

INTERNATIONAL LAW ASSOCIATION

SUBMARINE CABLES AND PIPELINES UNDER INTERNATIONAL LAW

FINAL REPORT:

**CONCLUSIONS ON MONITORING, PREVENTION AND RESPONSE AT SEA IN RESPECT OF
INTENTIONAL DAMAGE TO SUBMARINE CABLES AND PIPELINES**

Members of the Committee
Dr Danae Azaria (United Kingdom): *Chair*
Dr Tara Maria Davenport (Singapore): *Rapporteur*

	Alternate
Mr. Kent D Bressie (America)	
Ms. Alice deJuvigny Colarossi (America)	
Professor Erik Franckx (Headquarters)	
Dr. Maria Gavouneli (Greece) Nominee of the Chair	
Professor Géraldine Giraudeau (France)	
Mr. Laurent Grosse-Kozlowski (France)	
Dr. Douglas Guilfoyle (Australia)	
Professor Warwick Gullett (Australia)	
Professor Matthias C. Kettemann (Austria)	
Ms. Onni Irish (America) Nominee of the Chair	
Ambassador Marie Jacobsson (Sweden)	Dr. Martin Ratcovich Leopardi
Dr. hab. Tomasz Kamiński (Professor of University of Warsaw) (Poland)	
Professor Atsuko Kanehara (Japan)	Dr. Kentaro Nishimoto
Professor Konrad Marciniak (Poland)	
Professor Alina Miron (France)	
Dr. Efthymios Papastavridis (Greek)	
Professor Alfred H A Soons (Netherlands)	Dr. Geoffery Gordon
Ms. Vanessa Lam (Singapore)	
Ms. Colleen Sechrest (America)	
Dr. Andreas Kulick (Germany)	
Dr. Zhen Sun (Sweden)	
Lemonia Tsaroucha (Greece)	
Professor Youri van Logchem (Norway)	

CONTENTS

I.	INTRODUCTION	3
II.	GENERAL PART.....	5
	<i>Conclusion 1: Scope of the present Conclusions.....</i>	<i>5</i>
	<i>Conclusion 2: Definitions.....</i>	<i>7</i>
	<i>Conclusion 3: Conditions for Prevention and Response Measures</i>	<i>9</i>
	<i>Conclusion 4: Prevention and Response Measures Taken Pursuant to States' Jurisdiction to Protect and Preserve the Marine Environment.....</i>	<i>10</i>
III.	TERRITORIAL SEA	11
A.	MONITORING	11
	<i>Conclusion 5: Monitoring Activities by the Coastal State in the Territorial Sea.....</i>	<i>11</i>
	<i>Conclusion 6: Monitoring Activities in the Territorial Sea by States other than the Coastal State.....</i>	<i>11</i>
B.	PREVENTION AND RESPONSE MEASURES	12
	<i>Conclusion 7: Prevention and Response Measures by the Coastal State in the Territorial Sea.....</i>	<i>12</i>
	<i>Conclusion 8: Other Protective Tools by the Coastal State in the Territorial Sea</i>	<i>16</i>
IV.	STRAITS USED FOR INTERNATIONAL NAVIGATION AND ARCHIPELAGIC WATERS.....	16
	<i>Conclusion 9: Submarine Cables and Pipelines in Straits used for International Navigation.....</i>	<i>16</i>
	<i>Conclusion 10: Submarine Cables and Pipelines in Archipelagic Waters</i>	<i>19</i>
V.	EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF	21
A.	MONITORING	21
	<i>Conclusion 11: Monitoring Activities by the Coastal State in the EEZ and Continental Shelf.....</i>	<i>21</i>
	<i>Conclusion 12: Monitoring Activities by Other Interested States in the EEZ and Continental Shelf.....</i>	<i>22</i>
B.	PREVENTION AND RESPONSE MEASURES	23
	<i>Conclusion 13: Measures by the Coastal State with regard to Submarine Cables and Pipelines Connected to Artificial Islands, Installations and Structures in the EEZ and the Continental Shelf.....</i>	<i>23</i>
	<i>Conclusion 14: Measures by the Coastal State with regard to Submarine Pipelines that Land in the Coastal State or Transit in the EEZ and Continental Shelf.....</i>	<i>24</i>
	<i>Conclusion 15: Measures by Coastal States in the EEZ and Continental Shelf in Respect of Landing Submarine Cables</i>	<i>25</i>
	<i>Conclusion 16: Measures in the EEZ and Continental Shelf by Other Interested States Exercising the Freedom to Lay Submarine Cables and Pipelines</i>	<i>27</i>
	<i>Conclusion 17: Measures by All States in the EEZ and Continental Shelf</i>	<i>28</i>
	<i>Conclusion 18: Treaty-Based Rights.....</i>	<i>30</i>
	<i>Conclusion 19: Measures by Flag States in the EEZ and Continental Shelf</i>	<i>31</i>
VI.	HIGH SEAS AND THE AREA	33
A.	MONITORING	33
	<i>Conclusion 20: Monitoring Activities in the High Seas and the Area.....</i>	<i>33</i>
B.	PREVENTION AND RESPONSE MEASURES	34
	<i>Conclusion 21: Measures by All States in the High Seas and Area</i>	<i>34</i>
	<i>Conclusion 22: Treaty-Based Rights.....</i>	<i>34</i>
	<i>Conclusion 23: Measures by Flag States in the High Seas and Area</i>	<i>34</i>
VII.	CONCLUDING REMARKS	35

I. INTRODUCTION

(1) The International Law Association (ILA) Committee on Submarine Cables and Pipelines under International Law ('the ILA Committee') was established by the ILA Executive Council in November 2018. In doing so, the ILA Committee acknowledged that the current international legal regime governing submarine cables and pipelines established by the United Nations Convention on the Law of the Sea of 1982 (LOSC)¹ (and other conventions) may not adequately address the myriad of challenges that States, and entities engaged in cable and pipeline activities, currently face in the development of policies relating to all aspects of submarine cables and pipelines.

(2) The ILA Committee's First Interim Report was issued in December 2020 ('the First Report').² The First Report's objective was to 'map the field' to help identify the existing law on submarine cables and pipelines, with a specific focus on the LOSC, and to assess whether there is a need for further clarification or development of the law. This mapping exercise resulted in the identification of certain issues that could be the subject of the ILA Committee's future work.³

(3) The Second Interim Report issued in May 2022 ('Second Report') sets out the Committee's conclusions on two substantive issues identified in the First Report relating to (1) the difference between marine scientific research and surveys for laying cables and pipelines under the LOSC; and (2) issues relating to LOSC Article 51.⁴ The ILA Committee's mandate was extended for another four years until November 2026.

(4) The Third Interim Report ('Third Report') was issued in June 2024 and examined the international law that governs measures that States may take in response to intentional acts of damage to submarine cables and pipelines by States and non-State actors in peacetime.⁵ The ILA Committee decided to focus on this issue after a series of incidents of damage to submarine cables and pipelines in 2022 which raised concerns about State and non-State actors intentionally damaging submarine cables and pipelines in order to disrupt transmission of communications, energy and electricity with the objective of achieving, *inter alia*, strategic, military or political objectives.⁶ As observed in the Third Report, the majority of incidents of damage to submarine cables and pipelines are typically caused by normal maritime activities such as fishing and shipping and there have only been a few incidents of damage that have been publicly confirmed to be intentional.⁷ Nonetheless, the Committee felt that it was important to understand how international law governed State responses to intentional acts of damage to submarine cables and pipelines given the potentially serious ramifications of disruptions to the transmission of communications and energy, coupled with the fact that intentional damage can be inflicted under the guise of routine maritime activities making it difficult to prevent.⁸ Accordingly, the Third Report mapped the international law applicable to intentional acts of damage to submarine cables and pipelines, with a specific focus on primary rules in the law of the sea; the law on the use of force; and international instruments on terrorism as well as secondary rules on State responsibility. The Third Report observed that these different fields of international law set out a range of possible measures that States can take in response to acts of damage to submarine cables and pipelines. However, the Third Report noted that 'international law only sets out States'

¹ *United Nations Convention on the Law of the Sea*, adopted 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994) (LOSC).

² The First Interim Report ('First Report') at https://www.ila-hq.org/en_GB/committees/submarine-cables-and-pipelines-under-international-law.

³ *Ibid.*, para. 210.

⁴ The Second Interim Report ('Second Report') at https://www.ila-hq.org/en_GB/committees/submarine-cables-and-pipelines-under-international-law.

⁵ The Third Interim Report ('Third Report') at <https://www.ila-hq.org/en/documents/ilathi-1-1>.

⁶ Third Report, *ibid.*, paras. 5 – 8.

⁷ Third Report, *ibid.*, para. 7. For example, the damage to segments of the Nord Stream 1 and 2 pipelines that transported gas from Russia to Germany through the Baltic Sea is without a doubt intentional as they were the target of explosions in the Exclusive Economic Zones (EEZs) of Denmark and Sweden.

⁸ Third Report (n 5), para. 8.

rights and obligations in general terms, and operationalizing or implementing such measures in practice may give rise to problematic scenarios and potential disputes where clear legal solutions are difficult to identify and open to contestation.⁹ Accordingly, the Third Report highlighted possible interpretations, the uncertainties in interpretation that may exist and identified legal issues that would benefit from further clarification or development.

