



CENTRE FOR INTERNATIONAL LAW *CIL*

WORKSHOP REPORT

by

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WORKSHOP ON SUBMARINE CABLES AND LAW OF THE SEA
14 – 15 December 2009, Singapore

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PREFACE

The success of this Centre for International Law (CIL) Workshop was to a large extent due to the fact that it was organized in close collaboration with the International Cable Protection Committee (ICPC). We are especially grateful to Mr Douglas Burnett, the ICPC legal advisor, for his assistance in planning the workshop and in identifying panelists from industry. The participation of key persons from the cable industry in the workshop enabled Government officials and law of the sea experts to understand the practical law and policy issues relating to submarine cables.

This Workshop was a follow-up to a workshop organized in Beijing in May 2009 by Dr Gao Zhiguo of the China Institute for Marine Affairs (CIMA) and Professor Myron Nordquist of the Center for Ocean law and Policy at the University of Virginia (COLP). CIMA and COLP were sponsoring organizations of this Workshop, as was the Netherlands Institute for the Law of the Sea (NILOS). The law of the sea experts from those organizations, Dr Gao of CIMA, Prof Nordquist of COLP and Prof Fred Soons of NILOS, all played important roles in the Workshop and contributed to its success. Several other internationally recognized experts on law of the sea also participated in the Workshop, including Ambassador Satya Nandan of Fiji, Dr Hasjim Djalal and Prof Etty Agoes of Indonesia, Prof Stuart Kaye of Australia and Mr Serguei Tarrasenko, the Director of the United Nations Division on Ocean Affairs and Law of the Sea.

We would like to thank Prof Tommy Koh, the Chairman of the CIL Governing Board, for opening the Workshop, SingTel for sponsoring the Conference dinner, and Tyco Communications for organizing a tour of the Tyco Reliance cable ship. I would also like to express my gratitude to Dr Navin Rajagobal, the CIL Deputy Director, and Ms Geraldine Ng, CIL Events Manager, and our dedicated staff for doing their utmost to make the Workshop a success.

This Workshop Report was prepared by me and by Ms Tara Davenport, who is now a full-time Research Associate with CIL. We attempted to summarize the main points raised in the presentations and discussions and to make practical recommendations to address the major issues. We are grateful for the comments and suggestions made by Douglas Burnett on the draft report, but as its authors we are responsible for any errors or omissions. The PowerPoint presentations from the Workshop and a gallery of photographs from the Workshop are available on the CIL internet website under Past Events.

This Workshop Report represents an important milestone, but it is not the end of the journey. CIL intends to continue to research the law and policy issues relating to submarine cables, and to organize or participate in follow-up meetings, conferences or workshops on submarine cables. For the conference background materials and additional information on submarine cables, please visit the Research Projects page on the CIL internet website. We will continue to add new materials on submarine cables and law of the sea as they become available.

Robert Beckman
29 January 2009

I. EXECUTIVE SUMMARY

1. The Centre for International Law at the National University of Singapore (“CIL”) organized a regional workshop on submarine cables and law of the sea at the Grand Copthorne Waterfront Hotel, Singapore on the 14th and 15th of December 2009 (“the Workshop”). The Workshop was organized in close collaboration with the International Cable Protection Committee (“ICPC”). The Workshop was also jointly sponsored by the China Institute for Marine Affairs (“CIMA”), the Center for Ocean Law and Policy at the University of Virginia (“COLP”) and the Netherlands Institute for the Law of the Sea (“NILOS”). The Workshop was a follow-up to the CIMA/COLP Regional Workshop on Submarine Cables held in Beijing on the 7th and 8th of May 2009.
2. The Workshop brought together government officials from 12 Asian countries¹ (“government representatives”), experts on the law of the sea (“law of the sea experts”), experts from the cable industry (“the cable industry”), representatives from international organizations and other relevant stakeholders to examine the practice of the cable industry and governments on the laying, repair and protection of submarine cables in light of the legal regime in the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”).
3. The objectives of the Workshop were to:
 - a) Ensure that government officials and the cable industry understand the international and national legal regimes governing the protection, laying, and repair of submarine cables;
 - b) Identify gaps in the current international and national legal regimes governing submarine cables and recommend that the relevant governments and international bodies take such measures as are necessary, including adopting new conventions, to address those gaps;
 - c) Identify the various problems faced by both governments and the cable industry in the protection, laying and repair of submarine cables and recommend “best practices” to resolve these problems.
4. We are confident that the Workshop achieved its first objective. Not only did government representatives and representatives from the cable industry obtain a better understanding of the legal regime governing submarine cables, but government representatives and law of the sea experts learned a great deal about the cable industry.

¹ China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam and Korea

5. The Workshop concluded that there is some ambiguity in UNCLOS with respect to the freedom of all States to lay and repair submarine cables on the continental shelf beneath the high seas and in the exclusive economic zones (“EEZ”) of coastal States, and the right of coastal States to take reasonable measures for the exploration and exploitation of the resources of the continental shelf. However, the legal ambiguities in UNCLOS can be avoided in a manner which protects the rights and interests of both coastal States and the cable industry if they cooperate with each other to share information on the laying and repair of cables beneath the EEZ and high seas. Such cooperation is also possible with respect to the conduct of cable route surveys in the EEZ, which under UNCLOS is a lawful use of the sea incident to the freedom to lay submarine cables in the EEZ. Therefore, the Workshop recommends that coastal States and the cable industry cooperate with each other to develop and follow “best practices” with respect to the surveying of cable routes and the laying and repair of submarine cables.

6. The Workshop concluded that the legal regime set out in UNCLOS continues to provide a basic legal framework for submarine cables. However, the Workshop found that the current legal regime on the protection and security of submarine cables is not adequate in the following respects:
 - a) Many States have not enacted laws and regulations to protect submarine cables in their territorial sea from competing uses such as fishing and shipping, or providing that the breaking or injury of international submarine cables through wilful conduct or culpable negligence is a punishable offence.
 - b) Many States have not implemented their obligation under Article 113 of UNCLOS to adopt laws and regulations which make the breaking or injury of submarine cables beneath the high seas or EEZ through wilful conduct or culpable negligence a punishable offence if committed by their nationals or ships flying their flag.
 - c) The current legal regime does not recognize the threat of international terrorism and piracy to the security of submarine cables and cable ships, or the interest of all States in taking cooperative measures to protect international submarine cable systems and cable ships.
 - d) The current legal regime does not clearly provide that all ships must take measures to ensure that they do not interfere with the operation of cable ships which are engaged in the laying, repair or maintenance of international submarine cables, such as remaining one nautical mile from a cable ship engaged in cable laying or repair operations.

7. The key recommendations of the Workshop are as follows:
- a) That all States appoint a lead agency to be responsible for formulating a national policy on submarine cables and to be responsible for coordinating all issues relating to submarine cables including the surveying of cable routes as well as the laying, repair and protection of submarine cables. The lead agency should also be the single point of contact for the cable industry for the notification of security threats against cables and cable ships and for the co-ordination of appropriate national or regional responses to such security threats.
 - b) That all States adopt such laws and regulations as are necessary to fulfil their obligations under UNCLOS on submarine cables and protect submarine cables within their territorial sea.
 - c) That all States cooperate with the cable industry to develop a set of “best practices” with respect to the laying and repair of submarine cables, including the conduct of cable route surveys.
 - d) States with an interest in submarine cables should bring the issues concerning submarine cables to the attention of the UN Division of Ocean Affairs and Law of the Sea (“UNDOALOS”) as well as the UN Secretary-General², who in turn, could highlight these issues at the Meeting of State Parties to UNCLOS³. In particular, the following gaps in the current legal regime should be highlighted and the following recommendations made:
 - i. All States Parties to UNCLOS should take such measures as may be necessary to implement Article 113 of UNCLOS, including the adoption of laws and regulations;
 - ii. All States Parties to UNCLOS should cooperate with each other and with the cable industry to take such measures as may be necessary, consistent with international law

² The UN Secretary-General has the obligation under Article 319 (2) (a) of UNCLOS to report to all State Parties, the International Seabed Authority and competent international organizations on issues of a general nature that have arisen with respect to UNCLOS.

³ The Meeting of State Parties is convened in accordance with Article 319 (2) (e) of UNCLOS which provides that the UN Secretary-General shall convene necessary meetings of State Parties in accordance with UNCLOS. It receives information provided by the Secretary-General of the International Seabed Authority and the Chairman of the Commission on the Limits of the Continental Shelf on the activities of these bodies and also receives the Report of the Secretary-General under article 319 (2) (a) for the information of States parties on issues of a general nature, relevant to States parties, that have arisen with respect to UNCLOS: See http://www.un.org/Depts/los/meeting_states_parties/meeting_states_parties.htm

and UNCLOS, to protect international cable systems and cable ships outside the territorial sea of any State;

- iii. The UN Secretary-General should take such steps as may be necessary to draft a new UN counter-terrorism convention to make the intentional destruction or damage to international submarine cable systems and the intentional interference with cable ships an international crime;
- iv. The Maritime Safety Committee of the International Maritime Organization (“IMO”) should review the 1972 International Convention on the Prevention of Collisions at Sea (“COLREGS”) to determine if they sufficiently protect cable ships engaged in the laying and repair of submarine cables from interference by fishing vessels or commercial ships.

II. GENERAL ORGANIZATION OF THE WORKSHOP AND INTRODUCTORY REMARKS

1. The Workshop had eight (8) sessions over two days. Each session started with brief PowerPoint Presentations by panellists setting out the relevant issues and apart from the opening session (Session 1) and closing session (Session 8), the Chairman of each Session would open the floor to questions from the participants, after which lively debate and discussion would follow. The PowerPoint Presentations are available on the CIL website at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>.
2. Both Ambassador Tommy Koh, Chairman of CIL's Governing Board and Professor Robert Beckman, Director of CIL, gave introductory remarks to open the Workshop. Ambassador Koh noted that while there was little awareness about the importance of submarine cables, they played a critical role in contemporary society both economically and socially. He also emphasized the importance of speed in repairing cables damaged by natural disasters, fishing and shipping activities. He opined that the law governing submarine cables was reasonably clear and that it provided for both the freedom to lay cables as well as responsibilities on cable companies when laying cables. Lastly, he expressed his hope that the Workshop would clarify and reaffirm the existing legal framework.
3. In his introductory remarks, Professor Beckman noted that the provisions on submarine cables in UNCLOS had not been closely examined due to a misconception that there were no major legal issues concerning cables as evidenced by the fact that there was almost nothing on submarine cables in the legal literature on the law of the sea. He also noted that many of the problems faced by the cable industry with respect to permits for the laying and repair of cables were caused by two problems. First, there was a lack of communication between the cable industry and governments. Second, in most countries there was no lead agency in charge of submarine cables, there was little knowledge about the protection of cables in UNCLOS, and there was often no domestic legislation implementing the UNCLOS provisions on submarine cables. This situation was partly a result of the fact that UN system does not have a lead agency in charge of submarine cables. He also highlighted the importance of Track 2 Workshops such as these in which government officials attend in their private and personal capacity and speak only for themselves, not for their governments. Lastly, he hoped that through an open and free

discussion between the cable industry, government representatives and law of the sea experts, a consensus on common interests and best practices would be reached.

III. SESSION 1: THE SETTING

A. PRESENTATIONS:

1. Representatives from ICPC gave presentations on how the global submarine cable network is critical infrastructure and should be protected⁴.
2. Representatives from ICPC also provided an overview of the legal regime governing submarine cables⁵. The main points of this presentation are as follows:
 - a) The first convention on submarine cables was the 1884 Convention for the Protection of Submarine Cables (“the 1884 Convention”). About 40 States eventually became parties. Many of its provisions were incorporated into the 1958 Convention on the Continental Shelf.
 - b) The current legal regime governing submarine cables is set out in UNCLOS. The provisions in UNCLOS on the submarine cables are for the most part the same as those in the 1958 Convention on the Continental Shelf.
 - c) Under UNCLOS there is a clear distinction between the legal regime governing submarine cables in maritime zones under the sovereignty of coastal States (territorial sea and archipelagic waters) and maritime zones outside the sovereignty of coastal States (high seas, exclusive economic zone and continental shelf). Within their 12 nautical mile territorial sea, States have the right to regulate the laying, maintenance and repair of submarine cables. Similarly, archipelagic States such as Indonesia and the Philippines have the right to regulate the laying, maintenance and repair of submarine cables in their archipelagic waters. However, Article 51 of UNCLOS provides that archipelagic States must respect existing submarine cables laid by other States and passing through their waters without making a landfall.

