SUBMARINE NETWORKS CONFERENCE 2026

PROTECTION OF CABLES UNDER UNCLOS: THE WORK OF THE ILA COMMITTEE ON SUBMARINE CABLES AND PIPELINES

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The ILA Committee and its Mandate

The ILA Committee: 2018 to 2026

1 Nov 2018	2 Dec 2020	3 May 2022	4 Jun 2024	5 Jun 2026
Committee established Set up by the ILA Executive Council to test whether the existing regime meets current challenges	**First Interim Report** Maps the field: the existing law, with a focus on UNCLOS, and issues for clarification	**Second Interim Report** Marine scientific research versus cable surveys; Article 51. Mandate extended to 2026	**Third Interim Report** Maps the law on State responses to intentional damage in peacetime	**Final Report** 23 Conclusions with commentary on monitoring, prevention and response

Chair: Dr Danae Azaria **Rapporteur:** Dr Tara Davenport

Members and alternates drawn from Europe, the Americas, the Asia-Pacific

Why Focus on Intentional Damage?

The concern

- Incidents in 2022 raised concern that State and non-State actors were damaging cables and pipelines for strategic, military or political ends
- Most damage is still caused by fishing and shipping. Few incidents are publicly confirmed as intentional; Nord Stream 1 and 2 is one
- Intentional damage can be disguised as routine maritime activity, which makes it hard to prevent
- Further suspected incidents since 2024

The international response

UNGA Resolution 79/144 (2024)

Prevention, reporting and investigation through national legislation

New York Principles (Sept 2024)

Joint Statement on the Resilience of Undersea Cables

GUIDE (May 2026)

Guiding Principles for Underwater Infrastructure Defence Exchanges

ITU, NATO, EU and ASEAN

Monitoring of threats and information sharing

The Final Report at a Glance

Conclusions on Monitoring, Prevention and Response at Sea

23 Conclusions with commentary

3 categories of measures

4 categories of States

Monitoring

Detecting threats through patrols, vessel tracking and proximity sensing

Prevention

Measures against potential acts of damage that have not yet occurred

Response

Measures against acts of damage that have already occurred

Prevention and response measures include boarding, inspection, arrest and judicial proceedings; they differ only in function

Coastal and archipelagic States

Other interested States

Flag States

All States

Aim: certainty and clarity about the existing law, best practices consistent with it, and identifying measures that lack a clear legal basis

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The General Framework

Scope and Definitions

Conclusions 1 and 2

Within scope

- Monitoring, prevention and response
- Intentional damage by kinetic means, in peacetime
- All zones except internal waters

Outside scope

- Internal waters
- Damage exclusively from cyber operations
- Warships and immune government ships, unless stated
- Armed conflict; use of aircraft
- Invoking State responsibility, including Part XV

Landing cables and pipelines

Make landfall in a State

Transit cables and pipelines

Laid through a coastal State's zones on a journey that begins and ends outside them

Monitoring activities

Use of vessels, craft, sensors or sensing technologies to detect potential sources of damage (next slide)

Other interested States

States that have an interest in the unobstructed operation of a particular submarine cable or pipeline: Flag State of the cable ship; States connected to the cable; States of nationality of the owner or operator

Monitoring Activities

Conclusion 2(3) and commentary

‘Monitoring activities’ mean the use of vessels or other craft, sensing devices or technologies to detect potential sources of damage or damage to submarine cables and pipelines

a Patrols

- Surface vessels
- Submarines
- Remotely-operated underwater vehicles
- Autonomous underwater vehicles

b Vessel-based detection

- Identifying and tracking suspect vessels
- IMO-mandated LRIT and AIS for large vessels and international voyages
- Vessel Information Systems for smaller vessels

c Proximity sensing

- External sensing networks, including sensors on mounts and buoys
- Sensors in or connected to the cable or pipeline
- Distributed acoustic sensing
- Operational data, such as state of polarization

Conditions for Prevention and Response

Conclusions 3 and 4

1 Lawful basis

In accordance with international law, including the conditions of the applicable UNCLOS provision (e.g. hot pursuit, Article 111)

