Criminal jurisdiction over persons damaging submarine cables etc

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Overview

- Concept of jurisdiction
- Criminal acts
- Areas under coastal State sovereignty
- Areas within functional coastal State jurisdiction
- Areas beyond coastal State jurisdiction
- Crime of piracy?
Concept of jurisdiction

- Prescriptive jurisdiction
- Enforcement jurisdiction: arrest; prosecute
- Bases: principles of territoriality (incl. quasi/functional territorial jurisdiction), nationality (incl. ships), passive personality, protective, universality
Criminal acts

- Art. 2 of 1884 Convention and art. 113 UNCLOS
- Artt. 3/3bis SUA Convention 1988/2005
- International Convention for the suppression of terrorist bombings (ICSTB), 1997
- Intentional destruction or damage of cables / their infrastructure
- Theft of cables
- Intentional interference with cable ships engaged in laying or repair activities
Areas under coastal State sovereignty

- Coastal State has full competence to prescribe and enforce against any suspect irrespective of nationality.
- Other States may criminalize the acts, and, if the suspect is subsequently within its jurisdiction (territory or ship), may enforce against own nationals, and against foreigners if jurisdiction is provided by treaty (parties to SUA and ICSTB must criminalize, and prosecute or extradite for certain offences).
Areas under coastal State functional jurisdiction

- In EEZ and CS: no competence for coastal State as such
- Any State may criminalize the acts by its nationals and against foreigners if provided by treaty
- “landing states” may invoke protective principle to criminalize acts by anyone
- Parties to 1884 Convention, to UNCLOS, to SUA 1988/2005 and ICSTB must penalize certain acts
Enforcement jurisdiction for acts in EEZ/CS area

- Arrest at sea only by flag State
- Other States may/must, if the suspect is subsequently within its jurisdiction (territory or ship), enforce against own nationals, and against foreigners if jurisdiction is provided by treaty
Areas beyond national jurisdiction

- As in areas under functional coastal State jurisdiction
Piracy?

- If acts constitute piracy, then any State may take enforcement action at sea beyond the territorial sea (art. 105 UNCLOS)

- Definition of piracy in art. 101 UNCLOS (acts of violence or depredation; two-ship requirement; private ends)

- If against cable ships: yes

- If against cables: perhaps, if considered “in a place outside the jurisdiction of any State”