⁴ *The Global Cable Network: The Need to Protect Critical Infrastructure* by Lionel Carter, Marine Environmental Advisor, ICPC available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

⁵ *Overview of UNCLOS Cable Provisions and Legal Issues* by Douglas Burnett, Legal Advisor, ICPC available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

- d) The legal rules governing submarine cables in zones outside of the sovereignty of the coastal State are very different. Article 87 of UNCLOS provides that all States have the freedom to lay submarine cables on the high seas. Article 112 provides that all States are entitled to lay submarine cables on the bed of the high seas beyond the continental shelf. Article 58(1) provides that the freedom to lay submarine cables also applies in the exclusive economic zone (EEZ). The freedom to lay submarine cables also includes the right to maintain and repair such cables.
- e) The freedom to lay submarine cables on the high seas and in the EEZ is subject to Part VI of UNCLOS on the continental shelf. Article 79(2) provides that the coastal State may not impede the laying or maintenance of submarine cables and pipelines, subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources. Article 79(5) requires States, when laying submarine cables, to have due regard to existing cables or pipelines, and in particular, not to prejudice the possibility of repairing existing cables and pipelines.
- f) There are fewer restrictions on the laying of cables on the continental shelf than on the laying of pipelines on the continental shelf. Article 79(3) provides that the delineation of the course for the laying of *pipelines* on the continental shelf is subject to the consent of the coastal State. Also, coastal States may take measures for the protection, reduction and control of pollution from *pipelines* on the continental shelf. There is no right to take such measures with regard to submarine cables.
- g) Articles 113-115 of UNCLOS provide for the protection of submarine cables beneath the high seas and EEZ.
 - i. Article 113 obligates States to adopt laws and regulations necessary to ensure that it is a punishable offence for a ship flying its flag or a person subject to its jurisdiction to wilfully or through culpable negligence break or injure a submarine cable beneath the high seas (or EEZ) in such manner as to be liable to disrupt communications.
 - ii. Article 114 covers the situation where in the laying or repairing of a submarine cable, a break or injury is caused to another submarine cable or pipeline. If the owners of the submarine cable which caused the break or injury are subject to its jurisdiction, a State must adopt laws and regulations to provide that the owners shall bear the costs of repairs to the other submarine cable or pipeline.

- iii. Article 115 provides for indemnification for losses incurred in avoiding injury to a submarine cable. States have an obligation to adopt laws and regulations to provide that if a ship sacrifices an anchor or fishing gear to avoid injuring a submarine cable, the owner of the cable shall indemnify the owner of the ship for losses they incurred in avoiding injury to the cable.

- h) Any dispute between States parties on the interpretation or application of the provisions of UNCLOS on submarine cables is subject to the compulsory binding dispute settlement procedures in Section 2 of Part XV of UNCLOS.

IV. SESSION 2: SURVEYING CABLE ROUTES AND LAYING CABLES

A. PRESENTATIONS

1. Representatives from the cable industry presented on the problems faced by them in the surveying of cable routes and the laying of cables within a country's maritime zones, focusing particularly on the problem of permits for both cable surveys and cable laying⁶.
2. Experts on the law of the sea gave an overview of the relevant UNCLOS provisions dealing with cable surveys and the laying of cables⁷. They also explored the risks posed by cable surveys and cable laying to the marine environment and other competing activities such as fishing, navigation and resource exploitation⁸.

B. DISCUSSION

3. The discussion for Session 2 began with a clarification of the legal regime relating to submarine cables under UNCLOS. The main points discussed were as follows:
 - a) Under Article 79(2), the high seas freedom to lay cables was subject to the right of the coastal State to take "reasonable measures" for the exploration of the continental shelf and the exploitation of its natural resources. However, the right to lay cables was not subject to the right of the coastal State to take reasonable measures for the prevention, reduction and control of pollution. This was confined to only pipelines. Accordingly, in principle, a coastal State could not require an Environmental Impact Assessment (EIA) to be undertaken before a cable was laid or require the cable company to take into account other such environmental considerations. However, it was agreed that this compromise during the

⁶ *Route Planning and Cable Route Surveys* by Graham Evans, Director, EGS Survey Group available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>; *Problems faced by cable planners and installers in laying cables within a country's maritime zones* by Dr Ronald Rapp, Director of Cable Engineering and Technology, Tyco Telecommunications available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

⁷ *Surveying cable routes: international law issues* by Professor Alfred Soons, Director, NILOS available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

⁸ *Submarine Cables, Resource Use and Environmental Protection* by Ambassador Satya Nandan available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

negotiation of UNCLOS was on the assumption that communications cables do not pose a pollution threat.

- b) There was also a difference of opinion on the interpretation of the sentence in Article 79(4) stating that nothing in Article 79 affects the “right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea”. Some law of the sea experts felt that this enabled coastal States to impose conditions on submarine cables in its EEZ or on the continental shelf if it is landing in that coastal State’s territorial sea. The problem with this view is that there is no limit on what conditions can be required by a coastal State and this encroachment could easily nullify the freedom to lay cables outside territorial seas. Others in the majority felt that this was a “savings clause” intended to make clear that the restrictions in Article 79 on the right of a coastal State to regulate cables on the continental shelf (where it has sovereign rights but not sovereignty) do not affect the more extensive rights of the coastal State to impose additional conditions on cables which enter its territory or territorial sea (where it has sovereignty). In such cases, the additional conditions would apply only to cables within its territory or territorial sea.
 - c) There was agreement amongst the law of the sea experts that the right to survey a cable route was an “internationally lawful use of the sea” incident to the freedom to lay submarine cables as provided in Article 58(1) of UNCLOS. There was also agreement amongst the law of the sea experts that cable route surveys are not marine scientific research and hence, are not subject to the regulation of the coastal State in its EEZ or on the continental shelf pursuant to Articles 56 and 246 of UNCLOS. While it was acknowledged that there was no definition of marine scientific research in UNCLOS and that this “constructive ambiguity” leaves open certain room for development in practice, the provisions on marine scientific research, when viewed in the context of UNCLOS as a whole, suggest that the drafters of UNCLOS did not intend to include survey activities as a form of scientific research. Article 19(1) (j) mentions “research or survey activities” and Article 40 also refers to “marine scientific research and hydrographic survey ships” indicating that survey activities and marine scientific research are distinct activities. The practical result is that most States do not request permits for cable route surveys outside of territorial seas.
4. After discussion on the legal regime, participants from the cable industry highlighted the practical problems faced by cable industry in the surveying of cable routes and the laying of cables. The key points discussed were as follows:

- a) The main problem with both the surveying of cable routes and laying of cables was the permitting requirements imposed by some coastal States in their EEZ or on the continental shelf. These permitting requirements are in some cases unknown, unpredictable and lead to undue delay as well as increased costs in the whole cable installation process. Increased costs can also arise from the requirements of some coastal States that only vessels registered in that country can perform a cable route survey. Where cable routes transit multiple EEZs and continental shelves, this means multiple ships must be used for the same survey.
- b) It was pointed out by government representatives that it was quite usual for States to require a license for ships entering their territorial sea to conduct activities and this license is usually obtained through an agent who would be aware of all the necessary requirements. Accordingly, the government representatives opined that there should be no delay if the cable industry made proper arrangements and applied for permits before the vessel arrives in the coastal State. The cable industry representatives stated that a considerable amount of resources went towards understanding the various permitting processes in different countries to ensure that delays would not occur.
- c) Another major problem was that for most countries, with the exception of the State Oceanic Administration of China (“SOA”) and the Australian Communications and Media Authority (ACMA), there was no lead agency dealing with submarine cables. This made it difficult to determine who to go to if a problem arose such as permit delays or security threats, etc.
- d) The cable industry also faced difficulties in challenging illegal regulations enacted in the EEZ and on the continental shelf. A recent example was the proposal by Malta to impose a tax or administrative fee on cables which transit their continental shelf. Given that cables are usually owned by a consortium of companies of different nationalities and there is no international registry or flag, it was unlikely that a State would challenge the proposed Maltese regulation unless prompted by the cable owner or operator affected. In this regard, it was also noted that in view of the huge investment and time sensitive nature of cable installation operations, cable owners or operators would prefer to find an alternative solution rather than delay the project for a longer period of time by insisting on their interpretation of UNCLOS.
- e) A further problem discussed was the legality under UNCLOS of the permit requirement imposed by some coastal States that their local hydrographical departments conduct the

survey for the portion of the cable route located within their territorial sea. Such departments sometimes lack the skill and equipment to conduct such surveys with the result that a survey in the territorial sea may not be of the same standard as the remainder of the survey outside of the territorial sea. It was agreed by the law of the sea experts that under UNCLOS, coastal States do have the right to request that their local hydrographical departments carry out the surveys in their territorial sea. It was also noted that very few coastal States insist on this requirement, but when they did, the biggest problem was not the quality of the survey, but the timely delivery of the survey report. In addition, when coastal States do impose such a requirement, the cable survey company tries to ensure that the quality of work is up to standard by supervising the work and preparing the report.

5. Representatives from ICPC commented that both cable fault surveys and cable fault data can be used to allay the fears of coastal States on the negative environmental impact of a cable within their territorial sea⁹.
6. The issue of paying certain fees to local authorities as an inducement to allow cable route surveys was also discussed. Representatives from the cable industry explained that in some countries local stakeholders such as fishermen and other groups press governments to require that payments be made directly to them, as implied conditions for securing the permit. Representatives from the cable industry stated that while they had encountered these situations, their general policy is that they will only participate in a transparent process where it is clear that any fees or monetary payments are going to a government agency.

⁹ For example, cable fault data showed that since 1956, there had been no incidents of cables entangling whales contrary to what was commonly believed. This scientific research study is found in Wood, M.P. and Carter, L. "Whale Entanglements with Submarine Cables," IEEE Journal of Oceanic Engineering 33:445-450 (2008).

V. SESSION 3: BROKEN OR DAMAGED CABLES

A. PRESENTATIONS

1. Representatives from ICPC and the cable industry highlighted the importance of the rapid repair of damaged or broken cables and gave an overview of the relevant legal issues relating to the repair of damaged or broken cables within a country's maritime zones¹⁰.
2. They explained that the most common problems faced by the cable industry in the repair of broken or damaged cables were uncertain requirements to obtain permits and delays in obtaining permits. It was observed that there are only two Asian countries that require repair permits for international cables outside of the territorial sea. It was also stressed that every cable serves as a back-up for other cables so that any delay in the repair of a cable increases the risk to all cables in the event of another fault or a multiple fault situation.

B. DISCUSSION

3. There was general agreement between law of the sea experts and the cable industry that a cable ship carrying out repairs in the territorial sea is not merely transiting the territorial sea. Accordingly, repair by cable ships in the territorial sea could not be considered innocent passage under Article 19 of UNCLOS.
4. There was consensus amongst representatives from the cable industry that the major problems in the repair of cables within territorial seas were delays in getting repair permits as well as inconsistent and, on occasion, onerous procedural requirements. In particular, the cable industry agreed that the biggest challenge in obtaining repair permits was the coastal State's requirements that had to be met before crew members on board a cable ship could enter territorial seas or other areas under sovereignty. The cable industry emphasized the importance of developing a process whereby the approval for the entry of crew members could be done in a uniform and expeditious manner.

¹⁰ *Overview of Beijing Workshop and Focus on Cable Repair Issues* by Douglas Burnett, Legal Advisor, ICPC available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>; *Problems faced by the cable industry in the repair of damaged submarine cables* by Wolfgang Rain, Marine Liaison Manager, Tyco Telecommunications available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>; *Best Practices and Recommendations on Repair of Submarine Cables* by Mick Green, Chairman of ICPC, Head of Subsea Centre for Excellence, British Telecommunications available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

5. With regards to the problem of inconsistent and onerous permit requirements, it was suggested that the focus should be on the reasonable requirements that a coastal State could impose to protect its legitimate security interests. It was agreed that it was reasonable for a coastal State to require information about vessels entering its territorial sea to repair a cable, including information about the nationality of the crew members of the cable ship and their recent employment history. It was also agreed that having a single agency as a focal point for repair permits and having standardized requirements about the crew members would greatly alleviate the current problems in obtaining repair permits.
6. The importance of confidence building measures (“CBM”) in order to cultivate trust between governments and the cable industry was also extensively discussed. Some of the suggested CBMs include:
 - a. A meeting(s) between a coastal State, a cable ship owner(s) and the cable owner/operator for a designated cables system(s) in 2010 to discuss the possibility of a provisional agreement establishing a trial basis program for one year. Under this program, the cable ship(s) responsible for repairing the cable in that State’s territorial sea would be designated and pre-approved. A pre-approved vessel could sail immediately to carry out a repair after providing notice to the affected coastal State. At the conclusion of the one year trial, the parties would meet to evaluate the program with a view to using such a system for repairs in countries that require permits for repairs outside of the territorial sea. China expressed interest in such a CBM.
 - b. Allowing ship-riders or national observers from the coastal State to ride with the cable ship when repairing cables, if requested by the coastal State. The cable industry could offer training sessions to ship-riders or national observers so that they understand the different elements of the repair operation and know what to expect before the repair operation starts. Ship-riders would have to be available to go aboard the ship on 24 hours notice in order to accommodate the urgent nature of repairs.

VI. SESSION 4: PROBLEMS CAUSED BY OVERLAPPING MARITIME BOUNDARIES

A. PRESENTATIONS

1. Legal Experts on the law of the sea gave an overview of overlapping maritime boundaries in the Singapore Strait and South China Sea and the various mechanisms used by States in those areas to resolve conflicts relating to overlapping boundaries¹¹.
2. Representatives from the cable industry highlighted the problems faced by them in areas with overlapping maritime boundaries including that of multiple permits and conflicting requirements of several governments which greatly complicates operations and increases costs¹².

B. DISCUSSION

3. The discussion in Session 4 began with Ambassador Satya Nandan, one of the key players in the negotiation of UNCLOS, providing the Workshop with valuable insight on how Article 121 on islands and rocks came about. This issue is of particular concern in Asia where many conflicting claims based on the existence of an island or rock can impact permitting issues.
4. The discussion then continued to the extent to which overlapping maritime boundaries caused problems for the cable industry. Representatives from the Chinese State Oceanic Administration opined that the nine-dotted line or the U-shaped line in the South China Sea, which has been in place since the 1940s, had done no harm to the cable industry. Representatives from the Philippines government also noted that its claims in the South China Sea did not pose any problem to either the freedom of navigation or the freedom to lay cables.