2 Necessary, reasonable and proportionate

Reasonable, necessary and proportionate (Arctic Sunrise). Force avoided as far as possible (M/V Saiga; Article 301)

3 Considerations of humanity and due process

Human rights standards informs UNCLOS provisions on arrest and detention of crew + due process of law must be applied in all circumstances

4 Authorised government vessels

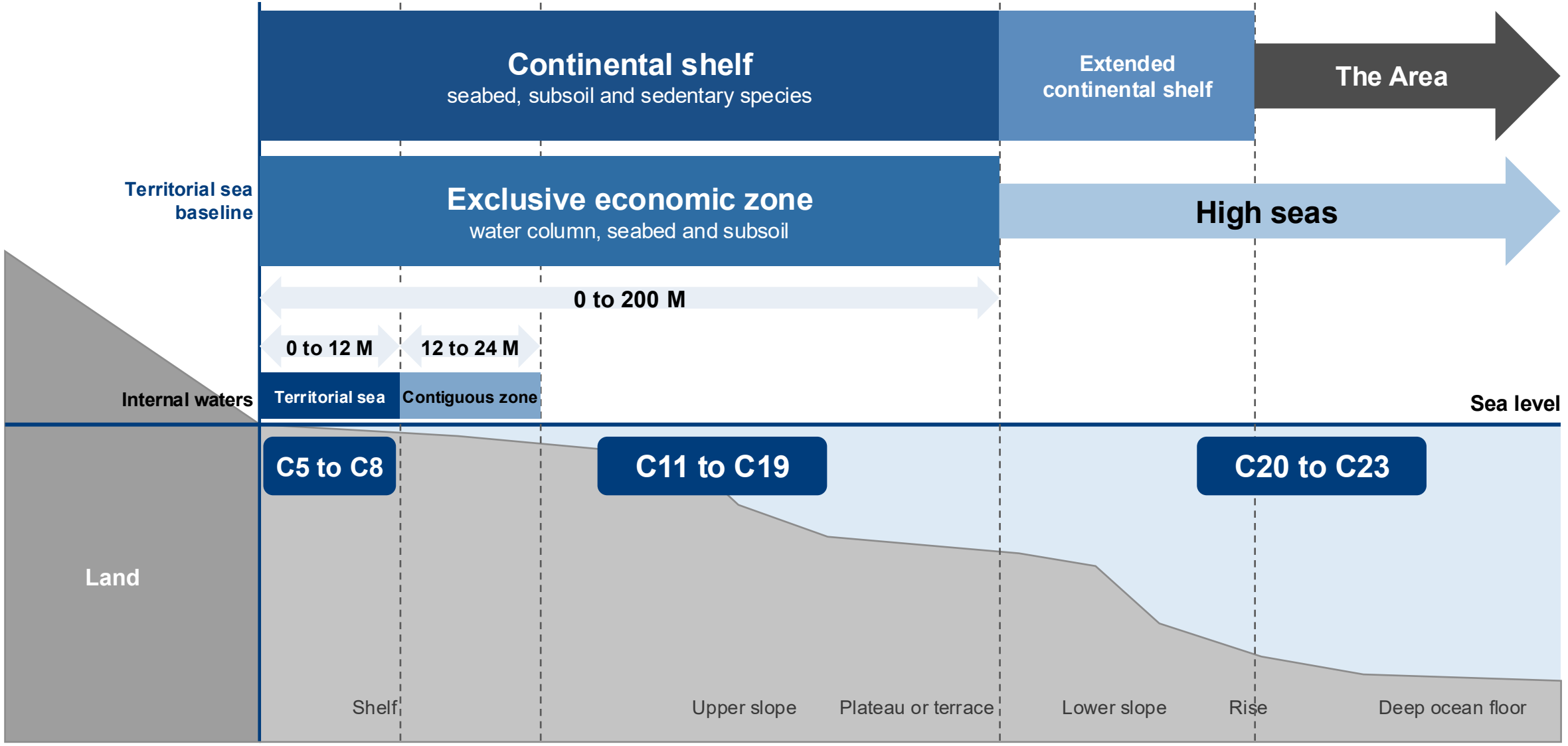
Warships, military aircraft, or ships and aircraft clearly marked as on government service

Conclusion 4: where measures rest on Part XII enforcement, the Section 7 safeguards apply

SECTION 3 OF 4

Measures by Maritime Zone

The Conclusions Follow the Maritime Zones



Straits and archipelagic waters: Conclusions 9 and 10. Internal waters excluded. After Arsana and Schofield (2012).