(5) Since the Third Report was issued, there have been further incidents of damage to submarine cables and pipelines that have been suspected to be intentional.¹⁰ In parallel, an increasing number of States and international organizations have affirmed the importance of submarine cables and pipelines and have proposed a series of initiatives for their protection. For example, in its 2024 omnibus resolution on the oceans, the United Nations (‘UN’) General Assembly (‘UNGA’) urged all States, in cooperation with the International Maritime Organization (‘IMO’) and other relevant international organizations and agencies ‘to improve the protection of [...] submarine cables and pipelines and other critical infrastructure by adopting measures related to the prevention, reporting and investigation of acts of violence against such infrastructure, in accordance with international law, and by implementing such measures through national legislation to ensure proper and adequate enforcement.’¹¹ The UNGA also recognized the importance of international cooperation in accordance with international law to combat threats to maritime security, including acts against submarine cables and pipelines, by monitoring, preventing and responding to such threats.¹² The UNGA’s Resolution confirmed the heightened interest of governments around the world as reflected, for example, in the Joint Statement of the Resilience of Undersea Cables in a Globally Digitalized World (‘New York Principles’) adopted in September 2024 and the Guiding Principles for Underwater Infrastructure Defence Exchanges (‘GUIDE’) adopted in May 2026.¹³ International and regional organizations, such as the International Telecommunication Union (‘ITU’), the North Atlantic Treaty Organization (‘NATO’), the European Union (‘EU’) and the Association of Southeast Asian Nations (‘ASEAN’) have also recognized the importance of protection of submarine cables and pipelines, and have proposed several cooperative measures including those concerning the monitoring of threats and information sharing.¹⁴

⁹ Third Report (n 5), para. 10.

¹⁰ See, for example, Barbara Paoletti, ‘Look Beyond the Sea to the Shore,’ Centre for European Policy Analysis, 18 May 2026, at <https://cepa.org/article/cable-danger-look-beyond-the-sea-to-the-shore/>.

¹¹ United Nations, General Assembly Resolution Oceans and the Law of the Sea (adopted 12 December 2024), A/RES/79/144, para. 139.

¹² 2024 GA Resolution, para. 118.

¹³ Joint Statement of the Resilience of Undersea Cables in a Globally Digitalized World, 26 September 2024 endorsed by the United States of America, Australia, Canada, the European Union, the Federated States of Micronesia, Finland, France, Japan, the Marshall Islands, the Netherlands, New Zealand, Portugal, Republic of Korea, Singapore, Tonga, Tuvalu, and the United Kingdom at <https://2021-2025.state.gov/joint-statement-on-the-security-and-resilience-of-undersea-cables-in-a-globally-digitalized-world/>; Guiding Principles for Underwater Infrastructure Defence Exchanges adopted on 30 May 2026 by Australia, Brunei, Malaysia, New Zealand, the Philippines, Singapore, Thailand, Estonia, Finland, France, Italy, Latvia, Lithuania, the Netherlands, Sweden, the United Kingdom, and Qatar at <https://www.mindef.gov.sg/news-and-events/latest-releases/30may26-fs/>.

¹⁴ See, for example, the International Advisory Body for Submarine Cable Resilience established by the International Telecommunication Union (‘ITU’) in partnership with the International Cable Protection Committee (‘ICPC’) at <https://www.itu.int/digital-resilience/submarine-cables/advisory-body/>; NATO Maritime Centre for Security of Critical Undersea Infrastructure at <https://mc.nato.int/media-centre/news/2024/nato-officially-launches-new-nmcscui>; NATO Critical Undersea Infrastructure-Network at <https://www.nato.int/en/news-and-events/articles/news/2025/11/21/nato-expands-its-engagement-on-critical-undersea-infrastructure-in-the-mediterranean>; NATO’s Baltic Sentry Programme at <https://www.nato.int/en/news-and-events/articles/news/2025/01/14/nato-launches-baltic-sentry-to-increase-critical-infrastructure-security>; EU-NATO Task Force, *Resilience of Critical Infrastructure: Final Assessment Report*, 29 June 2023, 3 at https://commission.europa.eu/document/34209534-3c59-4b01-b4f0-b2c6ee2df736_en; Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC; European Commission Recommendation on Secure and Resilient Submarine Cable Infrastructure, Brussels, 26 February 2024; C(2024) 1181 final; EU Cable Security Toolbox at <https://digital-strategy.ec.europa.eu/en/library/submarine-cable-security-toolbox-and-cable-projects-european-interest>; ASEAN Concept

(6) Against this background, the ILA Committee decided that its next phase of work should focus on drafting conclusions with accompanying commentary on three categories of measures that may be taken by States vis-à-vis potential or actual acts of intentional damage to submarine cables and pipelines: namely, (1) monitoring activities (as defined in Conclusion 2(3)) for purposes of detection of threats to submarine cables and pipelines; (2) prevention measures in relation to potential acts of intentional damage to submarine cables and pipelines; and (3) response measures in relation to actual acts of intentional damage to submarine cables and pipelines.¹⁵

Accordingly, the ILA Committee's Fourth and Final Report sets out the ILA Committee's 'Conclusions on Monitoring, Prevention and Response at Sea In Respect of Intentional Damage to Submarine Cables and Pipelines' consisting of twenty-three conclusions with accompanying commentary. The Conclusions are structured in six parts: Part II (the General Part) contains general conclusions setting out the scope of the Conclusions; definitions; conditions for prevention and response measures by States; and prevention and response measures taken pursuant to States' jurisdiction to protect and preserve the marine environment. The remaining Conclusions in Parts III – VI discuss monitoring activities, prevention and response measures in the respective maritime zones: territorial sea (Part III); straits used for international navigation and archipelagic waters (Part IV); the Exclusive Economic Zone ('EEZ') and continental shelf ('CS') (Part V); the high seas and the Area (Part VI). The Conclusions address measures that can be taken by four categories of States: (1) coastal and archipelagic States; (2) other interested States (defined in Conclusion 2(4)); (3) flag States; and (4) all States (encompassing the preceding categories of States).

(7) The objective of the Conclusions and accompanying commentary is to 'ensure certainty and clarity about the existing law applicable to such potential measures (monitoring, prevention and enforcement after such events)', and, conditioned on consensus among members, to 'propose appropriate solutions ('best practices') that are *harmonious* with existing international law.'¹⁶ They aim to provide guidance to States (and their various government agencies), international organizations, and relevant non-state actors (including entities engaged in cable and pipeline activities) on the measures that States may take under international law to protect submarine cables and pipelines from intentional acts of damage. The Conclusions and accompanying commentary also identify measures that presently do not have a clear basis under existing international law and consequently, may warrant further clarification and development.

II. GENERAL PART

Conclusion 1: Scope of the present Conclusions

These Conclusions:

- (1) address monitoring activities and measures for the prevention of acts of intentional damage ('prevention measures') or response to acts of intentional damage to submarine cables or pipelines ('response measures');
- (2) address intentional damage to submarine cables and pipelines in peacetime;
- (3) do not address submarine cables and pipelines in internal waters;
- (4) do not address intentional damage to submarine cables and pipelines resulting exclusively from cyber operations; and

Paper on Critical Underwater Infrastructure From a Defence Perspective adopted by the ASEAN Defence Minister's Meeting, 31 October 2025 at https://admm.asean.org/dmdocuments/2025_19th%20ADMM_KL,%20Malaysia,%2031%20October%202025_Concept%20Paper%20on%20CUI%20Security%20from%20a%20Defence%20Perspective.pdf.

¹⁵ See Conclusion 1, commentary, paras. 1 – 2.

¹⁶ ILA Committee on Submarine Cables and Pipelines, Resolution adopted on 24 June 2024, Athens.

(5) except where otherwise stated, do not address intentional damage to submarine cables and pipelines committed by warships or other government ships entitled to sovereign immunity.

Commentary

(1) The Conclusions address monitoring activities (defined in Conclusion 2(3)), prevention measures and response measures in relation to potential or actual intentional damage to submarine cables and pipelines. For the purposes of these Conclusions, prevention and response measures include the boarding of a vessel, inspection of a vessel, arrest of vessel and/or crew, and judicial proceedings. The difference between them is merely one of *function*: while ‘prevention measures’ concern State conduct vis-à-vis potential acts of intentional damage that have not yet occurred, ‘response measures’ concern State conduct vis-à-vis an incident of intentional damage that has already occurred. The undertaking of monitoring activities, prevention and response measures must be empowered by applicable international law, including the LOSC and other relevant rules of international law, including treaties and/or customary international law.¹⁷ The principal legal basis for monitoring activities, prevention and response measures is pursuant to States’ prescriptive,¹⁸ enforcement¹⁹ and/or adjudicative jurisdiction²⁰ over laws and regulations provided for under the LOSC and/or customary international law. Prevention and response measures may also be taken where the LOSC, other relevant treaties and/or customary international law provides a basis *separate* from a State’s jurisdiction to prescribe, enforce or adjudicate laws adopted in accordance with the LOSC.

(2) The prevention and response measures discussed in these Conclusions are limited to prevention and response measures against vessels and crew for potential or actual damage to submarine cables and pipelines. The Conclusions do not address measures involving the invocation of State responsibility for damage to submarine cables and pipelines, including through the LOSC Part XV dispute settlement proceedings.²¹ However, it is important to reiterate that there is a prohibition against infliction of damage to submarine cables and pipelines applicable to all States under customary international law.²² Moreover, as elaborated on in Conclusion 23 below, flag States have certain obligations vis-à-vis submarine cables and pipelines.²³ Depending on the circumstances, a flag State can be held responsible for such breaches, either because they can be attributed to the flag State or if it can be established that the flag State has failed to exercise due diligence to prevent such acts.²⁴ To the extent that these breaches constitute a ‘dispute concerning the interpretation or application of this Convention,’ a LOSC court or tribunal has jurisdiction to hear this dispute.²⁵

¹⁷ Matters not regulated by the LOSC continue to be governed by the rules and principles of general international law (LOSC, preamble). Courts and tribunals have found that external rules of international law can be considered in the interpretation or application of the LOSC either under LOSC Article 293, the Vienna Convention on the Law of Treaties (‘VCLT’) Article 31 (3) (c) or because a specific provision in the LOSC expressly refers to other rules of international law: see, for example, *MV Saiga* (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment of 1 July 1999, ITLOS Reports 1999, p. 10, para. 155; *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Case No. 31, Advisory Opinion, 2024 (‘ITLOS Climate Change Advisory Opinion’), paras. 135 and 285.