¹¹ *Special Problems which arise from the laying and repair of cables in areas of overlapping boundary claims and best practices which can be adopted by Industries and Governments to overcome these problems* by Dr. Hasjim Djalal, Director, Centre for South-East Asian Studies, Indonesia available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>; *Overlapping boundaries in East and Southeast Asia: the relevance of UNCLOS* by Professor Robert Beckman, Director, CIL available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

¹² *Problems caused by overlapping maritime boundaries* by Joshua Ang, Director (Submarine Cables), SingTel available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>; *Best Practices for Overlapping Maritime Boundaries* by Michael Costin, General Manager, International Networks, Telstra Operations available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

5. The traditional concerns of the cable industry when obtaining permits in waters with overlapping maritime boundaries were the additional delay and costs, conflicting requirements and the potential for conflicts with countries asserting their claims in these waters. In particular, representatives from the cable industry noted that there was a need for a more appropriate mechanism for the expeditious processing of repair permits given the time sensitive nature of repair operations.
6. Representatives from the cable industry commented that the cable industry has a neutral view of overlapping boundaries and as they operate in those areas, they do not want to be seen as favouring one State over another. Accordingly, they hoped that coastal States with overlapping boundaries would allow cable laying and repair activities to take place on a “without prejudice” basis while these overlapping claims were being resolved.
7. The discussion then focused on the most appropriate forum or mechanism for co-operation between the cable industry and States which have overlapping maritime boundaries, taking into consideration the highly sensitive and politicized nature of the topic. There was a consensus that there should be a regional solution. Suggestions included:
 - a. The Asia-Pacific Economic Co-operation Telecommunications and Information Working Group (“APECTEL”)¹³ although it was acknowledged that APECTEL had its limitations as it was limited to economies rather than governments and lacked the participation of the relevant stakeholders.
 - b. The ASEAN Regional Forum, given its history of co-operation on similar issues.
 - c. It was suggested that when overlapping boundaries are bilateral, the two States should attempt to come to practical arrangements on permits. When the overlapping boundaries are trilateral, like in the Singapore Strait, mechanisms such as the Tripartite Technical Experts Group (“TTEG”)¹⁴, which has a long history of co-operation, should be used.

¹³ The APEC Telecommunications and Information Working Group (TEL) was established to improve telecommunications and information infrastructure in the Asia-Pacific region by developing and implementing appropriate telecommunications and information policies, including relevant human resource and development cooperation strategies: See <http://www.apectelwg.org/>

¹⁴ The TTEG is a body of technical operational experts from the three littoral States which meet regularly to coordinate policies relating to safety of navigation and environmental protection in the Straits.

- d. It was also suggested that when the overlapping boundaries are multilateral, as they are in the South China Sea, mechanisms such as the Workshop on Managing Potential Conflicts in the South China Sea should be utilized. Dr Hasjim Djalal shared his experience with the Workshop on his instrumental role in the Workshop on Managing Potential Conflict in the South China Sea, and observed that both Vietnam and China were showing greater interest in developing co-operative relationships in the South China Sea now than they did previously and this could be utilized to increase co-operation in the laying and repair of submarine cables.
 - e. It was also suggested that any co-operation in the surveying of cable routes and the laying and repair of cables in the South China Sea or other overlapping areas could be carried out “without prejudice” to each party’s respective claims to maritime boundaries and sovereignty. This would be consistent with the 2002 ASEAN-China Declaration on Conduct of Parties in the South-China Sea. It would also be consistent with UNCLOS as they would be “provisional arrangements of a practical nature” pending settlement of the maritime boundaries, as is provided for in Articles 74 and 83 of UNCLOS.
8. There was also agreement that discussions about co-operation on submarine cables in areas of overlapping boundary claims such as the South China Sea could begin in Track 2 meetings, given that the issue of cooperation in areas of overlapping boundary claims involved sensitive political questions of sovereignty which are sometimes difficult for governments to discuss in direct talks.

VII. SESSION 5: REGULATION OF COMPETING USES TO PROTECT SUBMARINE CABLES

A. PRESENTATIONS

1. Representatives from ICPC and the cable industry gave presentations on the various competing uses of the ocean and the current practices used by the cable industry to prevent and minimize damage to cables from competing activities such as fishing, anchoring and resource exploitation¹⁵.
2. A legal expert on the law of the sea from Australia also gave an overview of cable protection legislation in Australia¹⁶.

B. DISCUSSION

3. Session 5 began with a discussion on Australian legislation on cable protection zones. It was noted that Australian legislation focuses on cable protection whereas Chinese legislation focuses on cable management. It was also clarified that cable protection zones do not provide for the exclusive use of areas for submarine cables and only certain activities are prohibited, for example, bottom trawling.
4. Representatives from the cable industry and government representatives from Indonesia also raised the point that to the extent that the Australian legislation restricts the rights of navigation of foreign cable ships or the laying of cables which would cross existing cables outside of the territorial sea, this was inconsistent with UNCLOS. The law of the sea expert from Australia explained that while the protected zones were outside of Australian territorial waters, the location of these waters were such that the only conceivable reason a ship would be in those waters would be to visit Australian ports. Australia could conceivably make compliance with cable protection legislation a condition of entry for foreign vessels into Australian ports. As

¹⁵ *Ocean Users, Now and the Future* by Lionel Carter, Marine Environmental Advisor, ICPC available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>; *Industry Practices on the protection of submarine cables* by Mick Green, Chairman of the ICPC, Head of Subsea Centre for Excellence, British Telecommunications available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

¹⁶ *Australian Submarine Cable Legislation* by Professor Stuart Kaye, University of Melbourne available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

such, Australian legislation on cable protection had not attracted international protest because the effect of its provisions could be legitimately accomplished by other means. Representatives from ICPC informed the Workshop that it has an outstanding inquiry about this precise issue with the Australian government. It was noted that New Zealand's cable protection legislation is a good model for States who wish to review their legislation because it protects cables in a manner that is consistent with UNCLOS.

5. The use of cable protection zones as de facto marine reserves was also discussed. It was noted that the Australian cable protection legislation had thus far not been proposed as a tool to protect the marine environment. It was pointed out that using such cable protection zones as a way to protect the marine environment was limited because cable protection zones are not in areas where fish are plentiful. The best habitats for fish are in areas with rocks and coral reefs, and such areas are avoided when laying cables.
6. The use of burial as a means of protecting cables was also extensively discussed. It was noted that burial of submarine cables was one of the prime means of protection. Singapore, for example, was quite successful at protecting cables because it was a requirement that cables be buried to 4 metres depth, although in most regions, a cable is usually buried up to 1 m. However, representatives from the cable industry pointed out that there were certain difficulties with burial, particularly in deep waters or when the seabed is hard or rocky. It is also time consuming, expensive and makes repair more difficult because it is difficult to recover.
7. The possibility of obtaining a world-wide ban on bottom trawling in order to protect cables was also raised. Ambassador Satya Nandan explained that while there were attempts by the UN to ban bottom trawling, there were problems with getting a blanket ban because some fish are bottom fish which can only be caught by bottom trawling. Further, there was no unanimity by Member States on the issue of bottom trawling.
8. Government representatives pointed out that one of the major problems was that there was a lack of awareness on the part of governments on the strategic importance of submarine cables. This was one of the reasons that there was usually no lead agency dealing with submarine cables and why the cable industry had to deal with so many different authorities such as environment agencies, security agencies, port authorities and telecommunications authorities. Representatives from ICPC responded that they are trying to increasing cable awareness through Workshops such as these and a UNEP/ICPC joint Publication "Submarine Cables and the

Oceans: Connecting the World (2010) which will be sent to governments and other audiences involved in ocean management and the marine environment.

9. Government representatives also raised the point that there may have been a strategic error on the part of the cable industry in exercising and asserting the freedom to lay submarine cables. They pointed out that the freedom of navigation of vessels under UNCLOS had been well preserved, but the freedom to lay cables did not seem to enjoy the same status because cable companies were complying with permit requirements on the laying and repair of cables outside the territorial sea even though such requirements may not be consistent with UNCLOS. It was suggested that the problem may lay in the practice of the cable industry in dealing with governments as individual cable companies rather than as an integrated industry. Law of the sea experts attributed the difference in the treatment of the freedom of navigation and the freedom to lay submarine cables to the fact that freedom of navigation is exercised and asserted by States, whereas the freedom to lay cables is exercised by cable companies and consortiums rather than States.
10. Representatives from ICPC commented that up until 1999, the cable industry was satisfied with the status quo regarding the national and international legal regimes governing cables, but after that, the intense use of the oceans and the realisation by governments of the potential use of the oceans made matters much more complicated. Further, up until the 1990's, satellites were mainly used and it was only recently that submarine cables were used more extensively. The cable industry did not have any coherent unified strategy in dealing with national governments, and each cable company applied to the relevant national governments for the necessary permits to lay and repair cables. However, representatives from ICPC stated that there was now a need to find a good working model on a regional or international basis to co-ordinate policies on the protection of cables and to engage with governments in a more pro-active manner.
11. Representatives from the cable industry commented that one important component of government representatives was missing, namely, those from national telecommunications authorities. It was suggested by both cable industry and government representatives that telecommunications authorities should be the lead agency for submarine cables. Professor Beckman, Director of CIL and the organizer of the Workshop, explained that representatives from telecommunications authorities were invited, but some of them declined because they did not see themselves as the lead agency for submarine cables, were unfamiliar with UNCLOS and were usually responsible for other aspects of communications such as competition issues.

12. It was also suggested that when governments are drafting legislation for the protection of submarine cables, they should bear in mind that one of the fundamental principles of UNCLOS is that each user of the sea is obligated to give due regard to other users. Such legislation should try and balance the competing interests of all the users of the sea to the extent that measures protecting these interests are reasonable.

13. A concern was also expressed by one of the law of the sea experts about the trend in certain Western countries, particularly the United States, of absolutist environmental legislation, which has the potential to severely restrict both the freedom of navigation and the freedom to lay submarine cables and undermine UNCLOS principles on freedom of the seas.

VIII. SESSION 6: THE INTENTIONAL DESTRUCTION OR DAMAGE OF SUBMARINE CABLES OR SUBMARINE CABLE INFRASTRUCTURE, THEFT OF SUBMARINE CABLES AND THE INTENTIONAL INTERFERENCE WITH CABLE SHIPS ENGAGED IN CABLE LAYING OR REPAIR ACTIVITIES

A. PRESENTATIONS

1. Legal experts gave an overview of the international legal regime on criminal liability for intentional destruction or damage of submarine cables, cable infrastructure and the intentional interference with cable ships, consisting of UNCLOS and the 1884 Convention, and concluded that there was a gap in the legal regime when these acts occurred in maritime zones outside of territorial sovereignty¹⁷. It was also pointed out that most national legislation did not criminalize the intentional destruction or damage to submarine cables or cable infrastructure or the intentional interference with cable ships.
2. Jurisdiction over persons guilty of such criminal acts was also discussed, including whether the intentional theft of international cables by the crew of a private ship for private gain outside the territorial sea could constitute piracy under UNCLOS¹⁸. It was noted that the theft of cables outside of territorial seas could fall within the definition of piracy in Article 101(a)(ii) of UNCLOS¹⁹ as cables outside the territorial sea could be considered property outside the jurisdiction of any State.
3. Legal experts also presented on the need for an international instrument to cover intentional destruction or damage of submarine cables and cable infrastructure, the theft of submarine cables and interference with cable ships²⁰.

¹⁷ *Overview of Criminal Law Requirements under international law* by Douglas Burnett, Legal Advisor, ICPC available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

¹⁸ *Criminal jurisdiction over persons who damage submarine cables* by Professor Alfred Soons, Director, NILOS available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

¹⁹ Article 101 (a) (ii) provides that any act of depredation, committed for private ends by the crew of a private ship and directed against property in a place outside the jurisdiction of any State constitutes piracy. Arguably, the intentional damage or theft of submarine cables could constitute piracy under UNCLOS.

²⁰ *A new international convention or protocol* by Professor Robert Beckman, Director, CIL available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

4. A representative from UNDOALOS also gave a presentation on the possible ways to highlight to the international community the need for a new instrument on the intentional destruction or damage of submarine cables, cable infrastructure and the intentional interference with cable ships²¹.

B. DISCUSSION

5. Representatives from ICPC highlighted the issues faced by the cable industry relating to the intentional destruction of submarine cables or submarine cable infrastructure, the theft of submarine cables and the interference with cable ship activities. They shared information on how in 2007 the crew members on at least two vessels operating out of Vietnam stole approximately 100 km of cable, along with optical amplifiers. Replacements had to be manufactured in France, resulting in two active cables in the South China Sea being out of service for 79 days. Urgent requests to at least three governments to protect the cables and apprehend the “pirate vessels” went unanswered largely because the governments were as surprised as the cable owners at the theft of the cables. ICPC representatives also explained the recent problems in the laying of cables off the east coast of Africa, where Somali piracy is a serious problem. Because cable ships laying cables travel slowly and have a low freeboard, they are particularly vulnerable to pirate attacks. Consequently, the companies laying the cable along the East coast of Africa had to engage the services of private security companies to protect the cable ships. This delayed completion of the cable and internet access to the east coast of Africa by several weeks, and the cable ships and cable owners had to incur additional costs of millions of dollars. The cable industry also highlighted concerns that Somali pirates operating off the east coast of Africa might deliberately cut a cable in order to lure a cable ship out for repairs so that the cable ship could be hijacked and the ship and its crew held for ransom.
6. It was also pointed out that when such acts occur outside of territorial seas, there was also the question of which State or agency to call, in view of the fact that there is no international lead agency and often no national lead agency.

