

16 SEPTEMBER 2025
SESSION 3 –ENFORCEMENT AND OTHER PREVENTION
MEASURES AT SEA
ENFORCEMENT AND OTHER PREVENTIVE MEASURES FOR
PROTECTION OF UNDERSEA INFRASTRUCTURE
: A RIGHT TO PROTECT USES OF OCEAN

1

CONFERENCE ON INTERNATIONAL LAW AND THE
PROTECTION OF SUBMARINE CABLES AND PIPELINES
:MULTI-DIMENSIONAL PERSPECTIVE

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2

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Talking Points

5

ENFORCEMENT AND OTHER PREVENTIVE MEASURES FOR PROTECTION OF UNDERSEA INFRASTRUCTURE : A RIGHT TO PROTECT USES OF OCEAN

I. Introduction

**II. Existing Law (UNCLOS) to Provide Legal Basis for
Preventive Measures**

**III. Characteristics of Undersea Infrastructure from a
Perspective of Legal Regulation**

**IV. Formulation of New Rules to Protect Undersea
Infrastructure Based upon an Idea of a Right to Protect Uses of
Sea**

I. Introduction

6

2. Terminology and Coverage of This Presentation

(1) Undersea Infrastructure

Designating both submarine cables and submarine pipelines unless distinction is needed between them depending on contexts

(2) Undersea Infrastructure in Exclusive Economic Zone (EEZ), Continental Shelf, and High Seas

I. Introduction

7

2. Terminology and Coverage of This Presentation (continued)

(3) “Prevention” “Preventive”

(* Title of my presentation, slightly changed from “prevention” to “preventive”)

Understood widely



Not confining itself to “prevention” “preventive” in a strict sense

Including responding measures

e. g. responding measures to harmful acts that are conducting and that have conducted

Similar to Article 25 of UNCLOS that covers not only prevention in a strict sense but also responding measures by coastal State of territorial seas

(3) Harmful acts

With reservation on the difficulty to find “intentional” harmful acts, in this presentation, the term “harmful acts” signifies intentional acts.

II. Existing Law (UNCLOS) to Provide Legal Basis for Preventive Measures

8

1. Rights (Freedom) to Lay Undersea Infrastructure According to UNCLOS

(1) The Right of Laying Undersea Infrastructure

: EEZ (Article 58) and Continental Shelf (Article 79)

(2) The Freedom of High Seas

Article 87 (1) (c)

2. Depending on Possible Interpretation of UNCLOS

(1) An “Incidental” Right to the Sovereign Right of Coastal States of EEZ and Continental Shelf on Exploitation of Natural Resources and Production of Energy (Article 56)

e.g. undersea infrastructure transporting energy from offshore facilities to land

?An “incidental” (right or) freedom to the freedom at high seas?

(2) A Right to Construct Structure and Installations

In cases in which undersea infrastructure falls under Article 60

II. Existing Law (UNCLOS) to Provide Legal Basis for Preventive Measures

9

3. Enforcement Jurisdiction on Harmful Acts against Undersea Infrastructure of II. 1. and 2. above

1. Rights (Freedom) to Lay Undersea Infrastructure According to UNCLOS

(1) The Rights (Freedom) of Laying Undersea Infrastructure
: EEZ and Continental Shelf

(2) The Freedom of High Seas

No explicit provisions

c. f. Article 79 (3) and (4) regarding continental shelf

c. f. prescriptive jurisdiction of flag States and nationality States of owners (Article 113 and Article 114)

II. Existing Law (UNCLOS) to Provide Legal Basis for Preventive Measures

10

3. Enforcement Jurisdiction on Harmful Acts against Undersea Infrastructure of II. 1. and 2. above (Continued)

👉 2. Depending on Possible Interpretation of UNCLOS

(1) An “Incidental” Right to the Sovereign Right of Coastal States of EEZ and Continental Shelf

No explicit provisions

👉 (2) A Right to Construct Structure and Installations

In cases in which undersea infrastructure falls under Article 60
Article 60 (2)

How about undersea infrastructure in safety zones?

Arctic Sunrise Arbitration (merits)

II. Existing Law (UNCLOS) to Provide Legal Basis for Preventive Measures

11

4. Other Possible Preventive and/or Responding Measures against Harmful Acts to Undersea Infrastructure

- Universal jurisdiction 🖐️ Piracy (High Seas)
- Inspection at sea 🖐️ Acts that fall under Article 110
- Self-defence 🖐️ Harmful acts that are the use of force (“armed attack”)
- Counter measures 🖐️ Violent harmful acts that do not meet the requirements for self-defence

?Enforcement jurisdiction under Article 73 🖐️ “Pseudo” fishing boats that conducts intentionally harmful acts to undersea infrastructure? Violation of Article 300?