¹⁸ ‘Under international law, the exercise of jurisdiction by a State entails an element of prescribing laws, rules, or regulations over conduct, or applying or enforcing such laws, rules, or regulations over persons or property’. The ‘*Enrica Lexie*’ Incident (Italy v. India), PCA Case No. 2015-28, 21 May 2020, para. 526. Prescriptive jurisdiction is the authority of a State to promulgate laws or regulations in relation to persons, property, or conduct. B.H. Oxman, ‘Jurisdiction of States,’ *Max Planck Encyclopedia of Public International Law* (2007), para. 3.

¹⁹ Enforcement jurisdiction is the State’s authority to exercise its *power to compel compliance with law*: Oxman, *ibid.*

²⁰ Adjudicative jurisdiction is the State’s authority to *apply* law to persons or things: Oxman, *ibid.*

²¹ For a discussion on State responsibility for intentional damage to submarine cables and pipelines, see ILA Third Report (n 5), Sections III (4) and (5). Also see Tara Davenport, ‘Intentional Damage to Submarine Cable Systems by States,’ Hoover Institution, Stanford University, AEGIS Series Paper No. 2305 (2023), 1 – 24.

²² See discussion in ILA Third Report (n 5), Section III (4).

²³ See discussion in ILA Third Report, *ibid.*, paras. 99 – 103.

²⁴ ILA Third Report, *ibid.*, paras. 132 – 135.

²⁵ LOSC, Article 288 (1).

(3) The Conclusions have been drafted with intentional damage to submarine cables and pipelines in mind. Accidental or negligent damage to submarine cables and pipelines is not the focus of these Conclusions. ‘Damage’ means physical harm that impairs the value, utility or normal functioning of submarine cables and pipelines, including disruptions to the services they provide. In practice, it may be difficult to establish before or after the acts of damage have occurred whether they constitute intentional, negligent, or accidental occurrences. The determination of whether damage is intentional or not is dependent on the facts and evidence.

²⁶ An assessment of the intention of the perpetrators is not a necessary condition for monitoring activities. Whether a determination of the intent of the perpetrator is a necessary condition before States can take prevention and response measures will depend upon the context, the specific measures and their legal basis under the LOSC and customary international law. For example, some LOSC provisions permit prevention or response measures on the basis that a specific act has taken place without specifying the requisite mental element: for example, LOSC Article 111 on hot pursuit requires that the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Others qualify the act with a mental element, such as LOSC Article 113 which obliges States to criminalize the breaking or injury of submarine cables and pipelines ‘done wilfully or through culpable negligence’. Where necessary, elaboration on the point is provided in the commentary to the relevant Conclusions.

(4) These Conclusions deal with submarine cables and pipelines in the territorial sea, including straits used for international navigation; archipelagic waters; the CS; the EEZ (if a coastal State has claimed an EEZ), the high seas and the Area. Internal waters are excluded.

(5) These Conclusions do not address activities and measures taken by use of aircraft. They are also only concerned with damage to submarine cables and pipelines caused by kinetic action or means. They do not address physical impairment or other damage to submarine cables and pipelines or disruptions to their operations that exclusively result from cyber operations, because doing so would implicate other areas of international law and exceed the scope of these Conclusions.²⁷ These Conclusions do not address measures that may be taken during armed conflict (such measures are governed by the law of armed conflict).

(6) Except where otherwise stated, these Conclusions generally do not address prevention and response measures that can be taken by States against warships or other government ships operated for non-commercial purposes suspected of potential or actual damage to submarine cables and pipelines. These vessels are entitled to sovereign immunity under the LOSC and customary international law.²⁸

Conclusion 2: Definitions

For the purpose of the present Conclusions:

²⁶ See ILA Third Report (n 5), paras. 7 – 8. For example, in the case of the *Eagle S*, the Finnish district court found that the ship’s anchor fell into the sea due to a failure of the anchor securing mechanism and the defendant’s alleged negligence related to their duties on board the ship and that there was no allegation in this case of the ship’s anchor being used to intentionally damage cables. See *Eagle S* (Criminal case against Davit Vadatchkoria and others), Helsinki District Court, Case No. R 706/2025/12270, Judgment of 3 October 2025, 15 – 16. In the case of the *Yi Peng 3*, it was reported that the Swedish Accident Investigation Authority was unable to assess whether *Yi Peng 3*’s anchor was dropped deliberately or not: ‘Swedish probe finds no conclusive evidence of deliberate cable damage by Chinese ship,’ Reuters, 15 April 2025. <https://www.reuters.com/world/europe/swedish-probe-finds-no-conclusive-evidence-deliberate-cable-damage-by-chinese-2025-04-15/>.

²⁷ See Michael N. Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (Cambridge University Press 2017) (‘Tallinn Manual 2.0’) 564, defining a ‘cyber operation’ as ‘the employment of cyber capabilities to achieve objectives in or through cyberspace’.

²⁸ LOSC, Articles 32, 95 and 96. Conclusion 7 discusses measures that a coastal State may take in relation to warships and other government ships that have breached coastal State laws on innocent passage under LOSC Article 30 which is limited to asking them to leave the territorial sea.

- (1) ‘Landing submarine cables and pipelines’ mean submarine cables and pipelines that make landfall in a State.
- (2) ‘Transit submarine cables and pipelines’ mean submarine cables and pipelines laid through one or more maritime zones of a coastal State where the journey begins and ends outside the maritime zone(s) of that coastal State.
- (3) ‘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. They include:
 - (a) patrols by surface vessels, submarines, remotely-operated underwater vehicles and underwater autonomous vehicles;
 - (b) vessel-based detection measures; and
 - (c) other detection measures (proximity sensing), including sensing networks.
- (4) ‘Other interested States’ means States that have an interest in the unobstructed operation of a particular submarine cable or pipeline: namely, the flag State of a ship laying a cable or pipeline; States connected to the submarine cable or pipeline; and/or States of nationality of the owner or operator of a cable or pipeline.

Commentary

(1) Conclusion 2 sets out the definitions of basic terms relied on in the Conclusions. In Conclusion 2(1), the term ‘landing’ refers to those cables and pipelines that reach the land of a coastal State.

(2) Paragraph (2) uses the term ‘transit’ in accordance with the established meaning of the term in international law, namely ‘the *passage across*’ the maritime zone(s) of the transit State that constitutes ‘only a portion of a complete journey, beginning and terminating beyond [the transit State’s] frontier [...]’.²⁹

(3) Paragraph (3) sets out the definition of ‘monitoring activities’, including specific monitoring measures. The definition is intended to be exclusive for the purpose of the Conclusions. ‘Patrols’ may be conducted by surface vessels and submarines, remotely-operated underwater vehicles and underwater autonomous vehicles. ‘Vessel-based detection measures’ include vessel-based monitoring technology, which assists in identifying and tracking suspect vessels. Examples include tracking systems mandated by the IMO such as the Long-Range Identification and Tracking System (‘LRIT’) or Automatic Identification System (‘AIS’) for large vessels and/or those on international voyages. Smaller vessels use Vessel Information System (‘VIS’). ‘Detection measures (proximity sensing)’ includes the construction or installation of external sensing networks (including positioning of sensors on mounts and buoys), connection or integration of sensors *in* submarine cables and pipelines, deployment of distributed acoustic sensing technologies *on* submarine cables and analysis of operational data *of* submarine cables (such as state of polarization data).

(4) The term ‘other interested States’ makes reference to States which are holders of the freedom under LOSC and customary international law to lay and operate a particular submarine cable or pipeline, as identified in the Committee’s First Report.³⁰ There may be other States that have an interest in the unobstructed operation of a particular submarine cable or pipeline, including States that own the product transported through a pipeline, electricity transmitted through a power cable or data transmitted through a communication cable (this may

²⁹ D. Azaria, *Treaties on Transit of Energy via Pipelines and Countermeasures*, (Oxford University Press, 2015), pp. 26-30 (defining transit and considering its definition under the 1921 Barcelona Convention, the GATT, the Energy Charter Treaty and bespoke pipeline treaties). See also by analogy LOSC, Article 124(1)(c).

³⁰ See First Report (n 2), paras. 71 – 72.

depend on specific contractual terms and national laws). However, for the purpose of these Conclusions, the term ‘other interested States’ is limited to the States identified in Conclusion 2(4).

Conclusion 3: Conditions for Prevention and Response Measures

- (1) All measures to prevent and respond to intentional acts of damage to submarine cables and pipelines must be taken in accordance with international law, including fulfilling requirements in applicable LOSC provisions, and must be necessary, reasonable and proportionate, taking into account the circumstances of each case.
- (2) All measures must be taken by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

Commentary

(1) Prevention and response measures must be in accordance with the applicable international law.³¹ For example, prevention and response measures that have their legal basis in a State’s enforcement jurisdiction, derived from the LOSC provisions, are governed by ‘certain rules and principles of general international law,’ such as the principle of reasonableness, which incorporates related principles of necessity and proportionality.³² Moreover, response measures based on the right of hot pursuit in LOSC Article 111 must satisfy all the conditions specified therein.³³ Prevention and response measures based on other legal grounds in the LOSC and/or other relevant rules of international law may also be subject to the principles of reasonableness, necessity and proportionality. For example, in the *Arctic Sunrise* arbitration, the arbitral tribunal found that the protection of a coastal State’s sovereign rights in its EEZ and continental shelf is a legitimate aim that allows the coastal State to take appropriate measures for that purpose and that ‘such measures must fulfil the tests of reasonableness, necessity, and proportionality.’³⁴ Similarly, coastal States may take ‘necessary’ steps to prevent non-innocent passage in their territorial sea under LOSC Article 25. Whether such steps are necessary will depend on the circumstances of the case.³⁵ The use of force in undertaking prevention and response measures is subject to LOSC Article 301. In *M/V Saiga*, the International Tribunal for the Law of the Sea (‘ITLOS’) found that international law (applicable by virtue of LOSC Article 293) requires that, in the arrest of ships, ‘the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances.’³⁶ All these requirements must be taken into account when States are undertaking the prevention and response measures discussed in these Conclusions.

