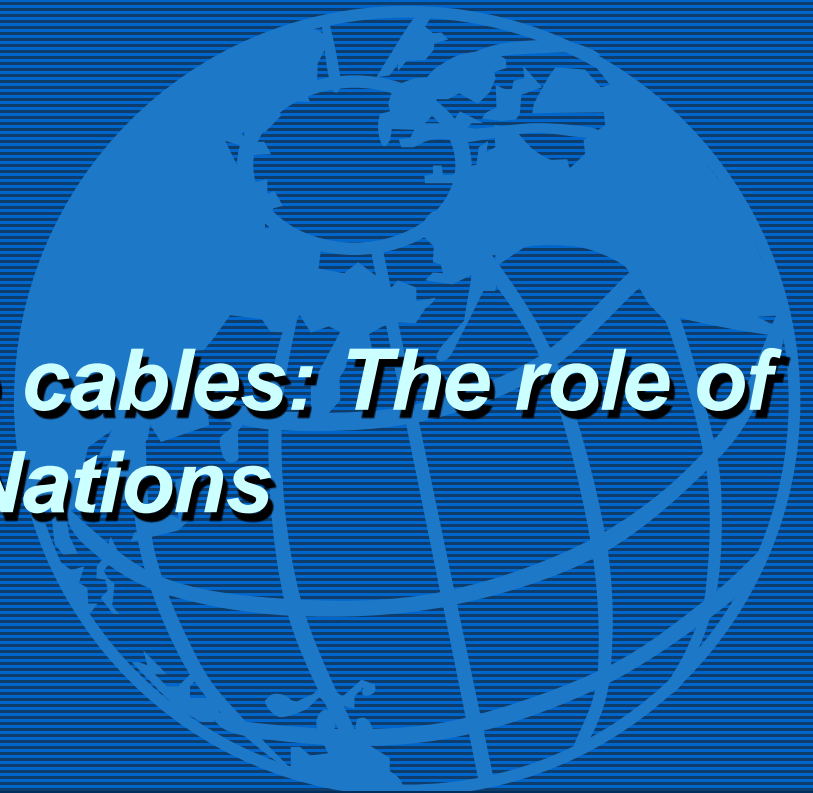




***Protection of submarine cables: The role of the United Nations***



# Outline

- Current legal regime
- Mechanisms available to States
- United Nations and UNCLOS
- Role of the General Assembly
- Regular Process for Global Reporting
- Informal Consultative Process
- Conclusions

# Submarine cables

- Submarine cables are of vital importance to the global economy and the national security of all States
- Over 95% of transoceanic communications is sent via submarine cables
- Threats/acts that can harm submarine cables:
  - Fishing
  - Anchors
  - Natural hazards
  - Terrorism

# Current Legal Regime

- The 1982 United Nations Convention on the Law of the Sea - sets out the legal framework within which all activities in the oceans and seas must be carried out (Articles 3, 21, 33, 51, 57, 58, 79, 87, 112, 113, 114, 115 and 297)
- Its provisions are built on the provisions in the 1958 Geneva Conventions on the High Seas, the Continental Shelf and the Territorial Sea.
- The Geneva Conventions were based on the 1884 International Convention for the Protection of Submarine Cables (Articles 1-16)
- The 1884 Convention was amended by the 1886 Declaration on the Protection of Submarine Cables and the 1887 Protocol on the Protection of Submarine Cables.
- All above instruments remain in force

# Submarine cables and the counter-terrorism conventions

- UNCLOS remains the primary legal framework
- Under certain limited circumstances, the 1997 International Convention for the Suppression of Terrorist Bombings might apply
- This Convention might be applicable, inter alia, if a person "unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against ... an infrastructure facility ... with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss." (Article 2)
- An "infrastructure facility" is defined as "any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications" (Article 1).
- It is, however, unclear whether a submarine cable could constitute a "facility"
- 1999 International Convention for the Suppression of the Financing of Terrorism, Annex – contains the Terrorist Bombings Convention.