I. Introduction

12

1. Focus of This Presentation

(1) Legal Basis for Preventive Measures for Protection of Undersea Infrastructure

Rather than focusing upon (contents) of preventive measures themselves

(2) An Analysis Based upon and Considering Recent Development of Undersea Infrastructure Mainly after UNCLOS of 1982

Proposed formulation of new rules for protecting undersea infrastructure under the framework of the law of the sea

II. Existing Law (UNCLOS) to Provide Legal Basis for Preventive Measures

13



Under UNCLOS

Lack or Lacuna of Legal Basis for Preventive Measures against Harmful Acts to Undersea Infrastructure



Amendment of UNCLOS and even Creation of New Rules

Foundational Analyses Required for Such a Purpose



III.

III. Characteristics of Undersea Infrastructure from a Perspective of Legal Regulation

14

Factors to Be Examined to Recognize the Variety of Undersea Infrastructure That is Far beyond the Expectation at the Time of Adoption of UNCLOS in 1982

1. Function
2. Harmful Acts against Undersea Infrastructure
3. Entities that Incur Harm by Acts of Sabotage against Undersea Infrastructure
4. Responsible Entities for Acts of Sabotage against Undersea Infrastructure
5. Acts of Sabotage: an “armed attack?”
Undersea Infrastructure : military objectives?

III. Characteristics of Undersea Infrastructure from a Perspective of Legal Regulation

15

1. Functions of Undersea Infrastructure

- ① A wide variety of communications services, from phone and internet banking to email and social media, all manner of cloud services; militaries depend on them for both defense and offensive purposes.
- ② Oil and gas industries utilize them for platform connectivity
- ③ Placement of scientific sensors on undersea infrastructure facilitates oceanographic data collection.

III. Characteristics of Undersea Infrastructure from a Perspective of Legal Regulation

16

1. Functions of Undersea Infrastructure (continued)

④ (Regarding submarine cables, in addition to communications) exploitation of conventional natural resources (cabled oil and gas platforms) producing alternative energy (offshore wind farms and tidal current generators), conducting marine scientific research (cabled ocean observatories and ocean monitoring systems), international high voltage direct current power cables between States cables used for military purposes

BASED UPON TARA'S EXCELLENT WORK: T. DAVENPORT, HOOVER INST. AEGIS SERIES PAPER NO. 2305, INTENTIONAL DAMAGE TO SUBMARINE CABLE SYSTEMS BY STATES 1 (Oct. 26, 2023), <https://www.hoover.org/research/intentional-damage-submarine-cable-systems-states>.

III. Characteristics of Undersea Infrastructure from a Perspective of Legal Regulation

17

2. Harmful Acts against Undersea Infrastructure

Thefts, terrorist attacks, and other violent acts

Vessels may deliberately cut cables by using cutting devices like anchors or dredging equipment

Divers, manned or unmanned submersible boats, crafts, maritime autonomous vehicles, or submarines



Relating to (4.) the issue of responsible entities for the sabotage to undersea infrastructure

Individuals? (Groups? NGOs?) States?

III. Characteristics of Undersea Infrastructure from a Perspective of Legal Regulation

18

3. Entities That Incur Harm by Acts of Sabotage against Undersea Infrastructure

Those who enjoy (legal) interests by the functions of undersea infrastructure

[Stakeholders]

- their (legal) interests infringed by the sabotage concerned
- They have standing to claim responsibility of harmful entities for the sabotage before international courts and/or domestic courts
- Depending on the nature of legal interests (individual and/or common, reciprocal and/or multilateral and/or erga omnes) stakeholders can be determined.

III. Characteristics of Undersea Infrastructure from a Perspective of Legal Regulation

19

4. Responsible Entities for Acts of Sabotage against Undersea Infrastructure

Individuals (Groups, NGOs)? States?



Issues of the Law of State Responsibility

Issues of the International Criminal Law

- 1884 Paris Convention for the Protection of Submarine Telegraph Cables
- Criminalization of sabotage against undersea infrastructure under many countries' domestic laws

III. Characteristics of Undersea Infrastructure from a Perspective of Legal Regulation

20

5. Acts of Sabotage: an “Armed Attack?”

Undersea infrastructure : military objectives?



Issues of the Law of the Use of Force (*jus ad bellum*)

Issues of the Law of Armed Conflict (*jus in bello*)



(Almost) An Entire Sketch of “International Law of Undersea Infrastructure?”