³¹ See, for example, *M/V Saiga* (No. 2) (n 17), para. 155; *Arctic Sunrise Arbitration* (The Kingdom of the Netherlands v. The Russian Federation), Award on the Merits, PCA Case No. 2014-02, 14 August 2015 (‘*Arctic Sunrise*’), para. 222.

³² *The Duzgit Integrity Arbitration* (Malta v. São Tomé and Príncipe), PCA Case No. 2014-07, 5 September 2016 (‘*Duzgit Integrity*’), para. 209. See also *M/V Saiga* (No. 2), *ibid*, para. 155; *Arctic Sunrise*, *ibid*, para. 222.

³³ *M/V Saiga*, *ibid*, para. 146; *Arctic Sunrise*, *ibid*, para. 246.

³⁴ *Arctic Sunrise*, *ibid*, para. 326.

³⁵ A coastal State enjoys wide discretion in the determination of the necessary steps it can take in order to prevent innocent passage in the territorial sea: Richard Barnes, ‘Article 25: Rights of Protection of the Coastal State,’ in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 222, 224. Nonetheless, whether a measure is ‘necessary’ is open to scrutiny by courts and tribunals in any Part XV dispute settlement proceedings. In *M/V Virginia*, ITLOS examined whether certain measures taken by Guinea-Bissau in enforcing its laws and regulations in relation to its living resources in the EEZ were ‘necessary’ pursuant to LOSC Article 73. It found that the confiscation of the vessel and the fuel oil was not necessary either to sanction the violation committed or to deter the vessels or their operators from repeating this violation, considering that other fishing vessels involved in the same conduct had not been subject to strict penalties: *The M/V "Virginia G" Case (Panama/Guinea-Bissau)*, ITLOS Case No. 19, Judgment of 14 April 2014, ITLOS Reports 2014, p. 4 (‘*M/V Virginia G*’), paras. 257, 268-9. Contra Joint dissenting opinion of Judges Hoffmann, Chandrasekhara Rao, Rangel, Kateka, Gao and Bougetaia (they did not agree that the measures were unnecessary).

³⁶ *M/V Saiga* (n 17), para. 155.

(2) In addition to the conditions described in paragraph (1), when taking the prevention and response measures discussed in these Conclusions vis-à-vis individuals, including the master and crew, States should note that ‘considerations of humanity must apply in the law of the sea, as they do in other areas of international law.’³⁷ General international law and rules beyond the LOSC, including human rights standards, can ‘assist in the interpretation and application of the Convention’s provisions that authorize the arrest or detention of a vessel and persons’ pursuant to LOSC Article 293.³⁸ ITLOS has observed in *M/V Louisa* that ‘States are required to fulfil their obligations under international law, in particular human rights law, and that considerations of due process of law must be applied in all circumstances.’³⁹

(3) If prevention and response measures discussed in these Conclusions are based on the right of visit under LOSC Article 110, the right of hot pursuit under LOSC Article 111 or pursuant to the enforcement jurisdiction of States to protect and preserve the marine environment stipulated in LOSC Part XII (see Conclusion 4 below), such prevention and response measures may only be taken by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.⁴⁰ Similarly, under general international law, ‘enforcement activities can be exercised only by duly authorized identifiable officials of a coastal State and that their vessels must be clearly marked as being on government service.’⁴¹

Conclusion 4: Prevention and Response Measures Taken Pursuant to States’ Jurisdiction to Protect and Preserve the Marine Environment

Section 7 of Part XII of the LOSC applies *mutatis mutandis* to Conclusions 7, 9, 10 and 13.

Commentary

(1) Acts of damage to submarine cables and pipelines may result in pollution of the marine environment under LOSC Article 1(1)(4) if they result, or are likely to result, in the indirect or direct introduction of substances or energy into the environment that has deleterious effects on the marine environment. This will depend on whether the target is a cable or a pipeline and the means used to damage it. For example, for submarine communication and power cables, the use of underwater explosives to damage them would introduce substances or energy into the environment that would likely result in harm to the surrounding biodiversity and resources and hinder marine activities. In contrast, damaging submarine cables by cutting them may not result in deleterious environmental effects, though there exists the possibility that cutting submarine power cables may result in increased introduction of electromagnetic fields into the marine environment.⁴² For submarine pipelines that are transporting substances, any means of damage to them is likely to result in marine environment pollution.⁴³

³⁷ Ibid.

³⁸ *Arctic Sunrise* (n 31), para. 198. See also the customary rule set forth in VCLT Article 31(3)(c).

³⁹ *M/V "Louisa"* (Saint Vincent and the Grenadines v. Kingdom of Spain), Judgment of 28 May 2013, ITLOS Reports 2013, p. 46, para. 155. Also see *The "Enrica Lexie" Incident (Italy v. India)*, Annex VII Arbitral Tribunal, Order of 29 April 2016, PCA Case No. 2015-28, paras. 104 – 107.

⁴⁰ LOSC Article 224. LOSC Article 224 also includes ‘officials’ as an actor allowed to exercise the power of enforcement for violations of Part XI, but this refers to situations when the power of enforcement is exercised by coastal States in port: see LOSC Article 218 and discussion in Vasco Becker-Weinberg, ‘Article 224: Exercise of Powers of Enforcement’ in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 1531, 1533.

⁴¹ *M/V Virginia* (n 35), para. 342. Also see para. 345 where ITLOS opined that the ‘Convention leaves it for the coastal State to decide which authorities under its national law will be responsible for exercising enforcement activities pursuant to article 73, paragraph 1 of the Convention in accordance with general principles of international law...’

⁴² See discussion in ILA Third Report (n 5), para. 57.

⁴³ Danae Azaria and Geir Ulfstein, ‘Are sabotage of submarine pipelines an “armed attack” triggering a right to self-defence?’ EJIL Talk, 18 October 2022, at <https://www.ejiltalk.org/are-sabotage-of-submarine-pipelines-an-armed-attack-triggering-a-right-to-self-defence/>.

(2) Some of the prevention and response measures discussed in Conclusions 7, 9, 10 and 13 are based on the enforcement jurisdiction of States relating to their laws and regulations on the protection of the marine environment and prevention, reduction and control of pollution thereof adopted in accordance with LOSC Part XII. Whether such enforcement jurisdiction may be exercised will depend on the specific circumstances, including the nature of the infrastructure, the means used to damage such cables and pipelines and the extent of harm to the marine environment. The safeguards in Section 7 of Part XII of LOSC are applicable to these prevention and response measures.

III. TERRITORIAL SEA

A. Monitoring

Conclusion 5: Monitoring Activities by the Coastal State in the Territorial Sea

Monitoring activities conducted by the coastal State vis-à-vis submarine cables and pipelines in its territorial sea shall not hamper innocent passage.

Commentary

(1) Monitoring falls within a State's enforcement jurisdiction.⁴⁴ Pursuant to their sovereignty in the territorial sea, coastal States are entitled to undertake themselves (or authorize any entity within their jurisdiction to undertake) monitoring activities over all submarine cables and pipelines located therein, in so far as these activities do not hamper innocent passage in accordance with customary international law (reflected in LOSC Article 24(1)). According to LOSC Article 24(1), the hampering of passage includes measures that introduce requirements that have the 'practical effect of denying or impairing the right of innocent passage' or discriminate between ships based on flag State or cargo.⁴⁵

Conclusion 6: Monitoring Activities in the Territorial Sea by States other than the Coastal State

Monitoring activities by States other than the coastal State with respect to submarine cables and pipelines in the territorial sea do not constitute innocent passage and require the consent of the coastal State.

Commentary

(1) Monitoring activities by other States consisting of (a) patrols by crewed surface vessels, submarines, remotely-operated underwater vehicles and underwater autonomous vehicles, as well as (b) vessel-based detection measures in the territorial sea constitute non-innocent passage, because they do not have a direct bearing on passage (LOSC Article 19(2)(l)) and/or because they are 'aimed at collecting information to the prejudice of the defence or security of the coastal State' (LOSC Article 19(2)(c)). Additionally, patrols by remotely operated underwater vehicles and underwater autonomous vehicles launched from foreign vessels will constitute non-innocent passage when they involve the launching, landing or taking on board any military device (LOSC Article 19(2)(f)).⁴⁶ Such monitoring activities may take place only with the consent of the coastal State.

⁴⁴ According to ITLOS, the word 'enforce' is 'a broad term encompassing the variety of ways and means to ensure compliance with laws and regulations within the framework of the national legal system', which may include 'for example, *monitoring and inspection*, administrative guidance, investigation and prosecution for breaches of laws, and judicial or quasi-judicial proceedings.' ITLOS Climate Change Advisory Opinion (n 17), para. 284 (emphasis added).

⁴⁵ In assessing what constitutes hampering of innocent passage, it is necessary to 'weigh up the various interests in each case in light of all the relevant circumstances,' which can be facilitated by using the concept of reasonableness: Richard Barnes, 'Article 24: Duties of Coastal States,' in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 217, 220.