²¹ *Possible ways to highlight to the international community the need for a new instrument regulating the laying and protection of submarine cables* by Serguei Tarassenko, Director of the Office of Legal Affairs, UNDOALOS available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

7. An issue which was extensively debated was whether the 1884 Convention, which has about 40 State Parties, was customary international law binding on all States. Representatives from the ICPC opined that that even provisions of the 1884 Convention which were not included in UNCLOS were customary international law. This was because Article 311²² of UNCLOS preserves the position in the 1884 Convention. They also maintained that Articles 5 – 7 of the 1884 Convention (which are not included in UNCLOS) are routinely observed in cable laying, surveying and repair activities today²³. Other legal experts questioned whether provisions in the 1884 Convention which were not included in UNCLOS represented customary international law, given that the only States in the Asia-Pacific region which are parties to the 1884 Convention are Japan, Australia and New Zealand.
8. The right to board vessels suspected of damaging cables or interfering with cable ships was also extensively discussed. The main points discussed are as follows:
 - a. While Article 10 of the 1884 Convention provides for the right to intercept vessels suspected of breaking or injuring a submarine cable either wilfully or through culpable negligence, there is no equivalent right in UNCLOS. It was observed that if the 1884 Convention was not customary international law, it would only be binding as between the parties to the 1884 Convention and would not extend to non parties²⁴.
 - b. Under Article 92 of UNCLOS, ships on the high seas are subject to the exclusive jurisdiction of the flag State, save in exceptional cases expressly provided in international treaties or in UNCLOS. The only exception in UNCLOS is piracy. Under Article 105 of UNCLOS the warships of any State have the right to seize a pirate ship and arrest the persons on board. It was acknowledged that the definition of piracy under Article 101 of UNCLOS could be interpreted to extend to acts of depredation against submarine cables outside the territorial

²² Article 311 (2) of UNCLOS provides that “This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.”

²³ It was also noted that in the Restatement of Foreign Relations Law of the United States (3rd Ed. 1986), the 1884 Convention was stated as customary international law.

²⁴ Article 10 of the 1884 Convention was the basis for the boarding in 1959 by the US Navy of a Russian Trawler suspected of breaking five transatlantic cables: See *The Novorossiisk*, Dept. of State Bull. Vol. XL no. 1034 at 555 (Apr 20. 1959). Both the US and USSR were parties to the 1884 Convention at that time.

sea,²⁵ and to an attack by a ship against a cable ship if such attack falls within the definition of piracy in Article 101. However, the mere interference with the activities of a cable ship would not constitute piracy.

- c. It was also pointed out that the provisions of the 2005 Protocol to the 1988 SUA Convention were also not helpful because the intentional destruction of cables is not an offence under SUA, and the right to board ships suspected of offences under SUA applies only outside of the territorial sea, and boarding can take place only with the express consent of the flag State.
 - d. It was also noted that under certain national rules of engagement such as those of the US, damage to US- owned submarine cables could be defined as a hostile act which would allow the US Navy to take reasonable measures including boarding a vessel.
9. It was suggested that the best way to fill the gap in the international regime was by adopting a protocol to the 1988 SUA Convention which would make it an offence to wilfully and intentionally destroy submarine cables and cables infrastructure.
10. There was also considerable discussion on ways in which the gap in the international legal regime could be highlighted to the international community. The following points were noted:
- a. Submarine cables are an “orphan” in the United Nations system in that there is no international agency responsible for submarine cables.
 - b. The onus of drawing attention to the gap in the international legal regime governing submarine cables fell to UN Member States. The only way in which submarine cables would be on the international agenda via any of the UN Organizations such as the IMO or UNDOALOS or the International Telecommunications Union (ITU) or through UN mechanisms such as General Assembly Resolutions would be on the request of a Member State. Thus far, no Member State has raised this issue.
 - c. The Security Council is unlikely to look at this issue unless it is one which constitutes a threat to international peace and security.

²⁵ See Note 4 above.

- d. The role of the ITU was also discussed. While it consisted of Member States and was the leading UN agency on information and communications technology, it had only made two recommendations on submarine cables, the scope of which were extremely limited. Representatives from the cable industry pointed out that the ITU is primarily concerned with standards and has little awareness and involvement in submarine cable protection and law of the sea issues. It was also noted that there is no formal relationship between the ITU and the ICPC.
- e. On whether the ICPC as an NGO could raise this issue at the UN level, representatives from ICPC commented that ICPC has applied for NGO status with IMO and has been rejected twice. The ICPC had invited the IMO to come to its plenary meetings but this invitation was declined. Representatives from ICPC also observed that ICPC has its limitations in that most of its members have full time jobs and it was not an organization which had a huge fixed infrastructure.
- f. It was also pointed out that State Parties to UNCLOS could also raise the issue at the Meeting of State Parties, the next meeting of which is scheduled for the 3rd week of June 2010. While it was observed that the Meeting of State Parties is theoretically limited to implementation of UNCLOS obligations, issues not directly related to implementation have also been discussed and could be used as a platform for multilateral co-operation on submarine cables²⁶.

²⁶ The Meeting of State Parties is convened in accordance with Article 319 (2) (e) of UNCLOS which provides that the UN Secretary-General shall convene necessary meetings of State Parties in accordance with UNCLOS. It receives information provided by the Secretary-General of the International Seabed Authority and the Chairman of the Commission on the Limits of the Continental Shelf on the activities of these bodies and also receives the Report of the Secretary-General under article 319 (2) (a) for the information of States parties on issues of a general nature, relevant to States parties, that have arisen with respect to UNCLOS: See http://www.un.org/Depts/los/meeting_states_parties/meeting_states_parties.htm

IX. SESSION 7: DAMAGE FROM INDISCRIMINATE ANCHORING IN SOUTHEAST ASIA

A. PRESENTATIONS

1. A legal expert gave an overview of private law tort actions and legal elements for civil recovery of damages under the general maritime law by cable companies against ships which damage cables by anchoring²⁷.
2. Representatives from the port authorities of Singapore and Malaysia outlined the steps taken by littoral States through the TTEG to prevent damage to submarine cables by indiscriminate anchoring in the Singapore Strait²⁸.
3. Representatives from the cable industry gave presentations on the cable faults caused by anchoring in the Singapore Strait²⁹.

B. DISCUSSION

4. The work of the TTEG in the Straits of Malacca and Singapore was commended by the panellists and other participants. It was also noted that the IMO Circular prohibiting anchoring in the buffer zone of the Traffic Separation Scheme ("TSS") was the first of its kind internationally.
5. The issue of whether the cable faults were caused by actual indiscriminate anchoring or from anchors being dragged while underway was discussed. The representative from the Singapore Maritime Port Authority ("MPA") commented that within the port of Singapore there was no

²⁷ *Damage to submarine cables: the case for holding wrongdoers civilly accountable* by Douglas Burnett, Legal Advisor to the ICPC available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

²⁸ *Actions taken by the MPA and the littoral states on ships anchoring indiscriminately in the Singapore Strait* by Captain M Segar, Director (Port Division), MPA available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>; *Indiscriminate anchoring of Ships at Non Designated Anchorage Areas* by Ahmad Nordin Bin Ibrahim, Principal Assistant Director, Marine Traffic Services Unit, Malaysia Marine Department available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

²⁹ *Damage to submarine cables from indiscriminate anchoring in Southeast Asia* by P Soundiramourty, General Manager (Engg), Tata Communications available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>; *Best Practices for the prevention of damage of submarine cables by indiscriminate anchoring in the Singapore Strait* by Mick Green, Chairman of ICPC, Head of Subsea Centre for Excellence, British Telecommunications available at <http://cil.nus.edu.sg/programmes-and-activities/past-events/workshop-on-submarine-cables-and-the-law-of-the-sea-on-14-15-december-2009/>

damage to cables from anchoring because cables within the port must be buried and armoured. In certain parts of the Singapore Strait outside Singapore waters, the representative from the Singapore MPA stated that cable damage was primarily caused by indiscriminate anchoring.

6. It was also made clear by representatives from both the Malaysia Marine Department and the Singapore MPA that there were designated anchorage areas and no anchorage areas which were clearly marked on all charts and maps. As such, mariners and ship owners could not claim ignorance when anchoring in a no anchorage area. There were also navigation rules in the Straits of Malacca and Straits of Singapore which applies to all ships passing through and which stipulated that if they should get into any difficulties while navigating, they should pull up to the starboard side and anchor.
7. The MPA representative also comprehensively explained the information on cable damage or threatened cable damage that was available to cable companies if requested. The main points are as follows:
 - a. MPA contacts vessels if its radar and Automatic Identification System (“AIS”) detects that these vessels are approaching submarine cables and warns them to move away from the submarine cables. It issues Safety Navigation Broadcasts which broadcast the name of the vessel and its longitude and latitude. The radar system is capable of using raw radar pictures as well as AIS. This information is kept for six months and MPA is willing to provide cable owners/operators with this information.
 - b. With regards to cable damage caused by indiscriminate anchoring, MPA is also able to detect whether there was a ship passing through the area or within the vicinity if provided with the time of the cable break. However, the MPA representative suggested that, in view of the fact that MPA is open 24 hours, cable owners/operators call immediately when they are alerted to a cable break. MPA usually only receives reports of a break a few days after the cable fault, and it requires some time and effort to detect which ship was passing through. MPA also offered to establish a direct hotline between cable owners/operators and the MPA.
8. With regards to prosecution of vessels which damage cables by anchoring in areas such as the Traffic Separation Scheme, MPA can only prosecute Singapore flagged vessels if the cable fault occurred outside of Singapore waters. However, the MPA does alert the flag State. The MPA

also stated that it is planning to follow up with the flag State to see what the outcome is of MPA's report against the guilty vessel.

9. It was also noted that despite the availability of information on the identity of the guilty ship, cable owners/operators had thus far not taken any civil action against any ships. Both representatives from ICPC and MPA as well as the law of the sea experts emphasized the importance of cable owners/operators taking civil action against guilty vessels. It was agreed that civil actions had a deterrent effect against vessels which anchor indiscriminately as both Protection and Indemnity Clubs (marine insurers) and vessel owners would then make a more concerted effort to ensure that their vessels do not anchor indiscriminately. While it was acknowledged that civil claims do require an initial investment in terms of lawyer's fees and costs incurred in investigating the claim, starting a civil action had great potential for further savings down the line in preventing future cable breaks. It was agreed that a consolidated effort by both government authorities and cable owners/operators including real time sharing of AIS data and legal action by cable owners would be most effective in reducing indiscriminate anchoring.
10. Representatives from ICPC also explained that there were many ways in which jurisdiction over a ship whose anchor damaged a cable could be asserted. First, courts in the flag State of the ship, the State in whose territorial sea or port the incident took place, and the landing States of the damaged cable would all have jurisdiction to hear the case against the ship. In addition, an *in rem* claim could be commenced against the ship in the courts in any State where the ship can be located. It is possible for cable owners/operators to monitor the ship's international movements through AIS, and then arrest the ship when it comes into port in a jurisdiction favourable for an *in rem* claim.

X. SESSION 8: CLOSING SESSION – COMMENTS BY CHAIRMEN AND SUPPORTING ORGANIZATIONS

The following comments were made by the various Chairmen of the Sessions as well as representatives from ICPC:

1. There is a need for a lead agency dealing with submarine cables in all the landing countries as well as coastal States with transit cables in areas under their sovereignty. The lead agency should act as a focal point in the approval process for route surveys, the laying and repair of cables and cable security. The lead agency would also assist in co-ordinating and developing a coherent national policy and strategy on the protection of submarine cables.
2. While it was not politically feasible to eliminate permits altogether, it was agreed that there was a need to streamline and standardize the permit process and other requirements for surveying cable routes and for the laying and repair of cables. Such streamlining should take into account the legitimate security interests of States.
3. The cable industry and governments should participate in further confidence building measures (CBM). One measure would be a provisional agreement for a one year trial period between interested national governments and the owners/operators of one or two international cable systems as well as owners/operators of one or two cable ships for repairs outside of territorial waters. Such an agreement would be on the basis that it was “without prejudice” to the position of the participants on their overlapping maritime boundary claims. There would also be a training component for government observers who wish to accompany cable ships carrying out repairs so that they are aware of how repairs done. After a year, a review meeting should be held to assess the success of the provisional arrangement and to determine whether it could be used in other regions.
4. There was a need to raise awareness on submarine cables at the international level. An interested State should be encouraged to raise the issue of submarine cables at the United Nations during the next meeting of the conference of parties to UNCLOS. It was also suggested that States could request the UN Secretary-General to ask the UN Division on Ocean Affairs and Law of the Sea to undertake a study of national legislation on submarine cables.

5. It was also suggested that the 1884 Convention was in need of urgent review and updating as it was insufficient to meet the needs of the twenty-first century. The number of parties to the 1884 Convention was limited, in that the only parties in the Asia-Pacific were Japan, Australia, and New Zealand. Further, a few essential articles were missing from the 1884 Convention, namely those on protection of cable systems and cable ships against pirate and terrorist activities or other activities interfering with cable ships and repairs, the need for lead agencies at a national level, dispute settlement procedures, international criminal provisions and standardization of permits.
6. In response to the comment made on the need to review the 1884 Convention, some law of the sea experts stated that focus should be on UNCLOS rather than on the 1884 Convention because UNCLOS is universally accepted as the constitution for the oceans. While there were gaps in UNCLOS, particularly in the protection and security of cables vis-a-vis piratical and terrorists acts, further study was required on ways in which the gaps in UNCLOS could be addressed.
7. The Beijing and Singapore Workshops on submarine cables and the law of sea were the first of their kind in the region, and indeed the world. They had gone a long way in clarifying the national and international legal regime and in identifying problems and possible solutions to the problems faced by the cable industry. It was hoped that the momentum established by the Beijing and Singapore Workshops could be carried forward to the COLP conference that will be held in May 2010 in Washington. Track 2 meetings organized by independent institutions such as CIL and COLP enabled industry, governments and international organizations to meet in an informal setting and address issue in a way that would not be possible in inter-governmental meetings.