Putting It under a Limited Framework of the Law of the Sea,
Formulation of New Rules to Protect Undersea Infrastructure

IV. Formulation of New Rules to Protect Undersea Infrastructure Based upon an Idea of a Right to Protect Uses of Sea

21

Formulation of New Rules to Protect Undersea Infrastructure

Fundamental Idea: A Right to Protect Uses of Sea

A possible theoretical framework for new rules on such a right to protect uses of sea

“the right to protect uses of sea”

1. “The Right to Protect” against Obstruction to Uses of Sea

e. g. sabotage against undersea infrastructure

e. g. violent attacks by Houthi Rebels against commercial vessels in the Red Sea

e. g. violent acts against Japan’s research whaling at high seas

IV. Formulation of New Rules to Protect Undersea Infrastructure Based upon an Idea of the Right to Protect Uses of Sea

22

Formulation of New Rules to Protect Undersea Infrastructure

2. Legal Basis for the Right to Protect Uses of Sea

e. g. Houthi Rebels' infringement on the freedom and the safety of navigation

Paragraph 3 of Resolution 2722 adopted by the Security Council of the United Nations

3. *Affirms* the exercise of navigational rights and freedoms by merchant and commercial vessels, in accordance to with international law, must be respected, and *takes note* of **the right of Member States, in accordance with international law, to defend their vessels from attacks, including those that undermine navigational rights and freedoms**

IV. Formulation of New Rules to Protect Undersea Infrastructure Based upon an Idea of the Right to Protect Uses of Sea

23

Formulation of New Rules to Protect Undersea Infrastructure

2. Legal Basis for the Right to Protect (Continued)

e. g. When UNCLOS has the provisions for the freedom and the rights to use sea, such provisions set forth the legal bases for the right to protect them.

See, II. 1. and 2. of This Presentation

1. (1) EEZ (Article 58) and Continental Shelf (Article 79)

(2) High Seas (Article 87 (1) (c))

2. Depending on Possible Interpretation of UNCLOS

(1) An “Incidental” Right to the Sovereign Right of Coastal States of EEZ and Continental Shelf on Exploitation of Natural Resources and Production of Energy (Article 56)

?An “incidental” (right or) freedom to the freedom at high seas?

(2) A Right to Construct Structure and Installations Article 60

IV. Formulation of New Rules to Protect Undersea Infrastructure Based upon an Idea of the Right to Protect Uses of Sea

24

Formulation of New Rules to Protect Undersea Infrastructure

3. Subjects of the Right to Protect Uses of Sea

e. g. to protect undersea infrastructure

See, III. 2. and 3. of This Presentation

2. Harmful Acts against Undersea Infrastructure

3. Entities That Incur Harm by Acts of Sabotage against Undersea Infrastructure

Subjects can be determined depending on the (individual and/or common, reciprocal and/or multilateral and/or erga omnes) interests infringed by sabotage against undersea infrastructure.

Case-by-case approach?

[According to the Law of the Sea]

- coastal State where the undersea infrastructure is set,
- “stakeholder States” enjoying legal interest by the undersea infrastructure,
- coastal States through whose jurisdictional sea areas undersea infrastructure runs?
- States to whose territories undersea infrastructure transport energies

Other possibilities?

IV. Formulation of New Rules to Protect Undersea Infrastructure Based upon an Idea of the Right to Protect Uses of Sea

25

Formulation of New Rules to Protect Undersea Infrastructure

4. Responsible Entities for Harmful Acts to Undersea Infrastructure

The law of the sea: vessel oriented

Wrongdoing vessel's flag State?

(Related issues)

- A possible shift from acts of individuals to those of States under the law of State responsibility
- Crimes under international criminal law and/or domestic laws

IV. Formulation of New Rules to Protect Undersea Infrastructure Based upon an Idea of the Right to Protect Uses of Sea

26

Formulation of New Rules to Protect Undersea Infrastructure

5. Restriction and Limitation on the Right to Protect Uses of Sea

(1) Supremacy of the Jurisdiction that UNCLOS Distributes to the Related States in Relation to an Exercise of Jurisdiction Based upon the Right to Protect Undersea Infrastructure

(2) Due Diligence

Article 56, Paragraph 2 in EEZ

Reciprocally, foreign States using EEZ, the due regard obligation Article 58, Paragraph 2

Article 87, Paragraph 2 at high seas

IV. Formulation of New Rules to Protect Undersea Infrastructure Based upon an Idea of the Right to Protect Uses of Sea

27

Formulation of New Rules to Protect Undersea Infrastructure

6. Restriction and Limitation on the Right to Protect Uses of Sea (continued)

(3) The Permissible Forcible Measures to Exercise the Right to Protect Uses of Sea

The right to protect uses of sea may be exercised as that of the enforcement jurisdiction which UNCLOS provides for.



The use of weapons accompanying the right to protect is the same as that accompanying law enforcement measures.

(related issue)

- Distinction between the use of weapons permitted by international law, and the use of force prohibited by international law

END

28

Thank You So Much for Your Very
Kind Attention!