⁴⁶ It is unclear how dual-use devices are to be treated in light of new technological advances. A criterion based on function on the ground may be useful for determining in each case whether the device constitutes a 'military device' or not.

(2) The lawfulness of monitoring activities conducted by other States consisting of (c) other detection measures (proximity sensing), including sensing networks, is complex. First, the analysis in the previous paragraph applies if such activities involve the passage of foreign vessels in the territorial sea. Second, cables or pipelines may possess in-built technologies for monitoring activities (as defined in Conclusion 2, paragraph (3)). Given that the laying of cables and pipelines in the territorial sea must take place with the prior consent of the coastal State, the coastal State must consent to submarine cables and pipelines being laid in its territorial sea with such in-built technology. Consent should be informed by knowledge of whether and how such technology will be used. Since monitoring is unlawful without the consent of the coastal State, it is recommended that operators/owners of cables or pipelines obtain the consent of the coastal State *before* they lay infrastructure with such in-built technology, and to make all necessary arrangements with the coastal State about the legal regime for monitoring via such in-built technology, including the sharing of any data collected.

(3) Monitoring activities conducted in the territorial sea by warships or government ships of States other than the coastal State fall within the analysis in paragraph (1) of the commentary of this Conclusion.⁴⁷

(4) Overall, all monitoring activities in the territorial sea of a coastal State without its consent violate the territorial sovereignty of that State under customary international law.⁴⁸

(5) Coastal States may conclude bespoke cable or pipeline agreements with other States that regulate the monitoring activities in relation to a particular cable or pipeline in their territorial sea. There are examples of regional practice on cooperation on monitoring activities, including the Baltic Sentry programme (pursuant to which NATO Member States cooperate on joint maritime patrols to deter threats to cables and pipelines in the Baltic Sea)⁴⁹ and the EU Action Plan on Cable Security (which includes enhancement of surveillance mechanisms for EU Member States by leveraging pre-existing surveillance systems).⁵⁰

B. Prevention and Response Measures

Conclusion 7: Prevention and Response Measures by the Coastal State in the Territorial Sea

- (1) When there are reasonable grounds for suspecting that a vessel in the territorial sea of a coastal State intends to engage in acts of damage against a submarine cable or pipeline, the coastal State may take all measures necessary to prevent such acts, in accordance with international law.
- (2) When there are reasonable grounds for suspecting that a vessel in the territorial sea of a coastal State has engaged in acts of damage against a cable or pipeline, the coastal State may take response measures in accordance with international law.

Commentary

⁴⁷ Additionally, to the extent that ships are not in compliance with the coastal State's laws and regulations concerning passage through the territorial sea, the coastal State can request that these ships comply with these regulations, and if it does not do so, the coastal State may require these ships to leave immediately (LOS Article 30).

⁴⁸ See discussion in Tara Davenport, 'The use of submarine cable infrastructure for intelligence collection,' in Russell Buchan and Iñaki Navarrete (eds), *Research Handbook on Intelligence and International Law* (Edward Elgar 2025), 278, 288 – 291.

⁴⁹ 'NATO launches Baltic Sentry to increase critical infrastructure security,' *NATO News*, 14 January 2025 at <https://www.nato.int/en/news-and-events/articles/news/2025/01/14/nato-launches-baltic-sentry-to-increase-critical-infrastructure-security>.

⁵⁰ European Commission, *EU Action Plan on Cable Security*, 21 February 2025, at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025JC0009>.

(1) Under LOSC Article 25 and customary international law, a coastal State is entitled to take the ‘necessary steps in its territorial sea’ to *prevent* non-innocent passage.⁵¹ Coastal States possess wide discretion on how to respond to non-innocent passage, ranging from requesting information, boarding, inspection, expulsion from the territorial sea and arrest and/or judicial proceedings against vessels and crew (although arrest and judicial proceedings depend on whether such vessels also committed an offence under the coastal State’s laws).⁵²

(2) Intentional acts of damage against a submarine cable or pipeline involving a foreign vessel in the territorial sea constitute non-innocent passage on the following grounds. First, because they are prejudicial to the peace, good order or security of the coastal State. Second, such acts would render passage non-innocent, pursuant to LOSC Article 19(2)(k), in that such acts would be aimed at interfering with systems of communication or other facilities or installations of the coastal State. Transit submarine communication cables are included in ‘systems of communication’ of the coastal State, because they are laid in its territorial sea.⁵³ Third, depending on the means used to damage cables or pipelines and the extent of pollution, such acts may amount to ‘any act of wilful and serious pollution’ (LOSC Article 19(2)(h)).⁵⁴ Fourth, because intentional acts of damage do not have direct bearing on passage (LOSC Article 19(2)(l)). Fifth, if the intentional act of damage involves the launching, landing or taking on board of any military device, it is an activity prejudicial to the peace, good order or security of the coastal State (LOSC Article 19(2)(f)). The term ‘military device’ may include underwater vehicles.⁵⁵ If such a military device is launched from a vessel traversing the territorial sea, it would render passage non-innocent. Sixth, if submerged submarines or underwater vehicles in the territorial sea are used in the commission of acts of damage to submarine cables and pipelines, they would violate the obligation under customary international law (and LOSC Article 20) that submarines and other underwater vehicles must navigate on the surface and show their flag in the territorial sea. Coastal States can take this conduct into consideration in determining whether specific behaviour is prejudicial to the peace, good order and security of the territorial sea rendering passage non-innocent.⁵⁶

(3) Measures to prevent acts of damage to submarine cables and pipelines may be taken if the coastal State suspects that there has been a violation of the laws of the coastal State (1) about non-innocent passage;⁵⁷ (2) about the protection of submarine cables and pipelines in the territorial sea;⁵⁸ (3) under its general criminal prescriptive jurisdiction.⁵⁹ Prevention measures may also be taken if the coastal State suspects that there have

⁵¹ LOSC Article 25.

⁵² Richard Barnes, ‘Article 25: Rights of Protection of the Coastal State,’ in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 223, 224-225.

⁵³ It is unclear whether submarine power cables and pipelines are ‘systems of communication’ or whether instead they fall under ‘facilities’ or ‘installations’ of the coastal State, since the latter terms are used frequently throughout LOSC separately from ‘cables’ and ‘pipelines’. For instance, LOSC Articles 21(1)(b), 125(3), 126, 127(2) for ‘facilities’; and Articles 60, 80 and 147(2) for installations.

⁵⁴ As mentioned in paragraph (1) of the commentary to Conclusion 4, and depending on the means used to damage submarine cables and pipelines, the threshold of ‘serious pollution’ may only be met by acts of damage to submarine pipelines.

⁵⁵ Richard Barnes, ‘Article 19: Meaning of Innocent Passage,’ in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 194.

⁵⁶ Richard Barnes, ‘Article 20: Submarines and Underwater Vehicles,’ in Alexander Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 196, 198 – 199.

⁵⁷ Laws adopted in accordance with LOSC Article 19 (or customary international law).

⁵⁸ LOSC, Articles 2, 21(1)(c), 21(1)(f) and 211(4). Such laws and regulations must not hamper innocent passage of foreign ships through the territorial sea as pursuant to LOSC, Articles 21(3) and 24.

⁵⁹ LOSC Article 27 provides for the enforcement of general criminal jurisdiction in some circumstances, and the ‘existence of general enforcement jurisdiction clearly presupposes the existence of general legislative jurisdiction’ Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea*, 4th Edition, 158. Churchill, Lowe and Sander also note that the general right to legislate for the territorial sea was the basis for the IMO’s Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships which recommends that States take measures as may be necessary to establish their jurisdiction over the offences of piracy and armed robbery that take place within a State’s internal waters,

been violations of the laws of the coastal State on the preservation of its environment, and the prevention, reduction and control of pollution thereof as set out in LOSC Articles 21(1)(f), 211(4), 220(1) and 220(2). These provisions are especially relevant to acts of damage to pipelines. LOSC Article 220(1) allows the coastal State to institute proceedings with respect to any violations of its laws and regulations on the preservation of its marine environment adopted in accordance with the LOSC when the violation has occurred within the territorial sea and the vessel is voluntarily located within the port of the coastal State. LOSC Article 220(2) allows the coastal State to undertake physical inspection of a foreign vessel where there are ‘clear grounds for believing’ that the vessel navigating in the territorial sea has committed violations of the laws and regulations of the coastal State on the preservation of its marine environment adopted in accordance with the LOSC. Where evidence so warrants, coastal States are further permitted to initiate relevant proceedings, including detention. Under LOSC Article 111 and customary international law, coastal States have the right of hot pursuit if there is ‘good reason to believe’ that the ship has violated the coastal State’s laws and regulations within the territorial sea, such pursuit has commenced when the ship is within this zone, and provided it meets the requirements contained therein. Such prevention measures may be taken on these legal grounds to the extent that violations of the laws of the coastal State encompass the actual act as well as conduct calculated to result in a violation. For example, coastal State laws on the protection of submarine cables and pipelines may criminalize both actual damage to submarine cables and pipelines and conduct calculated or likely to result in such damage, even if actual damage has not occurred. In a similar vein, laws and regulations relating to the protection and preservation of the marine environment may also include laws on the prevention of pollution and hence, should criminalize conduct likely to result in such pollution.

(4) With regard to response measures, these can be taken on the grounds mentioned in paragraphs (2) and (3) and the analysis in these paragraphs also applies to response measures taken after acts of damage to submarine cables and pipelines have occurred.

