

**CIL – ICPC WORKSHOP ON THE
PROTECTION OF SUBMARINE CABLES**
Singapore, 14-15 April 2011

**Session 6 : Global Action for the Protection of Cables
from Terrorism & Piracy**

**Terrorism, Piracy and the
Protection of Submarine Cables**

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Vital Communications Infrastructure

- Cables are as vital to the global economy as the infrastructure for airports and maritime navigation
- Common interest of all States to make the intentional destruction of cable infrastructure a criminal offence
- Common interest of all States to co-operate to ensure that terrorists or other persons who intentionally and willfully destroy or damage submarine cables are arrested and prosecuted

Principles of Criminal Jurisdiction

- **Prescriptive Jurisdiction** – the right of a State to pass legislation making acts criminal offences under its national laws
- **Enforcement Jurisdiction** – the right of a State to arrest persons suspected of violating its criminal laws
- **Enforcement Jurisdiction is Territorial** - States can arrest and prosecute persons within their territory or on ships flying their flag

Prescriptive Jurisdiction and Cables

Under international law, a State has the right to make acts criminal offences under its national laws when:

1. The acts take place in their territory or territorial sea (Territoriality Principle)
2. The acts take place on a ship flying their flag (Flag State Principle)
3. The acts are committed by their nationals (Nationality Principle)
4. The acts are committed by foreign nationals outside their territory if such acts are a threat to their critical national interests (Protective Principle)

Acts in Territorial Sea

- **UNCLOS does not obligate States to pass legislation making the intentional destruction of submarine cables in their territory or territorial sea a criminal offence under their laws**
- **UNCLOS seems to assume that States have such laws**
- **However, many States do not have any legislation making the intentional destruction of submarine cables in their territorial sea a criminal offence**

Acts Outside Territorial Sea

- Article 113 of UNCLOS obligates States to create an offence for the breaking or injury of a cable beneath the high seas or EEZ by their nationals or by a ship flying their flag, if such break was done wilfully or through culpable negligence
- Article 113 provides for the extension of jurisdiction based on the Nationality Principle and the Flag State Principle
- However, most parties to UNCLOS have not passed legislation implementing Article 113

Weakness of Article 113

- Article 113 does not obligate States to extend their jurisdiction to cover the acts of foreign nationals outside their territory
- The “protective principle’ would allow States to extend their reach extra-territorially to govern the acts of foreign nationals outside their sovereignty
- No States have extended their jurisdiction to cover the intentional destruction of cables by foreign nationals

Terrorism and Cables

- The intentional damaging or destroying of cables by terrorists outside the territorial sea of any State may not be a criminal offence under the laws of any State
- All States have a common interest in making the intentional damaging or destroying of submarine cables an international crime, punishable by any State which obtains custody over the offender

Existing UN Terrorism Conventions

- **1971 Montreal Convention** makes it an international crime to unlawfully and intentionally destroy or damage air navigation facilities
- **1988 SUA Convention** makes it an international crime to unlawfully and intentionally destroy or seriously damage maritime navigational facilities
- These conventions do **NOT** require that the acts be done with a terrorist motive or purpose

Scheme of UN Terrorism Conventions

1. States Parties must adopt laws making the offences defined in the Convention (eg, hijacking a ship in 1988 SUA) an offence under their domestic law, punishable by severe penalties
2. States Parties must establish jurisdiction of their Courts over the offence if it was committed:
 - (a) against or on board a ship flying its flag
 - (b) in its territory or territorial sea
 - (c) by a person who is its national
 - (d) by a person who is present in its territory

Scheme of UN Terrorism Conventions

3. Parties must take alleged offenders into custody if they are present in their territory
4. Parties must either extradite or prosecute the alleged offenders present in their territory
5. States Parties agree that they can use the Convention as the basis for extradition of alleged offenders to another State Party
6. States Parties are obligated to afford one another the greatest measure of co-operation in connection with the criminal proceedings

Arrest of Terrorists

- The UN Terrorism conventions do not give States any new powers to arrest suspected terrorists
- Warships have no power of arrest in the territory or territorial sea of another State
- The general principle governing ships on the high seas is that they are subject to the exclusive jurisdiction of the flag state
- Ships outside the territorial sea of any state cannot be boarded without the express consent of the flag State

Piracy on the High Seas

- Piracy is the one clear exception to the principle that ships on the high seas are subject to the exclusive jurisdiction of the flag state
- The warships of any state may board pirate ships on the high seas (or in an EEZ) and arrest the pirates
- There is an argument that the stealing of submarine cables outside the territorial sea is “piracy” under UNCLOS

UNCLOS Definition of Piracy

Under Article 101, **piracy consists of :**

(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 . . . , and directed:

(i) on the high seas [or in the EEZ], against another ship ... or against persons or property on board such ship . . . ;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

UNCLOS Definition of Piracy

- If a “creative” interpretation is given to the definition of piracy in UNCLOS, it could be applied to the intentional taking of cables on the high seas or in the EEZ for personal gain
- However, very few Governments would be willing to apply the piracy provisions of UNCLOS to persons who steal submarine cables

Recommendation

- A new terrorism convention is required to place an obligation on all States to make it an international crime for anyone (whatever nationality) to intentionally damage a international submarine cable wherever the act takes place
- New convention should follow the same scheme as the other UN terrorism conventions
- The new convention should provide for jurisdiction based on presence of the offender in the territory of a State Party

Thanks for Your Attention!

For more information on Submarine Cables
and Law of the Sea, see the CIL web site:

[http://cil.nus.edu.sg/research-
projects/submarine-cables/](http://cil.nus.edu.sg/research-projects/submarine-cables/)

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