XI. RECOMMENDATIONS

A. REGULATION OF THE SURVEYING OF CABLE ROUTES AND THE LAYING AND REPAIR OF CABLES

a. The Surveying of Cable Routes and Laying of Cables

KEY RECOMMENDATION: That all States and the cable industry co-operate with each other to develop a set of “best practices” with respect to the surveying of cable routes and the laying of cables, which protects the legitimate interests of States and the cable industry while avoiding differing interpretations of their respective rights under UNCLOS.

i. Actions to be taken by coastal States within maritime zones under sovereignty³⁰

1. Coastal States have the right to regulate the surveying of cable routes and the laying of cables in maritime zones under their sovereignty.
2. Coastal States should designate a lead agency to act as a focal point in the approval process for route surveys and the laying of cables and to assist both cable owners/operators and cable ship owners in obtaining the requisite permits. The lead agency would also be the point of contact for emergency repairs and cable security and protection events.
3. Coastal States should consider minimizing requirements for licensed cable ships engaging in laying or surveying activities within maritime zones under their sovereignty as they pose no threat to the security of the coastal State.
4. Coastal States within a region should standardize the requirements to be provided by cable ship owners/operators to coastal States for the survey of cable routes and the laying of cables in maritime zones under sovereignty. In particular, standard forms should be developed for cable ship operators to provide information on the background of crew members and their employment history.

³⁰ For purposes of the Workshop Report, ‘maritime zones under sovereignty’ refers to territorial sea and archipelagic waters of coastal States.

ii. Actions to be taken by coastal States in maritime zones outside sovereignty³¹

5. Coastal States should recognize that the right to lay submarine cables in the EEZ of coastal States is a high seas freedom under Article 58(1) of UNCLOS. Similarly, the right to survey a cable route within the EEZ is an “internationally lawful use of the sea” incident to the freedom to lay submarine cables under Article 58(1).
6. Coastal States should recognize that surveys by cable ships for the purpose of designating cable routes is not marine scientific research under UNCLOS and is not subject to the coastal States approval process for marine scientific research³².
7. Coastal States should recognize that the right to lay submarine cables and to survey cable routes in the EEZ and continental shelf is not subject to the consent of the coastal State. However, under Article 79(2) of UNCLOS, coastal States may take measures to ensure that the surveying of cable routes and the laying of cables do not interfere with its sovereign rights to explore the continental shelf and exploit its natural resources³³ provided that these measures are reasonable and do not result in unjustifiable interference with the surveying of cable routes and the laying of cables as stipulated in Article 78(2) of UNCLOS³⁴.
8. Pursuant to the coastal State’s right to impose reasonable measures on the exploration of its continental shelf and exploitation of its natural resources, coastal States may require that the cable route survey ship or cable ship officially notify the relevant government agency of the details of the ship, its location, its schedule and its planned activity, and if requested by such agency, provide a report at the end of its activities. This would enable the coastal State to advise other users of the presence of the cable route survey ship or cable ship. However, this notification and reporting regime would be more acceptable to the cable industry if it was not characterised as a permit requirement.

³¹ For purposes of the Workshop Report, ‘maritime zones outside sovereignty’ refers to the EEZ and continental shelf of coastal States.

³² Under Article 246 of UNCLOS, marine scientific research in the exclusive economic zone and on the continental shelf is subject to the consent of the coastal State.

³³ Under Article 77 of UNCLOS, the coastal State has sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources.

³⁴ Article 78(2) of UNCLOS provides that the exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

9. Coastal States should designate a lead agency to act as a focal point in the notification process for route surveys and the laying of cables, and for events involving cable repairs, protection, and security.

iii. Actions to be taken by the cable industry

10. The cable industry should recognize that although all States have the right to lay submarine cables on the high seas, in the EEZ and on the continental shelf, they must give due regard to the rights and duties of the coastal State, including their right to explore and exploit the natural resources of the EEZ and continental shelf. The cable industry should notify the relevant agencies in the coastal State about proposed routes on the continental shelf or through the EEZ to ensure that due deference is accorded to the rights and duties of the coastal State.
11. The cable industry should ensure that when engaging in survey or laying activities in the EEZ and continental shelf, the cable route survey ship or cable ship officially notify the relevant government agency of details of the ship, its location, its schedule and its planned activity, and if requested by such agency, provide a report at the end of its activities.
12. The cable industry should ensure that cable ships operating in maritime zones under sovereignty and outside sovereignty comply with the relevant provisions of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) by displaying recognized day shape and light signals as well as buoys to mark cable laying where appropriate.
13. The cable industry should make available to the coastal State cable route survey data upon completion of the survey provided that this information is kept confidential by the coastal State.

b. Repair of Cables

KEY RECOMMENDATION: That all States and the cable industry co-operate with each other to develop a set of “best practices” with respect to the repair of cables, which protects the legitimate interests of States and the cable industry while avoiding differing interpretations of their respective rights under UNCLOS.

i. Actions to be taken taken by coastal States within maritime zones under sovereignty

14. Coastal States should consider designating a single agency as a focal point, for all permits and requirements relating to the repair of submarine cables.

15. Coastal States should consider minimizing requirements for licensed cable ships operating within maritime zones under their sovereignty as they pose no threat to the security of the coastal State.
16. Coastal States should standardize the requirements to be provided by cable ship operators to coastal States for the repair of cables in maritime zones under sovereignty. In particular, standard forms should be developed for cable ship operators to provide information on the background and employment history of their crew.
17. Coastal States should consider establishing an Expedited Prior Approval Procedure in lieu of permits to facilitate repair in the event of damage to cables in maritime zones under their sovereignty. Since cable ships and their base ports are well known, and cable ships remain in the same location during the repair, coastal States should pre-clear these vessels for cable repairs on submarine cables in areas under their sovereignty so that repairs are not delayed and costs are minimized.

ii. Actions to be taken by coastal States in maritime zones outside of sovereignty

18. Coastal States should recognize that the right to repair submarine cables in its EEZ is an “internationally lawful use of the sea” incident to the freedom to lay submarine cables under Article 58(1).
19. Coastal States should recognize that the right to repair cables in the EEZ and on the continental shelf is not subject to the consent of the coastal State. However, under Article 79(2) of UNCLOS, coastal States may take measures to ensure that the repair of cables does not interfere with its sovereign rights to explore the continental shelf and exploit its natural resources³⁵ provided that these measures are reasonable and do not result in unjustifiable interference with the repair of cables as stipulated in Article 78(2)³⁶.
20. Pursuant to the coastal State’s right to impose reasonable measures on the exploration of its continental shelf and exploitation of its natural resources, coastal States may require that the cable repair ship officially notify the relevant government agency of the details of the ship, its

³⁵ Under Article 77 of UNCLOS, the coastal State has sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources

³⁶ Article 78(2) of UNCLOS provides that the exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention

location, its schedule and its planned activity and that it should provide a report to the coastal State on the completion of its repair activities. This would enable the coastal State to advise other users of the presence of the cable route survey ship or cable ship. However, this notification and reporting regime would be more acceptable to the cable industry if it was not characterised as a permit requirement.

iii. Actions to be taken by the cable industry

21. The cable industry should ensure that regardless of whether the repair of cables is taking place in maritime zones under sovereignty or outside of sovereignty, cable repair ships notify the relevant government agency of details of the ship, its location, its schedule and its planned activity.
22. When the repair is completed, the cable industry should provide a report on the repair to the coastal State if the coastal State requests a report.
23. The cable industry should ensure that cable ships operating in maritime zones under sovereignty and outside sovereignty comply with COLREGS by displaying recognized day shape and light signals as well as bouys to mark cable repair locations where appropriate.

c. Special Problems Posed by Overlapping Maritime Boundaries

KEY RECOMMENDATION: States with overlapping maritime boundaries should co-operate with each other and with the cable industry to develop a set of “best practices” with respect to the surveying of cable routes and the laying, repair and protection of cables, in a way which protects the legitimate interests of these States and the cable industry while avoiding differing interpretations of their respective rights under UNCLOS. Such co-operation should be done on a “without prejudice” basis to the respective claims relating to maritime boundaries and sovereignty of States with overlapping maritime boundaries.

i. Actions to be taken by coastal States in maritime zones under sovereignty

24. Coastal States should recognize that the surveying, laying and rapid repair of cables is in the common interests of all States, even the case where the cables are in areas where there are overlapping boundary claims.
25. Coastal States with overlapping maritime boundaries should co-operate with each other to minimize requirements for licensed ships engaged in either surveying, laying or repair activities

in maritime zones under sovereignty as they pose no perceived threat to the security of the coastal State.

26. Coastal States with overlapping maritime boundaries should co-operate with each other to standardize the requirements to be provided by ship operators to coastal States for the surveying of cable routes and the laying of cables in maritime zones under sovereignty. In particular, standard forms should be developed for cable ship operators to provide information on the background and employment history of crew members.
27. With regards to repair of cables, coastal States with overlapping maritime boundaries should co-operate with each other to establish common Expedited Prior Approval Procedures for the granting of repair permits in waters they claim to be within their sovereignty.
28. Such co-operation referred to in paragraphs 25, 26 and 27 shall be understood by all to be “without prejudice” to their respective claims relating to sovereignty and maritime boundaries.
29. The above practice is consistent with the 2002 Declaration ASEAN-China Declaration on Conduct of Parties in the South China Sea. The above practice is also consistent with the provisions of UNCLOS as they would be “provisional arrangements of a practical nature” within Articles 74 and 83 of UNCLOS on the delimitation of EEZ and continental shelf boundaries.

ii. Actions to be taken by coastal States in maritime zones outside of sovereignty

30. Coastal States with overlapping EEZ or continental shelf claims should recognize that the right to survey cable routes and lay and repair submarine cables in the EEZ and on the continental shelf is not subject to the consent of the coastal State. However, under Article 79(2), coastal States with overlapping maritime boundaries may take measures to ensure that the surveying of cable routes and the laying and repair of cables do not interfere with its sovereign rights to explore the continental shelf and exploit its natural resources³⁷ provided that these measures are reasonable and do not result in unjustifiable interference with the surveying of cable routes and the laying of cables as stipulated in Article 78(2)³⁸.

³⁷ Under Article 77 of UNCLOS, the coastal State has sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources.

³⁸ Article 78(2) of UNCLOS provides that the exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

31. Pursuant to the coastal State's right to impose reasonable measures on the exploration of the continental shelf and exploitation of its natural resources, coastal States with overlapping EEZ or continental shelf claims may reasonably require that ships engaging in surveying, laying or repair activities within their respective EEZs or continental shelves officially notify the lead government agency in their State of details of the ship, its location, its schedule and its planned activity, and if requested by such agency, provide a report at the end of its activities. This would enable the coastal State to advise other users of the presence of the cable route survey ship or cable ship. However, this notification and reporting regime would be more acceptable to the cable industry if it was not characterised as a permit requirement.
32. Coastal States with overlapping EEZ or continental shelf claims should co-ordinate and co-operate with each other on the reasonable measures to be adopted in areas where their EEZ and continental shelf claims overlap so as to minimize interference with the surveying of cable routes and the laying and repair of cables in these areas.
33. Such co-operation shall be understood by all to be "without prejudice" to their respective claims relating to sovereignty and maritime boundaries.
34. The above practice is consistent with the 2002 Declaration ASEAN-China Declaration on Conduct of Parties in the South China Sea. The above practice is also consistent with the provisions of UNCLOS as they would be "provisional arrangements of a practical nature" within Articles 74 and 83 of UNCLOS on the delimitation of EEZ and continental shelf boundaries.

iii. Mechanisms for co-operation between States with overlapping maritime boundaries

35. Coastal States with overlapping maritime boundary should consider utilizing the following mechanisms for co-operation:
 - a. When overlapping maritime boundaries are bilateral, the two States should attempt to come to practical arrangements on the surveying, laying and repair of submarine cables.
 - b. When the overlapping maritime boundaries are trilateral, like in the Singapore Strait, mechanisms such as the TTEG, which has a long history of co-operation, should be used.
 - c. When the overlapping maritime boundaries are multilateral, as they are in the South China Sea, mechanisms such as the Workshop on Managing Potential Conflicts in the South China Sea should be utilized.

36. Other forums such as ASEAN or the ASEAN Regional Forum should also be explored as a way to develop co-operation on submarine cables between States with overlapping maritime boundaries.

B. PROTECTION OF SUBMARINE CABLES

a. Protection from Competing Uses

KEY RECOMMENDATION: All States should ensure that they have enacted laws and regulations to protect submarine cables in maritime zones within their sovereignty from competing uses of the ocean such as fishing, shipping and resource exploitation activities. All States should also ensure that they have implemented their obligations under UNCLOS to protect submarine cables in maritime zones outside of sovereignty and that their exploration and exploitation of the resources in the EEZ and continental shelf do not damage submarine cables.

i. Actions to be taken by coastal States in maritime zones under their sovereignty

37. Coastal States should recognize that submarine cables are of vital strategic and economic importance and they should be protected as such.
38. Coastal States should exercise their right to enact laws and regulations relating to the innocent passage of foreign vessels through the territorial sea for the protection of submarine cables as provided for in Article 21(1) (c) of UNCLOS.
39. Coastal States should put into place measures to protect submarine cables in maritime zones under sovereignty from competing uses of the ocean such as fishing, shipping and resource exploration and exploitation activities. Such measures could include:
- a. The establishment of cable protection zones such as those established in Australia and New Zealand which prohibit certain activities such as anchoring and bottom trawling in designated areas;
 - b. The implementation and enforcement of the rule that vessels within maritime zones under sovereignty should keep a distance of at least one nautical mile from cable ships engaged in cable laying and repair operations;
 - c. The implementation and enforcement of regulations regarding the minimum precautions to be taken by vessels to secure anchors correctly prior to sea passage.

