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# **The International Legal Regime Governing Submarine Cables: UNCLOS and the 1884 International Convention on the Protection of Submarine Cables**

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Protection of Submarine Cables  
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# Treaties and Agreements

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- **1884 Submarine Cables Convention**
- **1958 Continental Shelf Convention**
- **1958 High Seas Convention**
- **1972 Collision Regulations (COLREGS)**
- **1982 Law of the Sea Convention**
- **Most comprehensive is LOS Convention**

# 1884 Submarine Cables

- **Convention for the Protection of Submarine Telegraph Cables, Paris 14 March 1884, entered into force 1 May 1888**
- **40 States Parties, Hong Kong**
- **States not Party include: China, Colombia, Ecuador, Egypt, Israel, Peru, Turkey, Venezuela, Japan, Korea, Singapore**

# 1972 Collision Regulations

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- **Convention on International Regulations for Preventing Collisions at Sea, London 20 October 1972, entered into force 15 July 1977**
- **151 State Parties**
- **Korea is not a Party**

# Collision Regulations (2)

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- **Rule 3(g)(i): vessel engaged in laying, servicing or picking up submarine cable is a vessel restricted in ability to maneuver and should be avoided by other vessels**

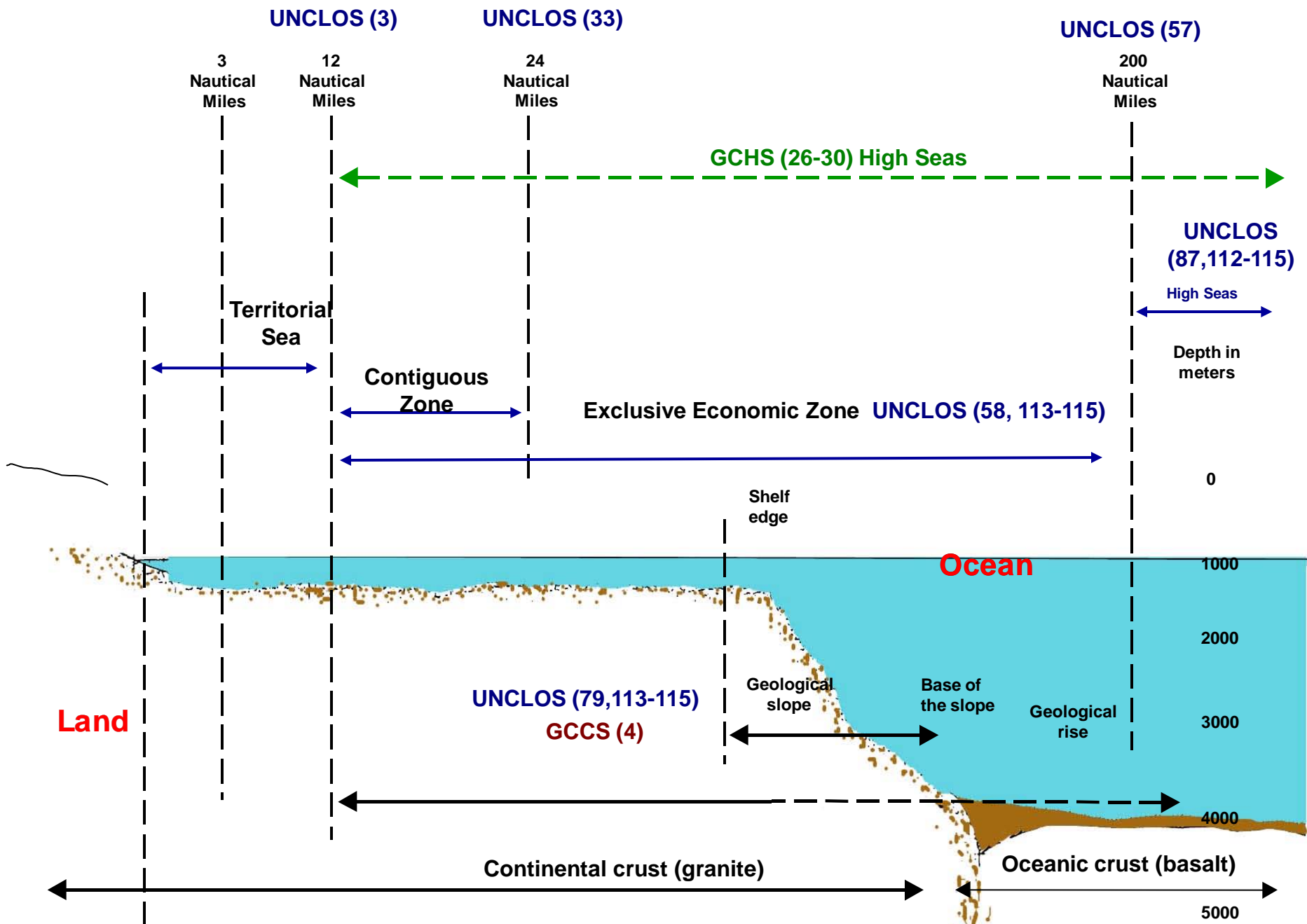
# 1982 Law of the Sea Convention

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- **UN Convention on the Law of the Sea, Montego Bay 10 December 1982, entered into force 10 November 1994**
- **161 Parties**
- **Significant States not Party: Colombia, Ecuador, Peru, Turkey, USA, Venezuela**

# United Nations Convention on the Law of the Sea (1982)

- The preamble of UNCLOS state, in part:
  - Recognizing the desirability of establishing through this Convention, with due regard to the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication...
- The official position of the UN on this issue:
  - “Beyond the outer limits of the 12NM territorial sea, **the coastal State may not (and should not) impede the laying or maintenance of cables**, even though the delineation of the course for laying of pipelines [**not cables**] on the continental shelf is subject to its consent”
  - Response to Question #7, Frequently Asked Questions at UN website:  
[www.un.org/Depts/los/LEGISLATIONANDTREATIES/frequently\\_asked\\_questions.htm](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/frequently_asked_questions.htm)





# Territorial Sea

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- **Maximum of 12 nautical miles from shoreline**
- **Coastal State may adopt laws and regulations to protect cables in its territorial sea**
- Article 21(1)(c)

# Archipelagic States

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- **Archipelagic State must**
  - **respect existing cables laid by other states and passing through its archipelagic waters**
  - **permit maintenance and replacement of such cables**
- **(Article 51(2))**