# Submarine Cables – Anti Piracy Instruments

- UNCLOS
- 1979 Hostage Taking Convention
- 1988 SUA Convention
- 1999 Terrorism Financing Convention
- 2005 Protocol to the SUA Convention

# Mechanisms available to States

- Universal organizations
  - UN
  - International Maritime Organization (IMO)
  - International Telecommunication Union (ITU)
- Regional organizations
  - The Association of Southeast Asian Nations (ASEAN)
  - The Caribbean Community (Caricom)

# United Nations and UNCLOS

- The United Nations has always been actively engaged in encouraging and guiding the development of the international law of the sea and in safeguarding the rule of law in the oceans
- Today, through the Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs (*de facto* the Secretariat of the United Nations Convention on the Law of the Sea), it continues to be in the forefront of this process...



# Relevant Activities carried out by DOALOS

- Resolution 52/26 of 26 November 1997 requested the Secretary-General to continue to carry out the responsibilities entrusted to him in the Convention and related resolutions of the General Assembly, in particular resolution 49/28 of 6 December 1994
- This mandate was confirmed in subsequent resolutions

# Assisting the General Assembly in its oversight role



# Report of the Secretary-General A65/69/Add.2 (2010)

- Addressed the issue of networks and cables
- Noted the need expressed by some States to consider the gaps in the existing legal regime regarding submarine cables, a need which has been exacerbated by the effects of cable breakage incidents
- Noted that, in the interim, better implementation of article 113 of the Convention may help to address the current challenges with regard to cable and pipeline management
- Cited several examples of national legislation

# GA resolution A/65/37 of 2010

- Fibre optic submarine cables transmit most of the world's data and communications and hence are vitally important to the global economy and the national security of all States
- Submarine cables are susceptible to intentional and accidental damage from shipping and other activities
- These matters have been brought to the attention of States at various workshops and seminars
- A need for States to adopt national laws and regulations to protect submarine cables and render their wilful damage or damage by culpable negligence punishable offences

# GA resolution A/65/37 of 2010

- “121. *Calls upon* States to take measures to protect fibre optic submarine cables and to fully address issues relating to these cables, in accordance with international law, as reflected in the Convention, encourages greater dialogue and cooperation among States and the relevant regional and global organizations to promote the security of such critical communications infrastructure and, in this regard, notes the attention given to this matter in the Okinawa Declaration of the eighth Asia-Pacific Economic Cooperation ministerial meeting on the telecommunications and information industry, held in Okinawa, Japan, on 30 and 31 October 2010;

# GA Resolution A/65/38 on Sustainable Fisheries

- SG Report on sustainable fisheries
- Workshop on bottom fishing





# Marine cables and pipelines in the context of the Regular Process for global reporting and assessment of the state of the marine environment, including socio-economic aspects

## The Group of Experts of the Regular Process

- Considered the economic aspects that marine cables and pipelines play in contributing to the development of internet, as a source of employment and of industrial development
- Noted, inter alia, the need for policies to protect the cables from damage and for capacity-building programmes in the management of cables and cable laying in order to avoid interference with other uses of the oceans.

# United Nations Open-ended Informal Consultative Process in Oceans and the Law of the Sea

- Facilitate the annual review by the United Nations General Assembly of developments in ocean affairs
- Open to States, observers, and intergovernmental organizations with competence in ocean affairs
- Receives input from representatives of the major groups as identified in Agenda 21, in particular through the discussion panels



# United Nations Open-ended Informal Consultative Process (cont.)

- Deliberates on the Secretary-General's report on oceans and the law of the sea
- Suggests particular issues to be considered by the General Assembly
- Identifies areas where international cooperation and coordination can be enhanced
- Proposes elements for the consideration of the General Assembly, including in relation to Assembly resolutions on "Oceans and the law of the sea"

# United Nations Open-ended Informal Consultative Process in Oceans and the Law of the Sea

- Twelfth ICP Meeting: Contributing to the assessment, in the context of the United Nations Conference on Sustainable Development, of progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges
- Thirteenth ICP meeting: Marine renewable energies

# Role of interested States

- UNCLOS is a clear jurisdictional framework regulating the laying and protection of submarine cables
- The matter of whether to propose an initiative in the General Assembly of the United Nations or in the context of a Specialized Agency (IMO, ITU) has strong political connotations and should be addressed by interested States
- Matters pertaining to the laying and protection of submarine cables may also be addressed in the context of appropriate regional mechanisms and bodies.

# Role of DOALOS - Providing Services to States and Intergovernmental Organizations

- Provision of information and advice, knowledge management, publications, Website
- Provision of technical assistance to States: Capacity-building
- Cooperation with intergovernmental organizations in strengthening the rule of law in the world oceans and seas

THANK YOU