40. Coastal States should also review their domestic legislation to ensure that they have implemented their obligation under Article 115 of UNCLOS to have laws and regulations which provide for indemnification to owners of ships who have sacrificed an anchor, a net or other fishing gear by the owners of cables, provided that the owner of the ship has taken all reasonable precautionary measures beforehand. Such laws may not be necessary if it is determined that the custom and practice in the area between cable owners and fishermen already implements in practice this requirement.

ii. Actions to be taken by coastal States in maritime zones outside their sovereignty

41. Coastal States should review their domestic legislation governing maritime zones outside of their sovereignty to ensure that they have implemented their obligations under Articles 113, 114 and 115 of UNCLOS to:

- a. Ensure that they have laws and regulations as provided in Article 113 which provides that the breaking or injury of submarine cables beneath the high seas or EEZ by ships flying their flag or by persons subject to their jurisdiction through wilful conduct or culpable negligence is a criminal offence;
- b. Ensure that they have laws and regulations as provided in Article 114 necessary to provide that owners of submarine cables who are subject to its jurisdiction and who in laying or repairing a cable cause a break or injury to another cable, should bear the costs of repairs;
- c. Ensure that they have laws and regulations as set out in Article 115 providing that the owner of the cable indemnify the owner of a ship which has sacrificed an anchor, a net or other fishing gear in order to avoid injuring a cable, provided that the owner of the ship has taken all reasonable precautionary measures beforehand. But such laws may not be necessary if it is determined that the custom and practice in the area between cable owners and fishermen already implements in practice this requirement.

42. Coastal States should enact laws and regulations governing the exploitation of resources of the EEZ and the continental shelf to ensure that such activities do not damage submarine cables.

43. Coastal States should partner with the cable industry to exchange and share AIS data on a timely basis to prevent and avoid cable faults and to identify vessels which damage or threaten to damage cables.

44. Coastal States should respond to requests by cable repair ships to prevent actions by other vessels which interfere with cable repair operations.

iii. Actions to be taken by the cable industry

45. The cable industry should ensure that procedures exist for the timely and fair indemnification for anchors and fishing equipment sacrificed to protect cables, following procedures established in Article 115 of UNCLOS.
46. The cable industry should comply with the relevant IMO regulations set out in the COLREGS when cable ships are engaging in the laying and repair of cables, including the use of signals to avoid the risk of other uses interfering with the laying and repair of cables.
47. The cable industry should continue its efforts to ensure timely updating of cable routes to national hydrographic offices for placement on nautical charts. It should also continue its efforts to standardize and distribute Cable Awareness Charts to hydrographic offices, the fishing and shipping industry. In addition, if it is discovered that cable routes have moved because of environmental factors, the cable industry should ensure that the new position of the cable routes is given to hydrographical offices and the fishing and shipping industries as soon as practicable.
48. The cable industry should engage and educate the fishing industry on how to prevent damage to cables by fishing activities.
49. The cable industry should engage and educate the shipping industry and Protection and Indemnity Clubs on how to prevent damage to cables by anchoring and other activities.
50. In cases of cable damage by vessels, the cable industry should initiate civil actions in courts with admiralty jurisdiction to obtain compensation and serve as a deterrent to avoid future faults.
51. The cable industry should partner with local governments to share and exchange AIS data on a timely basis to prevent and avoid cable faults and to identify vessels causing or threatening damage do cables.

iv. Actions to be taken by the IMO

52. The IMO should review the COLREGS to see whether they are adequate to protect cable ships engaging in laying and repair operations. For example, the IMO may wish to consider

implementing the rule that all vessels stay one nautical mile from cable ships engaged in these activities and one quarter of a nautical mile from repair buoys.

53. The IMO should review its regulations on the minimum precautions to be taken by ships when preparing to anchor or when securing the anchor prior to passage to ensure that they are adequate to protect submarine cables from damage by anchors dragging while underway. The IMO should also review their regulations on the design and construction of vessels so that the possibility of anchors dragging while underway is minimised.
54. The IMO should review its regulations on the designation of no anchorage areas pursuant to its powers on the General Routeing of Ships. In particular, the IMO should consider whether the protection of submarine cables should be a specific factor to be taken into consideration when deciding whether or not to designate a no anchorage area.

b. The Intentional Breaking or Injury of Cables

i. Actions to be taken by all States

55. All States should recognize that they have a common interest in ensuring the protection of submarine cables from threats such as the intentional breaking or injury of cables and cable infrastructure, the theft of submarine cables and the interference with ships engaged in survey, repair or laying operations.
56. States should review their domestic legislation to ensure that they have laws and regulations as provided in Article 113 which provides that the breaking or injury of submarine cables in the high seas by ships flying their flag or by persons subject to their jurisdiction through wilful conduct is a criminal offence.
57. States should review their domestic legislation to ensure that the intentional breaking or injury of cables and cable infrastructure, regardless of motive, and the theft of submarine cables and the interference with cable ships, are offences when committed by their nationals or ships flying their flag.
58. States should take such measures as may be necessary, consistent with international law, to prevent the intentional breaking or injury of cables, the theft of cables and intentional interference with cable ships engaged in cable laying or repair activities. Such measures may include co-operation among States in activities such as joint patrols and the escort of cable ships in areas vulnerable to pirate or terrorists attacks.

59. States should co-operate with the cable industry to develop contingency plans to respond to threats to cables such as intentional breaking or injury of cables by terrorists or other persons.
60. States should conduct international naval exercises in cooperation with the cable industry to develop and practice measures to protect international submarine cables outside of territorial seas.
61. States should explore the possibility of the international community preparing and adopting an international convention similar to the 1988 SUA Convention to make intentional acts to damage or destroy cables international crimes among contracting parties.
62. States should highlight the need for such an instrument to relevant United Nations agencies by raising it at the Meeting of State Parties of UNCLOS or with UNDOALOS.

c. Indiscriminate Anchoring in the Singapore Strait

KEY RECOMMENDATION: The three littoral States should continue to co-operate with each other through the TTEG to prevent indiscriminate anchoring in the Singapore Strait and should continue to co-operate with the cable industry to facilitate private law tort actions against ships whose anchors have damaged submarine cables.

i. Actions to be taken by coastal States

63. The three littoral States should be commended for the measures taken so far to address the problem of indiscriminate anchoring in the Singapore Strait and should continue these efforts through the TTEG.
64. The three littoral States should continue their efforts to follow up reports made with flag States on vessels who anchor indiscriminately in the Singapore Strait so as to ensure that such vessels are appropriately sanctioned.
65. The port authorities of the littoral States should consider setting up a 24 hour hotline designated for cable owners/operators to report cable breaks.
66. The port authorities of the littoral States should continue to co-operate with the cable industry to facilitate private law tort actions by cable companies against ships whose anchors have damaged their cables, including providing details of the identity of the guilty ship and sharing AIS and vessel traffic information system (VTIS) information on a real time basis as such

information can often assist in identifying the cause of cable faults. Port authorities and the lead national agency should provide the cable industry with 24/7 points of contact.

ii. Actions to be taken by cable industry

67. The cable industry should inform the relevant port authority as soon as possible when cable breaks occur and provide the port authority and lead agency with 24/7 points of contact.
68. The cable industry should seek the co-operation of the relevant government agencies in the littoral States to share information necessary to identify the ships whose anchors break cables and to obtain evidence which will support the legal action by the cable company against the offending ship. This includes sharing and exchange of AIS data on a timely basis.
69. When such evidence has been obtained, the cable industry should commence civil suits against ships whose anchors or fishing gear damages their cables and keep the relevant government agencies apprised of their actions.

C. MEASURES TO ENHANCE COMMUNICATION BETWEEN CABLE INDUSTRY AND GOVERNMENTS

70. The cable industry should explore establishing Confidence Building Measures with coastal States. These would include:
 - a. Holding workshops and/or seminars to increase the awareness of governments on submarine cables;
 - b. Allowing national observers on board the cable route survey ship or cable ship during surveying, laying or repair activities provided that there is no interference with these activities and provided that observers can be sent to the cable ship on 24 hours notice;
 - c. Offering training sessions to national observers nominated to ride with cable route survey ships and cable ships so that they understand the different elements of the various operations relating to surveying, laying and repair of cables;
 - d. Entering into a provisional agreement with one or more coastal States in the region, establishing an Expedited Prior Approval Procedure for the repair of specified cable systems by pre-approved cable ships in the maritime zones of those States on a one year trial basis.
71. The cable industry should also:

- a. Engage and educate governments on the strategic importance of submarine cables through regional workshops, seminars and reports;
 - b. Invite governments to become members of ICPC and/or to attend major ICPC meetings.
72. Cable companies operating in the region should co-operate with one another to develop a common strategy in communicating with governments in the region and should designate a representative to engage governments in the region on behalf of the cable industry on matters such as standardization of forms, Expedited Prior Approval Procedures, designation of national focal points, and contingency planning to deal with multiple cable faults due to terrorist and pirate actions, natural disasters and other crises.

XII. APPENDICES

APPENDIX 1: WORKSHOP AGENDA



Universiteit Utrecht

WORKSHOP ON SUBMARINE CABLES & LAW OF THE SEA

14 - 15 December 2009, Singapore

Workshop Programme for Participants

MONDAY 14 DECEMBER 2009

08.30 Registration

09:00 Welcome Remarks by Ambassador Tommy Koh, Chairman, CIL Governing Board

09:20 SESSION 1: THE SETTING

Introductory Session: Discussion on the global submarine cable network and the need to protect critical infrastructure as well as an overview of the international legal framework governing submarine cables.

CHAIRMAN

Professor Robert **Beckman**, *Director, CIL*

PANELISTS

1. Professor Lionel **Carter**, *Marine Environment Advisor, International Cable Protection Committee (ICPC)*
2. Douglas **Burnett**, *Legal Advisor, ICPC*

MATERIALS

UNCLOS Provisions

10:30 *Photo Session for Chairmen and Panelists with Ambassador Tommy Koh*

Coffee Break

11:00 SESSION 2: SURVEYING CABLE ROUTES AND LAYING CABLES

What best practices should be followed by industry and governments to minimize risk to the marine environment and competing activities?

CHAIRMAN

Professor Robert **Beckman**, *Director, CIL*

PANELISTS

1. Graham **Evans**, *Director, EGS Survey Group*
2. Dr Ronald **Rapp**, *Director of Cable Engineering and Technology, Tyco Telecommunications*
3. Professor Alfred **Soons**, *Director, Netherlands Institute of the Law of the Sea (NILOS)*
4. Ambassador Satya **Nandan**, *Chairman, Western and Central Pacific Fisheries Commission (former Secretary-General of International Seabed Authority)*

MATERIALS

UNCLOS Provisions

12:30 *Lunch*

14:00 SESSION 3: REPAIR OF BROKEN OR DAMAGED CABLES

What best practices should be adopted to ensure that damaged or broken cables can be repaired as quickly as possible without compromising the legitimate interests of governments and other stakeholders?

CHAIRMAN

Dr **Gao** Zhiguo, *Executive Director, China Institute of Marine Affairs (CIMA)*

PANELISTS

1. Douglas **Burnett**, *Legal Advisor, ICPC*
2. Wolfgang **Rain**, *Marine Liaison Manager, Tyco Telecommunications*
3. Michael **Green**, *Chairman of ICPC, Head of Subsea Centre of Excellence, British Telecommunications*

MATERIALS

1. CIMA/COLP Workshop Report, Beijing
2. ICPC Recommendation No. 6 on Recommended Actions for Effective Cable Protection (Post Installation)
3. UNCLOS Provisions
4. ICPC Table on Way Leave (Easement) Charges and Repair Permit Requirements

15:30 *Coffee Break*

16:00 SESSION 4: PROBLEMS CAUSED BY OVERLAPPING MARITIME BOUNDARIES

What special problems arise from the laying and repair of cables in areas of overlapping boundary claims and what best practices can be adopted by industry and governments to overcome these problems?

CHAIRMAN

Professor Myron **Nordquist**, *Director, Center for Ocean Law and Policy (COLP)*

PANELISTS

1. Professor Robert **Beckman**, *Director, CIL*
2. Dr Hasjim **Djalal**, *Senior Advisor, Ministry of Marine Affairs and Fisheries, Indonesia*
3. Joshua **Ang** Joon Ping, *Director (Submarine Cables), SingTel*
4. Michael **Costin**, *General Manager, International Networks, Telstra Operations*

Materials

1. UNCLOS Provisions
2. Maps of overlapping boundary claims in East & SE Asia
3. 2002 ASEAN-China Declaration on Conduct of Parties in the South China Sea

17:30pm **End of Day One**

18.30pm River Boat Ride for Overseas Delegates

Welcome Dinner (*sponsored by SingTel*)



Dress Code: Smart Casual

TUESDAY 15 DECEMBER 2009

9:00 SESSION 5: REGULATION OF COMPETING USES TO PROTECT SUBMARINE CABLES

What best practices and technology should be adopted to prevent and minimize damage to submarine cables from activities such as fishing, anchoring and resource exploitation?