The Territorial Sea

Conclusions 5 to 8

Monitoring

- **Coastal State:** may monitor without hampering innocent passage (C5)
- **Other States:** monitoring activities by all other States require the consent of the coastal State (C6)

Proximity Sensing

- Laying of cables and pipelines must take place with the prior consent of the coastal
- In-built technologies for proximity sensing also requires coastal State consent
- Cable owner/operator and coastal State should agree on the monitoring regime, including data sharing

Prevention and response

On reasonable grounds of suspicion, the coastal State may take prevention and response measures (C7)

Potential or actual acts of damage to submarine cables & pipelines:
- Render passage non-innocent under Article 19;
- Breach coastal laws under Article 21

Prevention and response measures rest on Article 25 (prevention of non-innocent passage) or enforcement jurisdiction

Other protective tools (C8)

Protection zones allowed if they do not hamper innocent passage

Straits and Archipelagic Waters

Conclusions 9 and 10

Regime	Monitoring	Prevention and response
Straits: transit passage (Art 37)	• Strait State can conduct monitoring activities but must not hamper transit passage • Others states require consent of Strait States	• Strait State may take prevention and response measures if acts of damage breach strait state laws on safety of navigation and traffic separation schemes adopted in accordance with UNCLOS
Archipelagic sea lanes passage (Art 53)	• Archipelagic States can conduct monitoring activities but must not hamper archipelagic sea lanes passage • Others states require consent of Archipelagic States	• Archipelagic State may take prevention and response measures if acts of damage breach strait state laws on safety of navigation and traffic separation schemes adopted in accordance with UNCLOS

EEZ and Continental Shelf: Monitoring

Conclusions 11 and 12

Coastal State may conduct monitoring activities (C11)

- SCP connected to islands, installations and structures: Arts 60, 79(4), 80
- Landing cables: freedom to lay and operate submarine cables and pipelines: Art 58(1)
- Landing and transit SCP: environmental jurisdiction, Arts 56(1)(b)(iii), 79(2)
- Subject to due regard to other states' freedoms

Other interested States may conduct monitoring activities (C12)

- Freedom associated with operating the cable, Art 58(1) – monitoring is necessary for the uninterrupted operation of SCP
- Due regard to coastal State rights; comply with its laws adopted in accordance with UNCLOS
- Due regard to other States' freedoms

Reciprocal due regard in practice (Arts 56(2), 58(3))

- Sensors must not obstruct transmission of data or energy
- May require sharing of gathered information between Coastal and Other interested States

Coastal State Measures in the EEZ & Continental Shelf

Conclusions 13 to 15: authority depends on what is targeted

Infrastructure	Legal basis	Prevention and Response Measures against foreign vessels
Connected to Artificial Islands, Installations and Structures (C13)	Exclusive jurisdiction: Arts 60, 80, 79(4)	**Permitted**
Landing and transit pipelines (C14)	Pollution from pipelines: Art 79(2)	**Permitted**
Landing cables (C15)	Coastal states connected to cables may adopt laws and regulations on damage to cables in their EEZ and continental shelf but there is no explicit basis in UNCLOS to exercise enforcement jurisdiction	**In accordance with international law** - **Prior flag State consent** - **State of necessity (essential interest is at risk; grave and imminent peril; State has no other means to safeguard its interests)**

Other Interested States Measures in the EEZ & Continental Shelf

Conclusion 16

On reasonable grounds of suspicion, other interested States exercising the freedom to lay cables and pipelines may take preventive and response measures in accordance with international law