# Article 78. Legal Status of superjacent waters and air space and the rights and freedoms of other States.

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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 112. Right to lay submarine cables and pipelines

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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

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**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 **wilfully 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

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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

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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.**

# Article 79. Submarine cables and pipelines on the continental shelf

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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.



# Article 79. Submarine cables and pipelines on the continental shelf

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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 island, 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 58. Rights and duties of other States in the exclusive economic zone

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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. Article **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.

# Article 297. Limitations on applicability of section 2.

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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;**

# COLREGS RECOMMENDATIONS



Photo courtesy SBSS



Photo courtesy TE  
Subcom

# COLREGS RECOMMENDATIONS

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- Amend COLREG Rule 18(c) with addition from Art. 5 Cable Convention:
  - *(iii) If the vessel restricted in her ability to maneuver is a cable ship, the fishing vessel and its gear shall keep one nautical mile away.*
- This change incorporates Art. 5 of the Cable Convention.

# COLREGS RECOMMENDATIONS



Photos courtesy BT



# COLREGS RECOMMENDATIONS

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- Amend COLREG Rule 18 (c) with addition from Art. 6 Cable Convention:
- *(iv) If the vessel observes a cable repair buoy, the fishing vessel shall keep the vessel and its gear one quarter of a nautical mile away.*
- This change incorporates Art. 6 of the Cable Convention.

# GAP-CABLE SECURITY

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- Hostile Acts By Pirates and Terrorists Outside of Territorial Seas
- Art. 10 of the Cable Convention that allows for collection of evidence of violations of international cable protection law on the high seas by warships deserves consideration in addressing modern threats to submarine cables by terrorists and pirates.
- UNCLOS - except for piracy - is premised on consensual boarding.
- Terrorists?



# Questions?

## EMERGING THREAT

- Live systems recovered at sea and a large quantity of cable stolen
- Unprecedented in the history of subsea cables
- Three events to date but others suspected
- Motive unknown
- 79 days for repairs



# Questions?

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