Chairman

Dr **Gao** Zhiguo, Executive Director, CIMA

Panelists:

1. Professor Lionel **Carter**, *Marine Environment Advisor, ICPC*
2. Michael **Green**, *Chairman of ICPC, Head of Subsea Centre of Excellence, British Telecommunications*
3. Professor Stuart **Kaye**, *University of Melbourne*

Materials:

1. UNCLOS Provisions
2. ICPC Recommendation No. 6 on Recommended Actions for Effective Cable Protection (Post Installation)
3. International Convention for the Prevention of Collisions at Sea 1972
4. Australian Legislation on Submarine Cables

10:30 *Coffee Break*

11:00 **SESSION 6: CRIMINAL LIABILITY FOR THE INTENTIONAL DESTRUCTION OR DAMAGE OF SUBMARINE CABLES OR SUBMARINE CABLE INFRASTRUCTURE, THEFT OF SUBMARINE CABLES AND THE INTENTIONAL INTERFERENCE WITH CABLE SHIPS ENGAGED IN CABLE LAYING OR REPAIR ACTIVITIES**

What measures are necessary to ensure that the intentional destruction or damage of submarine cables or submarine cable infrastructure, theft of submarine cables and the intentional interference with cable ships engaged in cable laying or repair activities is a criminal offence under national laws and regulations and international conventions?

CHAIRMAN

Professor Myron **Nordquist**, *Director, COLP*

PANELISTS

1. Douglas **Burnett**, *Legal Advisor, ICPC*
2. Professor Alfred **Soons**, *Director, NILOS*
3. Professor Robert **Beckman**, *Director, CIL*
4. Serguei **Tarassenko**, *Director, Office of Legal Affairs, United Nations Division for Ocean Affairs and Law of the Sea (UNDOALOS)*

MATERIALS:

1. UNCLOS Provisions
2. International Convention for the Protection of Submarine Cables 1884
3. Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988

12:30 *Lunch*

14:00 **SESSION 7: DAMAGE TO SUBMARINE CABLES FROM INDISCRIMINATE ANCHORING IN SOUTHEAST ASIA**

What measures can be taken to prevent damage to cables, to facilitate quick repair of damaged cables and to facilitate recovery for damaged cables?

CHAIRMAN

Ambassador Satya **Nandan**

PANELISTS

1. Douglas **Burnett**, *Legal Advisor, ICPC*
2. Captain M **Segar**, *Director, Port Division, Maritime Port Authority of Singapore*
3. Ahmad Nordin Bin **Ibrahim**, *Principal Assistant Director, Marine Traffic Services Unit, Malaysia*
4. P **Soundiramourty**, *Dy. General Manager (Engg), Tata Communications*
5. Michael **Green**, *Chairman of ICPC, Head of Subsea Centre of Excellence, British Telecommunications*

MATERIALS

1. Relevant IMO Regulations and Circulars
2. Circulars issued by Singapore and Malaysia regarding anchoring in the Singapore Strait

15:30 *Coffee Break*

16:00 SESSION 8: CLOSING SESSION

Reports and Comments by Chairmen and Supporting Organizations

CHAIRMAN

Professor Alfred **Soons**, Director, *NILOS*

PANELISTS

1. Professor Robert **Beckman**, *Director, CIL*
2. Dr **Gao Zhiguo**, *Director, CIMA*
3. Professor Myron **Nordquist**, *Director, COLP*
4. Douglas **Burnett**, *Legal Advisor, ICPC*
5. Ambassador Satya **Nandan**, *Chairman, Western and Central Pacific Fisheries Commission (former Secretary-General of International Seabed Authority)*

17:00 **End of Day Two & Workshop**

17:00 **Tour of Cable Ship Tyco Reliance organized by Tyco Telecommunications**

APPENDIX 2: PARTICIPANTS LIST

	Country:	Name:	Company:	Designation:
1	Australia	Michael Costin	Telstra Corporation Limited	General Manager, International Networks
2	Australia	Graham Evans	EGS Survey Group	Director
3	Australia	Stuart Kaye	Melbourne Law School, University of Melbourne	Director, Asia Pacific Centre for Military Law
4	Bahrain	Eric Dunand	Telecommunications Regulatory Authority, Bahrain	Technical Advisor
5	Cambodia	Gnak Tol	Telecom Cambodia, MPTC	Director of Project Management Department
6	China	Feng Jun	China Submarine Cable Construction Co Ltd	
7	China	Fu Yu	China Institute for Marine Affairs	Researcher
8	China	Gao Zhiguo	China Institute for Marine Affairs	Director
9	China	Li Jin Ming	Guangdong Transport Networks Operation Center, China Telecom	-
10	China	Wang Xiaodong	China Academy of Telecommunication Research of MIIT PR China	
11	China	Yang Xie Wen	China Submarine Cable Construction Co Ltd	
12	China	Zhong Chongjun	State Oceanic Administration of China	Deputy Director, Division of Submarine Management, Department of Sea Area & Island Management
13	Fiji	Satya Nandan	Western and Central Pacific Fisheries Commission	Chairman
14	Hong Kong SAR	Nicholas Chan	Squire, Sanders & Dempsey	Partner
15	Hong Kong SAR	Vincent Kou	Reach Global Services Limited	Senior Manager, Regulatory Affairs

16	Hong Kong SAR	Lau Siu Pong	EGS (Asia) Ltd	Chief Operating Officer
17	Hong Kong SAR	Christopher David Welsh	EGS (Asia) Ltd	Director
18	India	Narinder Singh	Legal & Treaties Division, Ministry of External Affairs	Joint Secretary & the Legal Adviser
19	Indonesia	Etty Agoes	Indonesian Center for the Law of the Sea Padjadjaran University Bandung, Indonesia	Director
20	Indonesia	Hasjim Djalal	Indonesian Maritime Council	Member
21	Indonesia	Renny Meirina	Directorate of Treaties on Political, Security and Territorial Affairs	
22	Indonesia	Arif Havas Oegrosono	Department of Foreign Affairs, Indonesia	Director General of Law and International Treaties
23	Indonesia	Ari Prasetyo	Ministry of Marine Affairs and Fisheries	Staff of Legal and Institutional Affairs Bureau
24	Indonesia	Purihitajati Widodo	Ministry of Marine Affairs and Fisheries	Head of Subdivision of International Cooperation
25	Japan	Yoshinobu Takei	Ocean Policy Research Foundation	Research Fellow, Policy Research Department
26	Japan	Akima Umezawa	Embassy of Japan in Singapore	Head of Chancery & Counsellor
27	Korea	Thomas Lim	Korean Embassy in Singapore	Researcher
28	Laos	Phoutthabandith Warinthrasak	Ministry of Foreign Affairs, Laos	Officer, Dept of Treaties and Law
29	Malaysia	Ahmad Nordin Bin Ibrahim	Marine Traffic Services Unit	Principal Assistant Director
30	Malaysia	Ronnie Lim	Optic Marine Services Limited	CEO
31	Maldives	Ibrahim Anwar	Dhiraagu	Senior Engineer
32	Myanmar	Nyunt Lwin	Office of the Attorney General Union of Myanmar	Staff Officer (Law Officer Grade-3)
33	Myanmar	Maung Maung Oo	Ministry of Transport (Myanmar)	Director General

34	Netherlands	Alfred Soons	NILOS	Director
35	New Zealand	Lionel Carter	ICPC & Victoria University of Wellington	Marine Environmental Adviser (ICPC)
36	Philippines	Janice Didal-Vargas	National Telecommunications Commission	Attorney III
37	Philippines	Neil Frank Ferrer	Ocean Concerns Office Department of Foreign Affairs, Philippines	Incoming Executive Director
38	Philippines	Reginald B Rapanan	Philippine Navy	Deputy Commander, Naval Intelligence and Security Force
39	Philippines	Henry Sicaad Bensurto, Jr	Commission on Maritime and Oceans Affairs Secretariat	Secretary General
40	Singapore	Davinia Filza Abdul Aziz	Attorney-General's Chambers, Singapore	State Counsel
41	Singapore	Johnny Yusuf Abdullah	Fugro Survey Indonesia (PT)	Director
42	Singapore	David Alfred	IDA	Deputy General Counsel
43	Singapore	Joshua Ang Joon Ping	Singapore Telecommunications Limited	Director
44	Singapore	Maureen Ann	Rodyk & Davidson LLP	Partner
45	Singapore	Robert C Beckman	Centre for International Law	Director
46	Singapore	Jakob Braendli	EGS Survey Pte Ltd	EGS (Asia) Ltd
47	Singapore	Chan Siok Mui	Global Marine Cable Systems Pte Ltd	Contracts Manager
48	Singapore	Jane Chan	S Rajaratnam School of International Studies	Associate Research Fellow
49	Singapore	Dulcie Chan	MICA	Deputy Director (Industry Policy)
50	Singapore	Benny Choo	Tyco Telecommunications	Regional Director, AP Marine Services
51	Singapore	Choong Yew Weng	Oriental Global Resources Pte Ltd	Director, Marine Advisor
52	Singapore	Fong Yiew Hsang	ASEAN Cableship Pte Ltd	Project Manager

53	Singapore	Lucien Hong	Ministry of Foreign Affairs, Singapore	Country Officer
54	Singapore	Howard Hoo	Pacific Internet Ltd	Senior Manager, Marine Planning & Logistics
55	Singapore	Kong Yan Ping	MICA	Assistant Manager (Industry Policy)
56	Singapore	Jean Kua	Attorney-General's Chambers, Singapore	State Counsel
57	Singapore	Lim Siew Khim	Maritime and Port Authority of Singapore	Deputy General Counsel
58	Singapore	Derek Loh	Attorney-General's Chambers, Singapore	State Counsel
59	Singapore	Loh Wei Hao	Drew & Napier LLC	Senior Associate
60	Singapore	Martin Marini	Maritime and Port Authority of Singapore	General Counsel
61	Singapore	Mathai Mathew	Nippon Maritime Center Ltd	Marine Manager
62	Singapore	Hanson Ng	Fairlead Marine Services Pte Ltd	Director
63	Singapore	Eitan Ng	Sea and Land Technologies Pte Ltd	Sales Engineer
64	Singapore	Ooi Seng Keat	Singapore Telecommunications Limited	Director
65	Singapore	Soundiramourty P	Tata Communications	DY General Manager (Engg)
66	Singapore	Pang Kang Chau	Attorney-General's Chambers, Singapore	Senior State Counsel
67	Singapore	Dhini Purnamasari	Shipping Association of Singapore	Executive Officer
68	Singapore	Quek Tsui Chiang	Shipping Association of Singapore	Executive Officer
69	Singapore	Navin Rajagobal	Centre for International Law	Deputy Director
70	Singapore	Carol Seah	Pacific Internet Ltd	Assistant General Counsel
71	Singapore	Mary Seet-Cheng	Ministry of Foreign Affairs, Singapore	Ambassador / Senior Specialist Adviser

72	Singapore	M Segar	Maritime and Port Authority of Singapore	Group Director (Hub Port) / Director (Port)
73	Singapore	Simon Smith	Pacific Internet Ltd	Assistant General Counsel
74	Singapore	Samuel Soo	Ministry of Transport, Singapore	Policy Executive
75	Singapore	Timothy Tan	ASEAN Cables Pte Ltd	Captain
76	Singapore	Jason Tan	Attorney-General's Chambers, Singapore	State Counsel
77	Singapore	Tan Pei Shan	MICA	Assistant Director (Industry Policy)
78	Singapore	Jason Tan	IDA	Assistant Director (Infrastructure Regulation)
79	Singapore	Kevin Tan	National University of Singapore	Adjunct Professor
80	Singapore	Daniel Tan	Shipping Association of Singapore	Executive Director
81	Singapore	John Walters	Global Marine Cable Systems Pte Ltd	Director
82	Singapore	Lionel Yee	Attorney-General's Chambers, Singapore	Principal Senior State Counsel
83	Singapore	Peggy Yeo	Monson Agencies Pte Ltd	Commercial Manager / Director
84	Singapore	Cheryl Yong	Maritime and Port Authority of Singapore	Assistant Manager
85	Singapore	Phoenix Yoong	ASEAN Cables Pte Ltd	Chief Executive Officer
86	Thailand	Nuanprae Bunnag	Division of Legal Affairs, Department of Treaties and Legal Affairs	Third Secretary Official
87	Thailand	Jaruwan Charoensuk	CAT Telecom Public Company Limited	Assistant Vice President, Law Department
88	UK	Michael Green	ICPC & BT	Chairman ICPC & Head of Subsea BT
89	UK	Geof Holland	Alcatel-Lucent Submarine Networks	Survey & Route Engineering Manager, Marine Operations

90	UK	Simon Jennings	Alcatel-Lucent Submarine Networks	Marine Permits & Environment Manager
91	UK	Andy Palmer-Felgate	Verizon Business	Senior Cable Engineer
92	UK	Richard David Taunton Poole	EGS (Asia) Ltd	Project Manager
93	USA	Douglas Burnett	ICPC	International Cable Law Advisor
94	USA	Daniel Marquis	Tyco Telecommunications (US) Inc	Senior Manager (Permitting & Regulatory Affairs)
95	USA	Myron Nordquist	COLP	Director
96	USA	Wolfgang Rain	Tyco Telecommunications (US) Inc	Marine Liaison Manager
97	USA	Ronald J Rapp	Tyco Telecommunications	Director, Cable Engineering & Technology
98	USA	M Serguei Tarassenko	UNDOALOS	Director
99	Vietnam	Do Ngoc Hung	Official of Department of Legal Affairs, MIC Vietnam	Official
100	Vietnam	Nguyen Manh Dong	Ministry of Foreign Affairs, Vietnam	Deputy Director General of the Department of International Law and Treaties
101	Vietnam	Nguyen Xuan Tru	Department of Telecommunications	Deputy Director General
102	Vietnam	Phan Quoc Vinh	Official of Department of Legal Affairs, MIC Vietnam	Officer