Who they are

- Flag State of the cable ship
- States connected to the cable
- States of nationality of the owner or operator

What this means in practice

- No lawful ground to act against a foreign vessel without prior flag State consent
- Without consent, necessity may justify prevention measures only
- At best, necessity is open to States that import or export energy via the cable or pipeline or are the recipients of telecommunications services

State of necessity: cumulative conditions

1. Essential interest at risk
2. Grave and imminent peril
3. No other means available
4. Others' essential interests not seriously harmed

All States and Treaty-Based Rights in the EEZ

Conclusions 17 and 18

1 Right of approach

Customary law. On reasonable suspicion, request identity, port of registry, last and next port of call

2 Right of visit (Arts 110, 58(2))

Only stateless ships or ships of the boarding State's nationality; compensation if suspicions prove unfounded

3 Flag State consent or necessity

Prevention and response with prior consent; otherwise necessity, if its conditions are met

Treaty rights (C18): 1884 Convention

- Article X: board ships suspected of breaking a cable and check nationality papers
- After the fact only; not for prevention
- Communication cables only, not power cables or pipelines; 39 States Parties

Is it piracy?

- Majority: no, for lack of State practice that supports such an interpretation
- Are cables in the EEZ ”property outside any State's jurisdiction"
- States Parties may agree otherwise in future

Flag State Obligations in the EEZ and Continental Shelf

Conclusion 19

Art 113: Obligation to Adopt Laws and Regulation

- Must criminalize willful or culpably negligent breaking or injury by their ships, including conduct likely to cause it
- Obligation of result – failure to do so entails flag state responsibility
- Poorly implemented; penalties too weak to deter

Due diligence Obligation to Ensure Vessels do not damage submarine cables and pipelines

- Flag States must exercise due regard to the interests of other States in the freedom to lay and operate cables (Arts 58(3), 113)
- Must effectively exercise jurisdiction and control over ships (Art 94(1)), including ensuring crew properly secure anchors
- Obligation to protect marine environment

What due diligence requires

- A national system of legislation, procedures and enforcement, with deterrent sanctions
- Other States may report failures of jurisdiction and control; the flag State must investigate (Art 94(6))

The High Seas and the Area

Conclusions 20 to 23

Monitoring (C20)

- All States, as part of the freedom to lay and operate cables (Arts 87(1), 112)
- Due regard to other States, the Area and other conventions, such as BBNJ

All States (C21)

- Right of approach; visit of stateless or same-flag ships
- Otherwise flag State consent or necessity, as in Conclusion 17

Treaty rights (C22)

- Rights of interference under treaties, notably 1884 Convention Article X
- As in Conclusion 18

Flag States (C23)

- Criminalise wilful or culpably negligent damage on the high seas
- Take all necessary measures, as in Conclusion 19

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Conclusion

UNCLOS Provides an Array of Tools which Need Better Implementation

1. UNCLOS predates our reliance on cables, but still gives States an array of tools

2. In the territorial sea, coastal States have extensive authority under UNCLOS to take measures to protect SCP, but have States have not fully utilized these tools

3. Outside the territorial sea, coastal States also have the authority to take certain measures in relation to certain categories of SCP

4. UNCLOS provides the framework for flag State obligations vis-à-vis protection of SCP

5. States should focus on leveraging off existing UNCLOS framework

The Gaps

Limited grounds for prevention and response measures against **landing and transit cables in the EEZ and on the continental shelf**, and for **cables and pipelines beyond national jurisdiction**

Flag State consent	State of necessity	Visit under Art 110	1884 Convention, Art X
May be refused or slow	Exceptional; not for response measures once peril has passed	Only stateless or same-flag ships	Communication cables only; both States parties; after the fact

The way forward

- UNCLOS legal regime is capable of evolving through various means such as subsequent agreements or through State practice
- Issue of protection of submarine cables and pipelines requires a balancing act between two interests: freedom to lay submarine cables & pipelines and freedom of navigation