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Monitoring threats of physical damage to submarine cables and pipelines: Questions for international law

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Are there shortcomings in international law which limit the ability to monitor submarine cables and pipelines?

1. What monitoring technologies are available?
2. Where does monitoring need to occur?

Monitoring:

Using technology that enables awareness of the integrity of the seabed infrastructure, coupled with ahead-of-time identification and surveillance of threats that might cause physical damage.

Categories of monitoring activities

1. Patrols conducted from vessels

- Crewed/uncrewed vessels – flag State control

2. Vessel-based detection measures

- AIS – helpful, but limitations

3. Proximity-sensing detection measures

- eg variations in oceanic conditions

Lawfulness of monitoring activities in zones of sovereignty

1. *Internal waters*

- Coastal State only

2. *Territorial sea (etc)*

- Will coastal State monitoring hamper innocent passage?
 - ‘research or survey activities’ are non-innocent: UNCLOS Art 19(2)(j)
 - Same for transit passage + archipelagic sea lanes passage: UNCLOS Art 40; 54



Lawfulness of monitoring activities in EEZ

- High risk zone for attacks
- Careful balancing needed between rights of coastal States and flag States
- Freedom of navigation and other high seas freedoms
 - This includes *'the laying of submarine cables and pipelines'* and **activities 'associated' with their operation**: UNCLOS Art 58(1) & Art 87

Questions for international law

Could monitoring conducted by foreign vessels in the EEZ be activities that need coastal State consent?

1. Marine Scientific Research (MSR)
2. Hydrographic surveys
3. Military activities

What is the **purpose** of a monitoring activity?

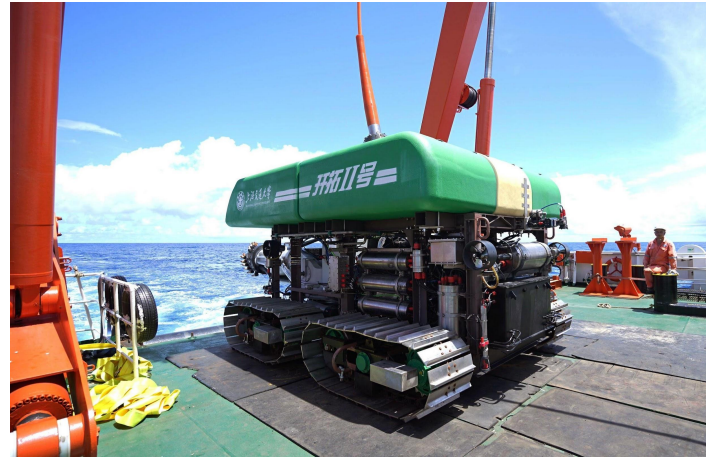
What about **dual** purposes?

Are there risks in sharing MSR results?

Cable-route surveys are not MSR

Lawfulness of monitoring activities in **ABNJ**

- Monitoring only limited by due regard obligation
- What about in the Area where the International Seabed Authority has licensed exploration or exploitation activities? How to operationalise due regard?



FINAL THOUGHTS

Clarification of the scope of rights is needed, especially in the EEZ

- Scope of MSR
- Convincing coastal States that monitoring doesn't stray into military or security
- Expand AIS sharing (like PSC MOU?)
- Consider specific areas of difficulty eg monitors fixed to the seabed
- Develop cooperation mechanisms

