

**APEC WORKSHOP ON ENHANCING SUPPLY CHAIN CONNECTIVITY:
SUBMARINE TELECOMMUNICATION CABLE RESILIENCE
IN THE ASIA-PACIFIC
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**Protection of Submarine
Telecommunications Cables :
The Obligations of Governments**

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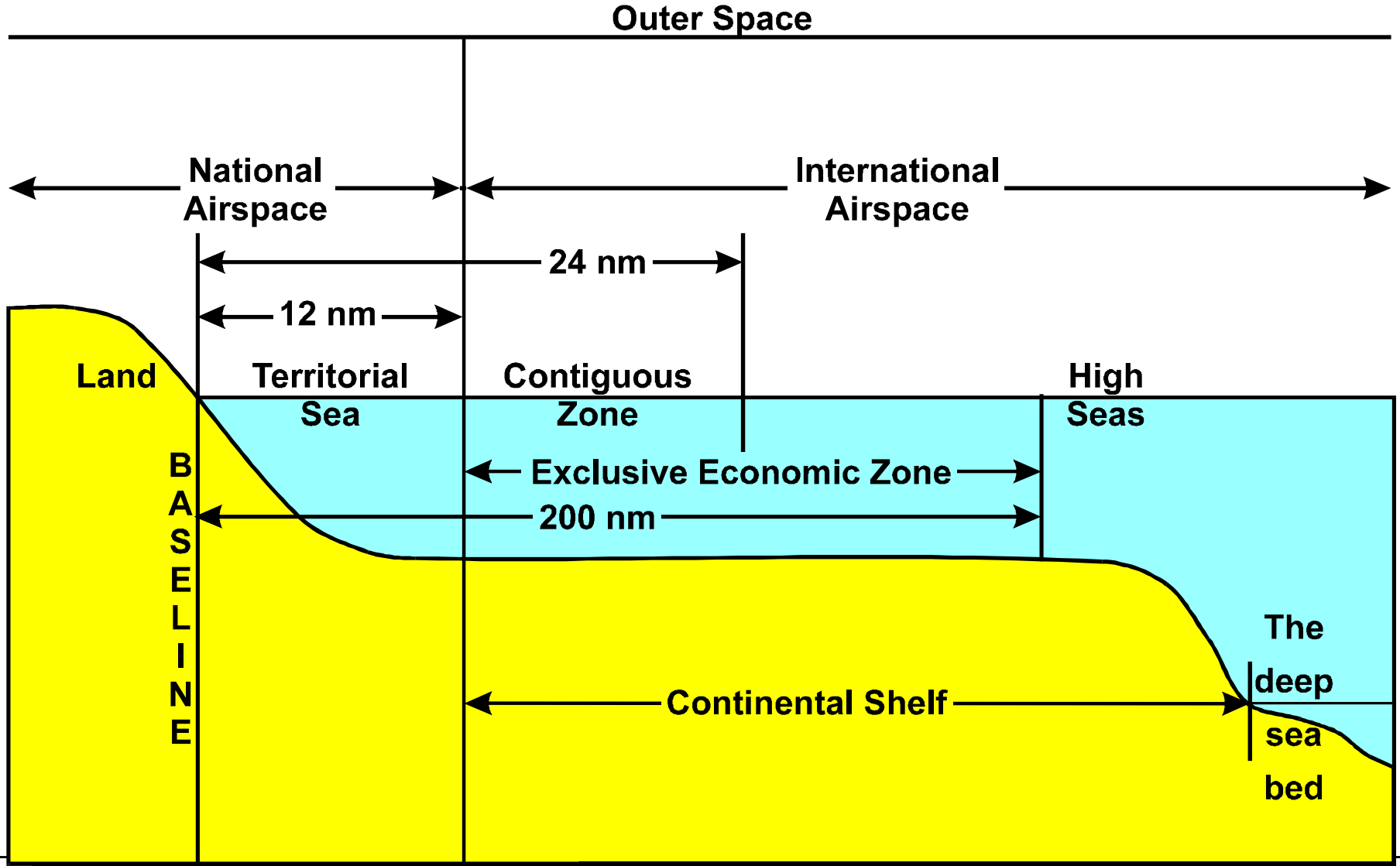
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Importance of Maritime Zones

Rights and obligations of States with regard to submarine cables depends upon the maritime zone where the cables are located:

1. **Zones subject to sovereignty** – territorial sea and archipelagic waters
2. **Zones outside sovereignty** – EEZ, continental shelf, high seas and deep seabed

LEGAL REGIMES OF THE OCEANS AND AIRSPACE



Cables in the Territorial Sea

- **Laying and Repair**

- Coastal States have wide discretion to adopt laws on the **laying and repair** of cables in territorial sea

- **Protection**

- Coastal States have the right to adopt laws to **protect** cables in territorial sea, including right to regulate ships exercising innocent passage in order to protect cables
- Coastal States can establish “cable protection zones”

Cables in Archipelagic Waters

- **Existing cables**
 - Archipelagic States must respect existing cables laid by other States which pass through its archipelagic waters, and must permit the maintenance and replacement of such cables [Art 51]
- **Laying and repair of new cables**
 - The laying and repair of new cables is subject to consent regulation of the archipelagic State
- **Protection of cables**
 - Archipelagic States have a right to adopt laws and regulations to protect cables

Exclusive Economic Zone (EEZ)

- Coastal States have the sovereign right to explore and exploit the natural resources, including the resources of the sea-bed and subsoil [Art 56]
- Other States have the right to exercise high seas freedoms including freedom of navigation and **freedom to lay cables** and pipelines
- Coastal States must give '**due regard**' to rights of other States when exercising their sovereign rights and jurisdiction over the natural resources [Art 56(2)]
- Other States must give '**due regard**' to the rights and duties of the coastal State when exercising their rights such as the freedom to lay cables [Art 58(3)]

Continental Shelf

1. The **delineation of the course** for the laying of cables on the continental shelf is NOT subject to the consent of the coastal State [Art 79(3)] [**Unlike pipelines**]
2. The coastal State may not impede the laying or maintenance of cables, **subject to its right to take reasonable measures** for:
 - the exploration of the continental shelf;
 - the exploitation of its natural resources
3. Coastal State measures must not infringe or result in any unjustifiable interference with the right of other States to lay and repair submarine cables

Obligation of Coastal States under Article 113 of UNCLOS

- Article 113 of UNCLOS provides that every State shall adopt the laws and regulations providing that the following is a **criminal offence** under their laws:
 - breaking or injury a submarine cable
 - beneath the high seas **[or EEZ]**
 - by a ship flying its flag or by a person subject to its jurisdiction
 - done wilfully or through culpable negligence,
 - in such a manner as to be liable to interrupt or obstruct . . . communications

Article 113 is Inadequate for Protection of Cables

Article 113 is inadequate for two reasons:

1. Most States have not enacted legislation implementing this provision
 2. It does not deal with acts by foreign terrorists outside the territorial sea
- **As practical matter, in many cases if foreign nationals intentionally destroy or damage cables in the EEZ or the high seas, such acts may not be a criminal offence under any States laws**

Need for extraterritorial jurisdiction

- A new international instrument is required to place an obligation on all States to make it a criminal offence under their laws:
 - for anyone (whatever nationality)
 - to intentionally injure or break a submarine cable which lands in their territory
 - wherever the act takes place
- States will be very reluctant to extend their laws to cover acts of foreigners outside their territory for negligent or reckless acts

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/>

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