

Protection of Submarine Cables in South China Sea: Advancing Multilateral and Regional Cooperation

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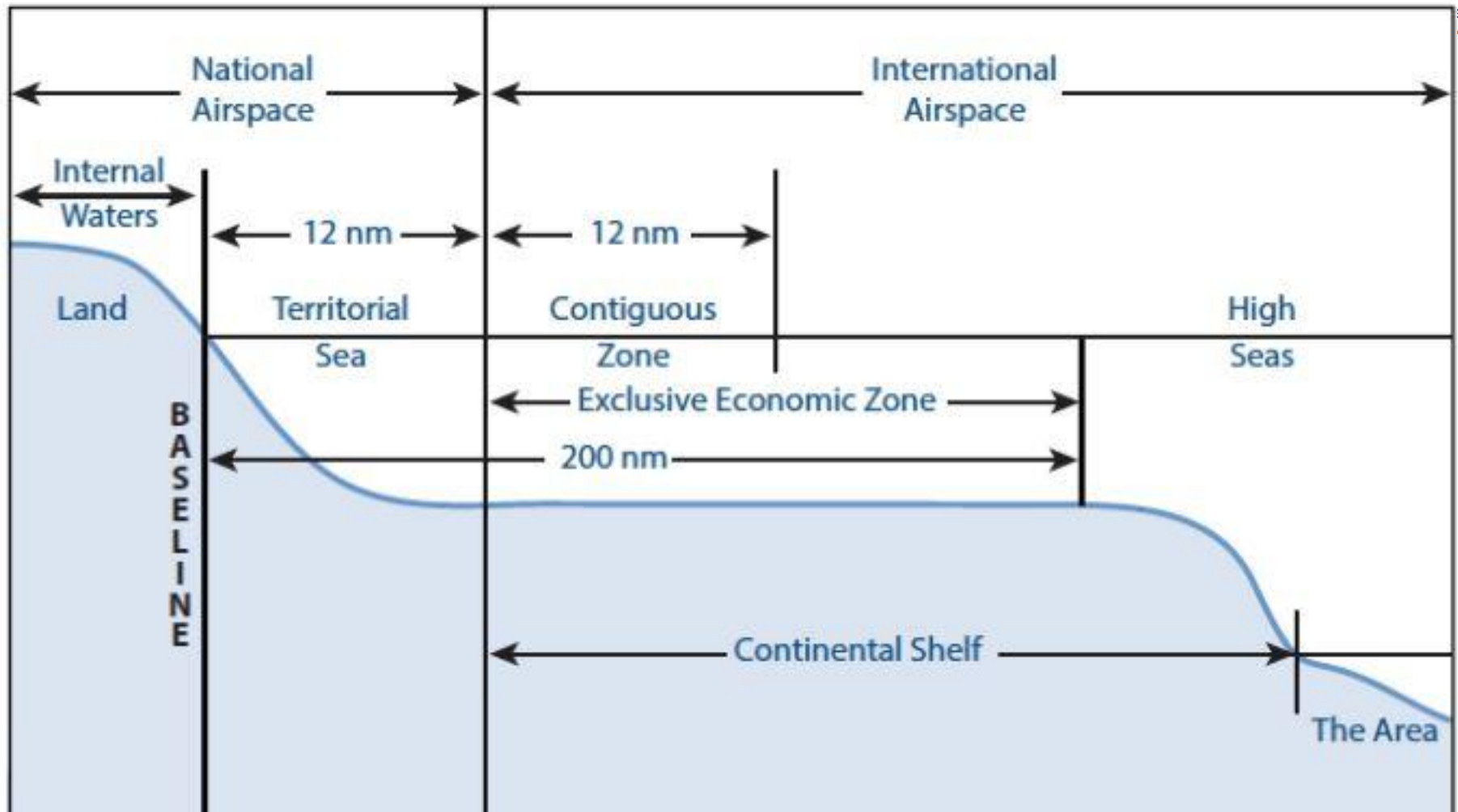
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Key Outlines

- UNCLOS and the gap
- The Need for Public-Private Partnership
- Submarine Cables in South China Sea
- Way Forward



Maritime Zones Illustration



UNCLOS on Protection of Submarine Cables

- Coastal States' *rights* to regulate cables and pipelines, and the *obligation* of States to protect cables, depend on where they are located:
 - Maritime zones subject to sovereignty – territorial sea and archipelagic waters
 - Maritime zones outside sovereignty – EEZ, continental shelf, high seas, and deep seabed

Key Actors under UNCLOS

- ✓ Coastal State
- ✓ Other (Third) States : (cable laying States)
- In practice: Private companies (Consortium of private companies own/lay the cables, **Not** the States)