(5) There are examples of States adopting national legislation to protect submarine cables and pipelines in the territorial sea. For example, in 2025, Taiwan amended its laws to provide for the confiscation of foreign vessels used to intentionally damage or interfere with cables and pipelines within its territorial sea and the imposition of significant fines or imprisonment for offenders. It is also an offence to negligently damage cables and pipelines, although the penalties are less severe than those incurred for inflicting intentional damage. Taiwan has also required the relevant Ministry to publicly release maps and information on submarine cables and pipelines and to strengthen awareness on their location to reduce the possibility of perpetrators claiming that they were unaware of the cable or pipeline. It is also an offence for vessels to disable their AIS or fail to properly disclose vessel identification information.⁶⁰ New Zealand’s 1996 Submarine Cables and Pipelines Protection Act makes it an offence to wilfully or negligently damage cables or pipelines in its territorial sea.⁶¹ It also stipulates that ‘a person who causes an event by an act or omission which he or she knows would probably cause it, being reckless whether that event happens or not, is deemed to have caused it wilfully.’

(6) Prevention and response measures by the coastal State against warships for breaches of coastal State laws and regulations referred to in paragraph (3) may only be taken if the warship has not complied with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards a request for compliance therewith. Prevention and response measures are confined to requesting the warship to leave

archipelagic waters and territorial sea: see IMO Assembly Res. A.1025 (26) 2009 and discussion at Churchill, Lowe and Sander, 158.

⁶⁰ Winston Qiu, ‘Taiwan Amends Seven Submarine Cable Laws, up to 7 years in Prison for Intentional Damage,’ *Submarine Cable Networks*, 31 October 2025 at <https://www.submarinenetworks.com/en/nv/insights/taiwan-amends-seven-submarine-cable-laws>.

⁶¹ See New Zealand’s Submarine Cables and Pipelines Protection Act 1996, section 11 at <https://legislation.govt.nz/act/public/1996/0022/latest/DLM375803.html>.

immediately as provided for in LOSC Article 30. LOSC Article 30 does not expressly mention ‘other government ships operated for non-commercial purposes.’ However, it is reasonable to assume that the ability to take prevention and response measures against other government ships is also confined to non-compliance with coastal State laws and regulations and with requests to leave the territorial sea immediately, as government ships possess immunity under general international law.⁶²

(7) A coastal State may take prevention and response measures against ships without nationality (or ‘stateless ships’) that are traversing the territorial sea or about to enter the territorial sea, regardless of whether they are suspected of potential or actual intentional damage to submarine cables and pipelines. A ship without nationality refers to a ship flying no flag and without a valid claim to nationality under LOSC Article 91; a ship flying a flag and without a valid claim to nationality of that flag State under LOSC Article 91; a ship flying the flags of two or more States, using them according to convenience and which may be assimilated to a ship without nationality under LOSC Article 92(2); or a ship flying a flag which is determined to be unauthorized as the flag State has refuted a claim of nationality.⁶³ A ship without nationality does not enjoy protection under international law. It does not have the right of innocent passage through the territorial sea under LOSC Article 17 and accordingly, stateless vessels are subject to the full jurisdiction of the coastal State.⁶⁴

(8) Accordingly, if there are reasonable grounds to suspect that a ship traversing or entering the territorial sea is without nationality (for example, after verifying the vessel’s nationality with the Global Integrated Shipping Information System (‘GISIS’) and/or checking with the relevant flag State administration), the coastal State may take all measures necessary vis-à-vis such ships on the basis that such ships do not have the right of innocent passage under LOSC. This includes the boarding of the vessel, the denial of passage, the expulsion of the vessel from the territorial sea, and/or the arrest of the vessel and crew, subject to Conclusion 3. There are reports of State practice supporting this position. For example, in 2026, Sweden boarded two vessels and detained their shipmasters on account of suspected crimes off the Swedish south coast. This occurred on the basis that vessels without nationality in the territorial sea fall under the jurisdiction of the coastal State, given that the right to innocent passage is inapplicable to them.⁶⁵ Germany also denied entry into German waters to a vessel using a fake Cameroonian registration.⁶⁶

⁶² Also see LOSC, Article 32.

⁶³ Douglas Guilfoyle, ‘Article 110: Right of Visit,’ in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 767, 772. Also see International Maritime Organization (IMO), ‘Final Report of the Study Group on Fraudulent Registration and Fraudulent Registries of Ships,’ LEG111/6, April 2024, para. 15. Depending on the circumstances, a ship that has been fraudulently registered, which has been defined by the IMO Legal Committee as the ‘intentional misrepresentation of information and documentation by which a ship is purportedly given its nationality without authorization by the Government of the misrepresented flag State’, may also be considered to be a ship without nationality because it lacks a genuine link with the claimed flag State under LOSC Article 91 or because it is flying the flag of two States under LOSC Article 92(2): Final Report, paras. 30 and 37.

⁶⁴ In the case of *Naim Molvan v. Attorney-General for Palestine* [1948] AC 351, it was accepted that ‘in the interest of the order of the open sea, a vessel not sailing under the maritime flag of a State enjoys no protection whatever, for the freedom of navigation on the open sea is freedom for such vessels only if they sail under the flag of a State.’ Nigel P Ready, ‘Nationality, Registration and Ownership of Ships’ in D. Attard et al (eds), *The IMLI Manual on International Law: Volume II: Shipping Law* (OUP 2016), 20.

⁶⁵ Joshua Minchin, ‘European nations start to split on stateless vessel boardings,’ *Lloyd’s List*, 20 February 2026, <https://www.lloydslist.com/LL1156405/European-nations-start-to-split-on-stateless-vessel-boardings>; Joshua Minchin, ‘Sweden boards second falsely flagged ship,’ *Lloyd’s List*, 13 March 2026, <https://www.lloydslist.com/LL1156607/Sweden-boards-second-falsely-flagged-ship>.

⁶⁶ Joshua Minchin, ‘Growing stateless shadow fleet transits sparks stronger action from Europe,’ *Lloyd’s List*, 15 January 2026, <https://www.lloydslist.com/LL1156094/Growing-stateless-shadow-fleet-transits-sparks-stronger-action-from-Europe>.

Conclusion 8: Other Protective Tools by the Coastal State in the Territorial Sea

A coastal State must not hamper innocent passage when it adopts other protective tools, such as protection zones, for submarine cables and pipelines laid on the seabed of the territorial sea.

Commentary

(1) Coastal States may adopt ‘other protective tools’, such as protection zones and no anchorage zones, pursuant to their prescriptive and enforcement jurisdiction regarding innocent passage to protect submarine cables and pipelines in the territorial sea. These measures can also serve to preserve the environment of the coastal State and to prevent, reduce and control pollution thereof vis-à-vis innocent passage of foreign vessels in the territorial sea.⁶⁷ These measures may interfere with other activities in the seabed and superjacent water column in the vicinity of submarine cables and pipelines or restrict anchoring. Coastal States may also impose criminal penalties for damage to submarine cables and pipelines.⁶⁸ Such laws and regulations must be given due publicity and must not hamper innocent passage of foreign ships through the territorial sea.⁶⁹ To the extent that protective tools involve the designation of sea lanes and traffic separation schemes for the passage of ships, coastal States are required to take into account specific recommendations from the IMO, the channels customarily used for international navigation, the special circumstances of particular ships and channels, the density of traffic and the provision of due publicity in regard to sea lanes and traffic separation schemes.⁷⁰

(2) Examples from State practice can be located in actions undertaken by Australia and New Zealand. Australia’s protection zones for cables of national significance extend from the shore to a depth of 2000 metres and span one nautical mile on either side of the laid cable. In such zones, the damaging of cables or the involvement in prohibited activities in protection zones amounts to an offence.⁷¹ New Zealand’s legislation provides that certain activities, such as fishing operations or ship anchoring, are tantamount to offences in the protected area.⁷²

(3) In practice, mandatory protection zones and cable corridors may provide insufficient separation from other submarine cables for installation and maintenance activities. Such protective areas also encourage geographic clustering of cable routes and landings, which can magnify the risk that a single natural or human-made event could damage multiple cables. For this reason, the International Cable Protection Committee (‘ICPC’) has recommended that: cable protection zones be adopted in consultation with and support of cable operators; nautical charts be used to demarcate cable protection zones; and that the coastal State maintain flexibility in regard to the number and size of cable protection zones.⁷³

IV. STRAITS USED FOR INTERNATIONAL NAVIGATION AND ARCHIPELAGIC WATERS

Conclusion 9: Submarine Cables and Pipelines in Straits used for International Navigation

(1) Conclusions 5, 6, 7 and 8 above apply *mutatis mutandis* to straits used for international navigation that fall under LOSC Article 45 where the right of innocent passage applies.

⁶⁷ LOSC, Articles 2, 21(1)(c) and 21(1)(f).

⁶⁸ Richard Barnes, ‘Article 21: Laws and Regulations of the Coastal State Relating to Innocent Passage,’ in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 205.

⁶⁹ LOSC, Articles 21(3) and 24.

⁷⁰ LOSC, Article 22.

⁷¹ Australia’s Telecommunications Act, Schedule 3A, sections 10, 11, 36 and 37.

⁷² New Zealand’s Submarine Cables and Pipelines Protection Act 1996, section 13 at <https://legislation.govt.nz/act/public/1996/0022/latest/DLM375803.html>.

⁷³ International Cable Protection Committee, ‘ICPC Government Best Practices for Cable Protection Resilience’ <https://www.iscpc.org/documents/?id=3733>, 2, 3, 6.