APPENDIX 3: LIST OF MATERIALS AVAILABLE ON CIL WEBSITE

When planning and organizing the Workshop on Submarine Cables and Law of the Sea, CIL staff undertook a significant amount of research on the legal regime governing submarine cables. Some of the materials that were gathered were made available on the CIL web site prior to the Workshop. Other materials were made available to participants at the Workshop. These materials are now available on the CIL Website at <http://cil.nus.edu.sg/research-projects/cil-research-project-on-submarine-cables-and-law-of-the-sea/>. A list of these materials can be found below:

Materials on Submarine Cables and Law of the Sea

1. International Conventions
 - 1) International Convention for the Protection of Submarine Cables 1884
 - 2) Relevant Provisions of United Nations Convention on the Law of the Sea 1982 (UNCLOS)
 - 3) International Regulations for the Prevention of Collisions at Sea 1972 (COLREGS)
 - 4) Convention for the Suppression of Unlawful Acts of against the Safety of Maritime Navigation 1988 (SUA)

2. Domestic Legislation
 - 1) Australian Legislation
 - a) Submarine Cables and Pipelines Protection Act 1963
 - b) Schedule 3A of the Telecommunications Act 1997
 - c) Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) 2005
 - d) Submarine Cable (Northern Sydney Protection Zone) Declaration 2007
 - e) Explanatory Statement to Submarine Cable (Northern Sydney Protection Zone) Declaration 2007
 - f) Submarine Cable (Perth Protection Zone) Declaration 2007

 - 2) New Zealand Legislation
 - a) Submarine Cables and Pipelines Protection Act 1996
 - b) Submarine Cables and Pipelines Protection Order 1992

3. International Cable Protection Committee (ICPC) Documents
 - 1) ICPC Recommendation No. 6 on Recommended Actions for Effective Cable Protection (Post Installation)
 - 2) ICPC Booklet on Fishing and Submarine Cables

4. IMO Documents
 - 1) IMO Circular No. 282 on the Prohibition of Anchoring in the Straits of Malacca and Singapore dated 27 November 2009
 - 2) Information on Ship Routeing from the IMO Website

- 3) Amendments to the General Provisions on Ships Routeing (resolution A.572 (14))
5. Circulars issued by Port Authorities and P and I Clubs on indiscriminate anchoring in the Singapore Strait
 - 1) MPA Port Marine Circular No. 5 of 2001 on Prohibition of Anchoring in the Straits of Malacca and Singapore, 1 February 2001
 - 2) MPA Notice to Mariners No. 57 of 2009 on Damage to Submarine Cables caused by ships anchoring at non-designated anchorage areas dated 1 June 2009
 - 3) Malaysia Marine Department Notice to Mariners 73/2008 on Non Anchorage Areas dated 22 October 2008
 - 4) Circular issued by the Standard Club dated 12 September 2009
 - 5) Loss Prevention Circular No. 11-09 issued by Gard Club, August 2009
6. Miscellaneous Documents
 - 1) CIMA/COLP Workshop Report on Submarine Cables, Beijing, 7 – 8 May 2009
 - 2) 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea
 - 3) Maps of Overlapping Boundary Claims in the South China Sea
 - 4) Map of the Singapore Strait showing the location of Submarine Cables
 - 5) Cable Fault Statistics in the Singapore Strait for 2008 and 2009
7. Background Power Point Presentations
 - 1) *Overview of Submarine Cable Route Planning & Cable Route Survey Activities* by Graham Evans, Director, EGS Survey Group
 - 2) *Causes of Cable Faults and Repairs in Regional Seas* by Stephen Drew, ICPC Executive Committee Member
 - 3) *Undersea Cables in the East China Sea* by Robert Wargo, ICPC Vice Chairmen
 - 4) *UNCLOS and Submarine Cables* by Douglas Burnett, Legal Advisor, ICPC

APPENDIX 4: RELEVANT PROVISIONS OF UNCLOS 1982

1. PART II: TERRITORIAL SEAS AND CONTIGUOUS ZONES

Article 3: Breadth of the Territorial Sea

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 19: Meaning of innocent passage

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.
2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:
 - (j) the carrying out of research or survey activities;

Article 21: Laws and regulations of the coastal State relating to innocent passage

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:
 - (a) The protection of cables and pipelines;
 - (g) Marine scientific research and hydrographic surveys;

Article 33: Contiguous zone

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:
 - (a) Prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
 - (b) Punish infringement of the above laws and regulations committed within its territory or territorial sea.
2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2. PART III: STRAITS USED FOR INTERNATIONAL NAVIGATION

Article 40: Research and survey activities

During transit passage, foreign ships, including marine scientific research and hydrographic survey ships, may not carry out any research activities without the prior authorization of the States bordering straits.

3. PART IV: ARCHIPELAGIC STATES

Article 51 (2): Existing Agreements, traditional fishing rights and existing submarine cables

An archipelagic State shall respect existing submarine cables laid by other States and passing through its waters without making a landfall. An archipelagic State shall permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair and replace them.

Article 54: Duties of ships and aircraft during their passage, research and survey activities, duties of the archipelagic State and laws and regulations of the archipelagic State relating to archipelagic sea lanes passage

Articles 39, 40, 42 and 44 apply *mutatis mutandis* to archipelagic sea lane passage.

4. PART V: EXCLUSIVE ECONOMIC ZONE**Article 56: Rights, jurisdiction and duties of the coastal State in the exclusive economic zone**

1. In the exclusive economic zone, the coastal State has:
 - a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
 - b) Jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - i. The establishment and use of artificial islands, installations and structures;
 - ii. Marine scientific research;
 - iii. The protection and preservation of the marine environment
 - c) Other rights and duties provided for in this Convention.
2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

Article 57: Breadth of the exclusive economic zone

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 58: The rights and duties of other States in the Exclusive Economic Zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.
3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Article 74: Delimitation of the exclusive economic zone between States with opposite or adjacent coasts

1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

5. PART VI: CONTINENTAL SHELF

Article 77: Rights of the coastal State over the continental shelf

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional or any express proclamation.
4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with the living organisms belonging to the sedentary species, that is to say, organisms which at the harvestable stage, either are

immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil.

Article 78: Legal status of the superjacent waters and air space and the rights and freedoms of other States

1. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.
2. The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

Article 79: Submarine cables and pipelines on the continental shelf

1. All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article.
2. Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines.
3. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.
4. Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.
5. When laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 83: Delimitation of the continental shelf between States with opposite or adjacent coasts

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional

arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

6. PART VII: HIGH SEAS:

Article 86: Application of the provisions of this Part

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Article 87: Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
 - (a) freedom of navigation;
 - (b) freedom of overflight;
 - (c) freedom to lay submarine cables and pipelines, subject to Part VI;
 - (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
 - (e) freedom of fishing, subject to the conditions laid down in section 2;
 - (f) freedom of scientific research, subject to Parts VI and XIII.
2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 91: Nationality of ships

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.
2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 92: Status of ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly

provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 101: Definition of Piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 112: Right to lay submarine cables and pipelines

1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.
2. Article 79, paragraph 5, applies to such cables and pipelines.

Article 113: Breaking or injury of a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done willfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 114: Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to provide that, if persons subject to its jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 115: Indemnity for loss incurred in avoiding injury to a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

7. PART XIII: MARINE SCIENTIFIC RESEARCH**Article 245: Marine scientific research in the territorial sea**

Coastal States in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research in their territorial sea. Marine scientific research therein shall be conducted only with the express consent of and under the conditions set forth by the coastal State.

Article 246: Marine scientific research in the Exclusive Economic Zone and on the continental shelf

1. Coastal States, in the exercise of their jurisdiction, have the right to regulate, authorize and conduct marine scientific research in their exclusive economic zone and on their continental shelf in accordance with the relevant provisions of this Convention.
2. Marine scientific research in the exclusive economic zone and on the continental shelf shall be conducted with the consent of the coastal State.

8. PART XV: SETTLEMENT OF DISPUTES**Article 297 (1) (a): Limitations on applicability of section 2 on Compulsory Procedures Entailing Binding Decisions**

1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:
 - (a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;

9. PART XVI: GENERAL PROVISIONS**Article 300: Good faith and abuse of rights**

States Parties shall fulfill in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of rights.

APPENDIX 5: CONVENTION FOR THE PROTECTION OF SUBMARINE TELEGRAPH CABLES**Convention for the Protection of Submarine Telegraph Cables
(Paris, 14 March 1884)****1. Article I**

The present Convention applies outside territorial waters to all legally established submarine cables landed on the territories, colonies or possessions of one or more of the High Contracting Parties.

2. Article II

It is a punishable offence to break or injure a submarine cable, wilfully or by culpable negligence, in such manner as might interrupt or obstruct telegraphic communication, either wholly or partially, such punishment being without prejudice to any civil action for damages.

This provision does not apply to cases where those who break or injure a cable do so with the lawful object of saving their lives or their ship, after they have taken every necessary precaution to avoid so breaking or injuring the cable.

3. Article III

The High Contracting Parties undertake that, on granting a concession for landing a submarine cable, they will insist, so far as possible, upon proper measures of safety being taken, both as regards the track of the cable and its dimensions.

4. Article IV

The owner of a cable who, on laying or repairing his own cable, breaks or injures another cable, must bear the cost of repairing the breakage or injury, without prejudice to the application, if need be, of Article II of the present Convention.

5. Article V

Vessels engaged in laying or repairing submarine cables shall conform to the regulations as to signals which have been, or may be, adopted by mutual agreement among the High Contracting Parties, with the view of preventing collisions at sea.

When a ship engaged in repairing a cable exhibits the said signals, other vessels which see them, or are able to see them, shall withdraw to or keep beyond a distance of one nautical mile at least from the ship in question, so as not to interfere with her operations.

Fishing gear and nets shall be kept at the same distance.

Nevertheless, fishing vessels which see, or are able to see, a telegraph-ship exhibiting the said signals, shall be allowed a period of 24 hours at most within which to obey the notice so given, during which time they shall not be interfered with in any way.

The operations of the telegraph-ships shall be completed as quickly as possible.

6. Article VI

Vessels which see, or are able to see, the buoys showing the position of a cable when the latter is being laid, is out of order, or is broken, shall keep beyond a distance of one-quarter of a nautical mile at least from the said buoys.

Fishing nets and gear shall be kept at the same distance.

7. Article VII

Owners of ships or vessels who can prove that they have sacrificed an anchor, a net, or other fishing gear in order to avoid injuring a submarine cable, shall receive compensation from the owner of the cable.

In order to establish a claim to such compensation, a statement, supported by the evidence of the crew, should, whenever possible, be drawn up immediately after the occurrence; and the master must, within 24 hours after his return to or next putting into port, make a declaration to the proper authorities.

The latter shall communicate the information to the consular authorities of the country to which the owner of the cable belongs.

8. Article VIII

The tribunals competent to take cognizance of infractions of the present Convention are those of the country to which the vessel on board of which the offence was committed belongs.

It is, moreover, understood that, in cases where the provisions in the previous paragraph cannot apply, offences against the present Convention will be dealt with in each of the Contracting States in accordance, so far as the subjects and citizens of those States respectively are concerned, with the general rules of criminal jurisdiction prescribed by the laws of that particular State, or by international treaties.

9. Article IX

Prosecutions for infractions provided against by Articles II, V and VI of the present Convention shall be instituted by the State, or in its name.

10. Article X

Offences against the present Convention may be verified by all means of proof allowed by the legislation of the country of the court. When the officers commanding the ships of war, or ships specially commissioned for the purpose by one of the High Contracting Parties, have reason to believe that an infraction of the measures provided for in the present Convention has been committed by a vessel other than a vessel of war, they may demand from the captain or master the

production of the official documents proving the nationality of the said vessel. The fact of such document having been exhibited shall then be endorsed upon it immediately. Further, formal statements of the facts may be prepared by the said officers, whatever may be the nationality of the vessel incriminated. These formal statements shall be drawn up in the form and in the language used in the country to which the officer making them belongs; they may be considered, in the country where they are adduced, as evidence in accordance with the laws of that country. The accused and the witnesses shall have the right to add, or to have added thereto, in their own language, any explanations they may consider useful. These declarations shall be duly signed.

11. Article XI

The proceedings and trial in cases of infraction of the provisions of the present Convention shall always take place as summarily as the laws and regulations in force will permit.

12. Article XII

The High Contracting Parties engage to take or to propose to their respective legislatures the necessary measures for insuring the execution of the present Convention, and especially for punishing, by either fine or imprisonment, or both, those who contravene the provisions of Articles II, V and VI.

13. Article XIII

The High Contracting Parties will communicate to each other laws already made, or which may hereafter be made, in their respective countries, relating to the object of the present Convention.

14. Article XIV

States which have not signed the present Convention may adhere to it on making a request to that effect. This adhesion shall be notified through the diplomatic channel to the Government of the French Republic, and by the latter to the other Signatory Powers.

15. Article XV

It is understood that the stipulations of the present Convention do not in any way restrict the freedom of action of belligerents.

16. Article XVI

The present Convention shall be brought into force on a day to be agreed upon by the High Contracting Powers

It shall remain in force for five years from that day, and unless any of the High Contracting Parties

have announced, 12 months before the expiration of the said period of five years, its intention to terminate its operation, it shall continue in force for a period of one year, and so on from year to year.

If one of the Signatory Powers denounce the Convention, such denunciation shall have effect only as regards that Power.

17. Article XVII

The present Convention shall be ratified, and the ratifications exchanged at Paris with as little delay as possible, and, at the latest, at the expiration of a year.

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