Beyond TS, No Consent Required

UNCLOS Provisions	Right (freedom) to lay cables by third States	Coastal State's Consent required
Territorial Sea and Archipelagic Waters (Article 21 & 51)	Yes (subject to coastal State's relevant laws and regulations on protection of cables)	Yes
Exclusive Economic Zone (Article 58)	Yes (due regard to the rights and duties of coastal State)	No
Continental Shelf (Article 79)	Yes (due regard to cables and pipelines already in position)	No
High Seas (Article 87)	Yes	No

Article 113: Breaking or injury of a submarine cable or pipeline

- Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done willfully or through culpable negligence,.....to interrupt or obstruct telegraphic or telephonic communications,shall be a punishable offence.
- This provision shall apply also to conduct calculated or likely to result in such breaking or injury. (This reflected concerns with fishing vessels anchoring & exploration by researchers around cables, etc) Proles's commentary

Does article 113 applicable to EEZ?

- Yes
- Article 58 (2): Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part



Implementation of Article 113: Prescriptive and Enforcement Jurisdiction

Article 113	Exclusive Economic Zone	High Seas
Prescriptive Jurisdiction (Adopt national legislation)	laws and regulations that make the breaking or injury beneath the high seas or in the EEZ <u>by vessels flying their flag or their nationals a punishable offence.</u>	laws and regulations that make the breaking or injury beneath the high seas or in the EEZ <u>by vessels flying their flag or their nationals a punishable offence.</u>
Enforcement Jurisdiction (Stop, Board, Investigate and seizure/arrest/convict/sentence)	<ul style="list-style-type: none"> • Flag State • States where perpetrators are the Nationals of that State 	<ul style="list-style-type: none"> • Flag State • States where perpetrators are the Nationals of that State

Case Studies: Enforcement Jurisdiction based on Article 113

Coastal State Jurisdiction: A Chinese National, the captain of Hong Tai 58, a Tongolese- flagged vessel was sentenced to three years in prison for damaging an undersea cable connecting Taiwan's main island and the Penghu islands in the Taiwan Strait.

National Jurisdiction (beyond Territorial Sea): Cable Theft: Vietnam's Submarine Cables lost and found 2007 ; Total of 10 ppl were arrested, and the ringleader (Vietnamese national) was sentenced 12 years imprisonment.

Flag State Jurisdiction: The captain is Chinese, but the trial is taking place in Hong Kong as the New New Polar Bear was sailing under the Hong Kong flag. The man has been held in pretrial detention in Hong Kong since May. Prosecutors consider the captain responsible for damaging the Balticconnector gas pipeline (Between Finland and Estonia) in October 2023. In addition to the criminal charge, he is also accused of violating maritime safety regulations.