- (2) For other straits used for international navigation which are not regulated by international conventions and where the regime of transit passage applies under LOSC Article 37, the following conclusions apply:
- a. Monitoring activities conducted by a State bordering a strait ('Strait State') used for international navigation vis-à-vis submarine cables and pipelines located in that strait shall not hamper transit passage. Monitoring activities by States other than a Strait State require the consent of the Strait State.
 - b. Where there are reasonable grounds for suspecting that a vessel navigating in straits used for international navigation intends to engage in acts of damage against a submarine cable or pipeline, the Strait State may take all measures necessary to prevent such acts in accordance with international law.
 - c. Where there are reasonable grounds for suspecting that a vessel navigating in straits used for international navigation has engaged in acts of damage against a submarine cable or pipeline, the Strait State may take response measures in accordance with international law.

Commentary

(1) With regard to Conclusion 9(1), LOSC Article 45 provides that the regime of innocent passage in accordance with Section 3 of Part II on the territorial sea shall apply in straits used for international navigation: (1) where that strait is formed by an island of a Strait State and its mainland and there exists a parallel route through the high seas or EEZ of similar convenience with respect to navigational and hydrographical characteristics; or, (2) where that strait comprises a link between a part of the high seas or an EEZ and the territorial sea of a foreign State. Accordingly, Conclusion 5 on monitoring activities by coastal States, Conclusion 6 on monitoring activities by States other than the coastal State in the territorial sea, and Conclusion 7 on prevention and response measures by the coastal State apply to these straits.

(2) Conclusion 9(2) addresses straits used for international navigation that are not regulated by international conventions as stipulated in LOSC Article 35 (c) and that are subject to the transit passage regime under LOSC Article 37. With regard to Conclusion 9(2)(a) on monitoring activities, Strait States are entitled to undertake themselves (or authorize any entity within their jurisdiction to undertake) monitoring activities over all submarine cables and pipelines located therein, in so far as these activities do not hamper the right of transit passage afforded to all ships under LOSC Article 38.⁷⁴ Monitoring activities by other States, consisting of (a) patrols by crewed surface vessels, submarines, remotely-operated underwater vehicles and underwater autonomous vehicles, as well as (b) vessel-based detection measures by other States in straits used for international navigation, do not meet the requirements of transit passage. Specifically, these activities are not consistent with 'freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait' under LOSC Article 38(2). These activities would be contrary to the obligation to proceed without delay through the strait and refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress under LOSC Article 39.⁷⁵ The Committee notes that submarines, remotely-operated underwater vehicles and underwater autonomous vehicles can travel submerged, and that vessel-based detection measures including the operation of sensors and equipment during transit passage may be considered as 'incident to their normal modes of continuous and expeditious transit.'⁷⁶ However, to the extent that such equipment or technology is used by foreign vessels for the purpose of detecting threats to submarine cables and pipelines in straits used for international navigation, such vessels would not be in transit passage. With regard to monitoring activities

⁷⁴ LOSC, Articles 38 and 44.

⁷⁵ LOSC Articles 39(1)(a) and (d).

⁷⁶ Natalie Klein, *Maritime Security and Law of the Sea* (Oxford University Press 2011) 217.

consisting of other detection measures (proximity sensing), including sensing networks, the analysis in Conclusion 6(2) also applies to submarine cables and pipelines laid in straits used for international navigation.

(3) With regard to Conclusions 9(2)(b) and (c), Strait States do not have prescriptive jurisdiction to adopt laws and regulations concerning transit passage to protect submarine cables and pipelines under LOSC Article 42. However, where necessary to promote the safe passage of ships, Strait States have explicit authority to adopt laws and regulations for the safety of navigation and the regulation of maritime traffic consisting of designation of sea lanes and prescribing traffic separation schemes for navigation in straits.⁷⁷ The laws and regulations relating to traffic separation schemes in straits used for international navigation may include measures to protect submarine cables and pipelines, provided that such measures have been adopted in accordance with the procedures for establishment of traffic separation schemes as prescribed by LOSC Articles 41(4) – (6), including referring proposals to the IMO.⁷⁸ For example, in the Straits of Malacca and Singapore, Singapore has prohibited anchorage outside designated anchorage areas in the traffic separation scheme (in accordance with Rule 10 (g) of the 1972 Convention on the International Regulations for Preventing Collisions at Sea), including for purposes of preventing damage to submarine cables.⁷⁹ Singapore has imposed fines on offenders that have breached its anchorage rules.⁸⁰ It has stated that authorities will take appropriate action, including reporting incidents to flag States and sharing information with cable owners, to facilitate legal proceedings to ensure compensation from owners and masters of vessels responsible for cable damage.⁸¹ Strait States may take prevention and response measures pursuant to LOSC Article 233 if a foreign ship has violated laws and regulations related to the safety of navigation and the regulation of maritime traffic under LOSC Article 42(1)(a) and (b) and if the violations cause or threaten major damage to the marine environment. This authority is particularly relevant for vessels that anchor or attempt to anchor in traffic separation schemes and cause or threaten major damage to the marine environment as a result of potential or actual acts of damage to submarine pipelines.

(4) Vessels engaged in potential or actual acts of intentional damage to submarine cables and pipelines may slow down, loiter in one area, drop or drag their anchors. In these circumstances, such actions will *prima facie* not meet the requirement of being navigation ‘solely for the purpose of continuous and expeditious transit’ as required under LOSC Article 38 (2). Under LOSC Article 38 (3), ‘any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.’ Where a vessel not exercising transit passage commits a violation of the coastal State’s laws and regulations on the protection of submarine cables and pipelines in the territorial sea, the coastal State may exercise its enforcement jurisdiction pursuant to its sovereignty in the territorial sea.⁸² There is also academic commentary that suggests vessels not in transit passage automatically fall under the general regime of innocent passage, and

⁷⁷ LOSC, Articles 42(1)(a) and 41.

⁷⁸ Before designating sea lanes and traffic separation schemes, Strait States shall refer proposals to the IMO and the IMO may only adopt such sea lanes and traffic separation schemes as may be agreed with Strait States, after which such States may designate them (LOSC Article 41(4)). See also 1972 COLREGS, rule 10 (g) which states that a ‘vessel shall so far as practicable avoid anchoring in a traffic separation scheme or in areas near its terminations.’

⁷⁹ Maritime and Port Authority of Singapore (MPA) Port Marine Circular No. 3 of 2017; IMO, Safety of Navigation: Information Concerning Anchoring in the Traffic Separation Scheme in the Straits of Malacca and Singapore, SN.1/Circ.282, 27 November 2009.

⁸⁰ See Maritime and Port Authority of Singapore (MPA) Port Marine Circular No. 08 of 2019.

⁸¹ IMO, Safety of Navigation: Information Concerning Anchoring in the Traffic Separation Scheme in the Straits of Malacca and Singapore, SN.1/Circ.282, 27 November 2009, updated 27 November 2019.

⁸² An analogy can be drawn to the *Duzgit Integrity* arbitration which found that São Tomé had acted lawfully and in accordance with its law enforcement jurisdiction resulting from its sovereignty over its archipelagic waters when it took measures against a vessel conducting ship-to-ship transfer in its archipelagic waters and such measures were necessary to ensure compliance with its laws and regulations adopted in conformity with the Convention.

‘this will usually imply loss of innocence as well, and bring the powers under Article 25(1) into operation.’⁸³ It has also been suggested that Strait States can prohibit passage of a ship that is not engaging in transit passage in accordance with Part III.⁸⁴ These arguments would support the taking of prevention and response measures against vessels vis-à-vis potential or actual acts of damage to submarine cables or pipelines.⁸⁵

Conclusion 10: Submarine Cables and Pipelines in Archipelagic Waters

- (1) Conclusions 5, 6, 7 and 8 above apply *mutatis mutandis* to archipelagic waters where foreign ships enjoy the right of innocent passage.
- (2) Where foreign vessels enjoy the right of archipelagic sea lanes passage in archipelagic waters, the following conclusions apply:
 - a. Monitoring activities conducted by an archipelagic State vis-à-vis submarine cables and pipelines located in archipelagic waters shall not hamper archipelagic sea lanes passage. Monitoring activities by States other than an archipelagic State require the consent of the archipelagic State.
 - b. When there are reasonable grounds for suspecting that a vessel exercising the right of archipelagic sea lanes passage intends to engage in acts of damage against a submarine cable or pipeline, the archipelagic State may take all measures necessary to prevent such acts in accordance with international law.
 - c. Where there are reasonable grounds for suspecting that a vessel exercising the right of archipelagic sea lanes passage has engaged in acts of damage against a submarine cable or pipeline, the archipelagic State may take response measures in accordance with international law.

Commentary

(1) With regard to Conclusion 10(1), ships of all States enjoy the right to innocent passage through archipelagic waters in accordance with Section 3 of Part II on the territorial sea pursuant to LOSC Article 52. Accordingly, Conclusions 5, 6, 7 and 8 and accompanying commentary are applicable.⁸⁶

(2) Conclusion 10(2) addresses two situations where the ships of all States enjoy the right of archipelagic sea lanes passage: first, where an archipelagic State has designated sea lanes pursuant to the procedure set out in LOSC Article 53(9); and, second, through routes normally used for international navigation when an

⁸³ ILA Committee on Coastal State Jurisdiction Relating to Marine Pollution, Final Report (2000), 15–16. See also Statement relating to Art. 233 of the Draft Convention on the Law of the Sea in its Application to the Straits of Malacca and Singapore, made by Indonesia, Malaysia and Singapore, 28 April 1982, Official Records Vol. XVI, pp 250–251, UN Doc A/CONF.62/L.145, which noted that Articles 42 and 233 of [the LOSC] do not affect the rights and obligations of states bordering the Straits regarding appropriate enforcement measures with respect to vessels in the Straits not in transit passage; Churchill, Lowe and Sander have observed that ‘any activity threatening a coastal State would bring the ship or aircraft under the general regime of innocent passage, in which case passage could be denied for want of innocence.’ See Churchill, Lowe and Sander, “Straits,” in *The Law of the Sea* (Manchester University Press 2022) 175.