EXCLUSIVE ECONOMIC ZONE



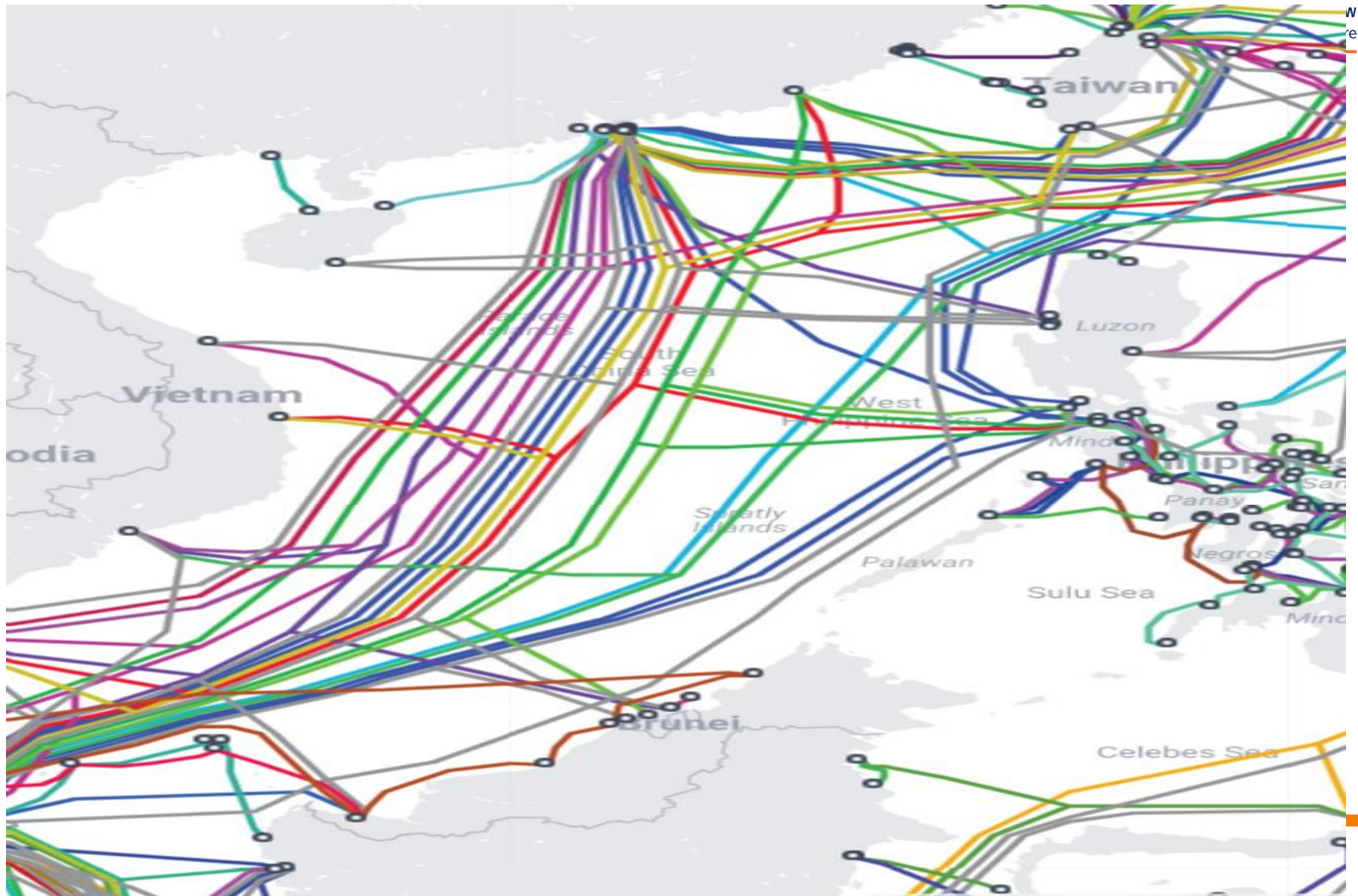
Public Private Partnership

1. Before laying
 2. During laying (due regard)
 3. After being laid, monitoring and surveillance
 4. Taking Legal Action
- ✓ Working closely with the industry for stages 1 to 3
 - ✓ Best to prevent damage by taking proactive actions



Cables in South China Sea

CIL



Impact-centric Approach


Security Risks to Cables	Impact
Intentional: Sabotage (State-sponsored operations) Terrorism Espionage/Data interception Theft Hybrid Warfare	Immediate technical impact: <ul style="list-style-type: none">• Communication breakdown• Latency• Reduced bandwidth Economic and Operational Impact: <ul style="list-style-type: none">• Financial market/banking• Maritime & aviation operation• E commerce and digital operation• Media and communication (news, govt communications etc) Security Impact: <ul style="list-style-type: none">• Loss of situational awareness• Vulnerability exposure• Public panic or misinformation
Unintentional: Fishing activities, Natural hazards, Anchoring, Construction/seabed works, Operational error etc.)	

Way Forward: National Level

- Strengthen *national legal frameworks*, including implementation of UNCLOS Article 113
 - Establish a *national coordinating agency* for submarine cable governance
 - Enhance *monitoring and surveillance* of cable routes and activities
 - Promote *information sharing* among *relevant government bodies, operators, and regulators*
 - Develop *cooperative mechanisms* for efficient laying, maintenance, and repair of cables
 - Integrate *cable protection issues* into national maritime security policy/strategy (recognize cables as CNI)
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Recommendation: ASEAN

- **ASEAN recognizes submarine cables as critical infrastructure**, ASEAN Guidelines for Strengthening Resilience and Repair of Submarine Cables in 2019. (*Keynote by Secretary General of ASEAN at AOIP Seminar Series: Submarine Cable*)
- In 2024, established the **Working Group on Submarine-Cables** to facilitate regular exchanges and promote cooperation among ASEAN Member States. The Working Group is currently enhancing the 2019 Guidelines.
- ASEAN could create a model provision (implementing Article 113 of the UNCLOS) to harmonize national legislation for AMS.
- ASEAN could develop an agreement (legally binding) for cooperation for strengthening law enforcement for the protection of submarine cables and pipelines between AMS, e.g, coordinated patrol, surveillance, and monitoring
- Information Sharing
- Establish cooperative mechanisms on monitoring and surveillance
- ASEAN Subsea Cables Association (Public+ Private Partnership)
- **Mainstream CUI protection in COC discussions**

A photograph of a desert landscape. A paved road with double yellow lines curves through sand dunes. The sky is a clear, pale blue. The text "If there is a will there is a way." is overlaid in white on a dark red rectangular background.

If there is a will
there is a way.

Jude Law

“ quote fancy

THANK YOU