⁸⁴ Donald Rothwell, ‘International Straits,’ in Donald Rothwell et al, *The Oxford Handbook of the Law of the Sea* (OUP 2015), 122, 123.

⁸⁵ Note academic commentary which suggests that a State may not unilaterally declare non-conforming passage as either transit or non-transit passage, and there is no right for strait States to stop, board or arrest such vessels: Hugo Caminos and Vincent P. Coglianiti-Bantz, *The Legal Regime of Straits: Contemporary Challenges and Solutions*, (Cambridge University Press, 2014), 217 – 224. The only option open to such States is to hold the flag State responsible through diplomatic channels and dispute settlement procedures.

⁸⁶ See also the *Duzgit Integrity Arbitration* where the arbitral tribunal affirmed that archipelagic States had enforcement jurisdiction resulting from its sovereignty over its archipelagic waters to arrest vessels undertaking ship-to-ship transfers in archipelagic waters without the archipelagic State’s consent, and that such vessels were not in ‘passage’ as ship-to-ship transfers encompass stopping or anchoring. *Duzgit Integrity* (n 32), paras. 234-236, 310.

archipelagic State has not designated sea lanes as set out in LOSC Article 53(12). With regard to Conclusion 10(2)(a) on monitoring activities, archipelagic States are entitled to undertake themselves (or authorize any entity within their jurisdiction to undertake) monitoring activities in regard to submarine cables and pipelines located in archipelagic waters, provided these activities do not hamper the right of archipelagic sea lanes passage afforded to all ships under LOSC Article 53(2).⁸⁷ Monitoring activities, consisting of (a) patrols by crewed surface vessels, submarines, remotely-operated underwater vehicles and underwater autonomous vehicles, as well as (b) vessel-based detection measures by other States in sea lanes designated for archipelagic sea lanes passage, do not meet the definition of archipelagic sea lanes passage under LOSC Article 53(3), which is therein defined as ‘the rights of navigation and overflight in the normal mode solely for the continuous, expeditious and unobstructed transit.’⁸⁸ Nor do such monitoring activities meet the obligations of vessels exercising archipelagic sea lanes passage of proceeding without delay through such sea lanes and refraining from any activities other than those incident to their normal modes of continuous and expeditious transit (unless rendered necessary by *force majeure* or by distress) under LOSC Article 54.⁸⁹ The Committee notes that submarines, remotely-operated underwater vehicles and underwater autonomous vehicles can travel submerged and that vessel-based detection measures, including the operation of sensors and equipment operating during archipelagic sea lanes passage, may be considered ‘normal modes of continuous and expeditious transit.’ However, to the extent that such equipment or technology is used by foreign vessels for the purpose of detecting threats to submarine cables and pipelines by vessels traversing archipelagic waters, such vessels would not be in archipelagic sea lanes passage. With regard to monitoring activities consisting of other detection measures (proximity sensing), including sensing networks, the analysis in Conclusion 6(2) also applies to submarine cables and pipelines laid in sea lanes where archipelagic sea lanes passage applies.

(3) With regard to Conclusions 10(2)(b) and (c), archipelagic States do not have prescriptive jurisdiction to adopt laws and regulations concerning archipelagic sea lanes passage to protect submarine cables and pipelines. However, like Strait States, archipelagic States have explicit authority to adopt laws and regulations for the safety of navigation and the regulation of maritime traffic consisting of designation of sea lanes and prescribing traffic separation schemes. These laws and regulations may include measures to protect submarine cables and pipelines through, for example, the adoption of no-anchorage zones.⁹⁰ To the extent that potential or actual damage to submarine cables and pipelines constitutes a breach of such regulations, the archipelagic State may take prevention or response measures pursuant to its enforcement jurisdiction vis-à-vis vessels exercising archipelagic sea lanes passage, as explained in relation to transit passage in paragraph (3) of commentary to Conclusion 9.⁹¹

(4) The analysis in paragraph (4) of commentary to Conclusion 9 also applies to prevention and response measures against vessels that are not in archipelagic sea lanes passage as defined in LOSC Article 53(3).⁹²

⁸⁷ LOSC, Article 44.

⁸⁸ LOSC, Article 53(3).

⁸⁹ See discussion in paragraph 4 of Conclusion 9. LOSC Article 54, read with LOSC Articles 39(1)(a) and (d).

⁹⁰ LOSC, Articles 53(1), (6), (8) and (9).

⁹¹ The LOSC is silent on enforcement jurisdiction over vessels exercising archipelagic sea lanes passage and there is no equivalent to Article 233 on enforcement jurisdiction in straits used for international navigation. LOSC Article 49(4) states that the regime of archipelagic sea lanes passage established in Part IV ‘shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.’ Churchill and Lowe conclude that in principle, an archipelagic State does have enforcement jurisdiction over foreign ships and aircraft exercising the right of archipelagic sea lanes passage.

⁹² See *Duzgit Integrity* (n 32), para. 235.

V. EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF

A. Monitoring

Conclusion 11: Monitoring Activities by the Coastal State in the EEZ and Continental Shelf

- (1) The coastal State may conduct monitoring activities for the prevention of intentional damage to submarine cables and pipelines in the EEZ and on the CS.
- (2) When conducting monitoring activities in its EEZ, the coastal State shall have due regard to the freedom of navigation and other high seas freedoms that all other States enjoy in the EEZ.
- (3) Monitoring activities conducted by the coastal State on the CS must not infringe or result in an unjustifiable interference with navigation and other rights and freedoms that all other States enjoy on the CS.

Commentary

(1) In relation to cables or pipelines connected to artificial islands, installations and structures subject to coastal State jurisdiction on the EEZ and CS (e.g. windfarms or oil and gas installations), the coastal State has exclusive jurisdiction over such cables or pipelines pursuant to LOSC Articles 60, 79(4) and 80. For this reason, the coastal State is entitled to conduct monitoring activities to prevent intentional damage to these cables or pipelines.

(2) In the EEZ and CS, the coastal State enjoys the freedom to lay and operate pipelines and cables. As a result, it is entitled to conduct monitoring activities for landing cables and pipelines in these maritime zones.

(3) Coastal States are obliged within their EEZ and CS to take all measures in accordance with customary international law, as reflected in the relevant provisions of LOSC, for the purpose of protecting and preserving the marine environment.⁹³ This may also include monitoring activities as defined in Conclusion 2(3). In relation to landing or transit cables and pipelines (unconnected to artificial islands, installations and structures subject to the coastal State jurisdiction in the EEZ and CS), the coastal State may also conduct monitoring activities pursuant to its jurisdiction for the protection and preservation of the marine environment in the EEZ (if it has proclaimed an EEZ)⁹⁴ and its rights to take reasonable measures for the prevention, reduction and control of pollution from pipelines.⁹⁵ All these measures are subject to the obligation to refrain from unjustifiable interference with activities of other States as required under LOSC Article 194(4).

(4) Generally, monitoring activities conducted by the coastal State vis-à-vis submarine cables and pipelines located in the EEZ are subject to the obligation to exercise due regard to the rights and duties of other States in the EEZ (LOSC Article 56(2)).⁹⁶ The latter rights include the freedom of navigation and the laying of submarine cables and pipeline under LOSC Article 58(1). Further, monitoring activities conducted by the coastal State vis-à-vis submarine cables and pipeline on its CS must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States, including the entitlement to lay submarine cables and

⁹³ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (Nicaragua v. Colombia), (Judgment) [2022] ICJ Rep, p. 266, para. 95. See also LOSC Article 204.

⁹⁴ LOSC Article 56(1)(b)(iii).

⁹⁵ LOSC Article 79(2).

⁹⁶ *Fisheries Jurisdiction Case* (United Kingdom v. Iceland), [1974] ICJ Rep. 3, paras. 67 – 72; *Chagos Marine Protected Area Arbitration* (Mauritius v. United Kingdom), (Award) [2015] PCA, paras. 517, 519, 534, <http://www.pcacases.com/pcadocs/MU-UK%2020150318%20Award.pdf>; *South China Sea Arbitration* (Philippines v. China) (Award) [2016] PCA, para. 757; *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission* (Advisory Opinion) ITLOS Reports, 2015, 4, para. 216.

pipelines on the CS (LOSC Article 78(2)).⁹⁷ For instance, if a coastal State places external sensors on a cable or pipeline in its EEZ, the placement must be conducted in a way that does not interrupt or otherwise obstruct the transmission of data or carriage of energy. Another example is that the coastal State must share the information gathered regarding potential sources of intentional damage to a cable or pipeline in its EEZ/CS with other interested States with respect to that particular cable or pipeline.

Conclusion 12: Monitoring Activities by Other Interested States in the EEZ and Continental Shelf

Other interested States may conduct monitoring activities to detect potential acts of damage to submarine cables and pipelines in the EEZ and continental shelf subject to:

- (1) the obligation to exercise due regard to the coastal States' sovereign rights over their resources and jurisdiction in the EEZ and CS and to comply with the laws and regulations adopted by the coastal State in accordance with the provisions of the LOSC; and,
- (2) the obligation to have due regard to the freedoms of other States in the EEZ and the continental shelf, and taking into account the rights associated with the operation of the cable or pipeline.

Commentary

(1) Under customary international law and LOSC Articles 58(1) and 79(1), States enjoy the freedom to lay, and by necessary implication, to operate and enjoy the uninterrupted operation of submarine cables and pipelines in the EEZ and CS. Monitoring activities with a view to preventing intentional damage to cables and pipelines are necessary for the uninterrupted operation of cables and pipelines. For this reason, monitoring activities are an integral part of the freedom to operate cables and pipelines in the EEZ and the CS. Alternatively, the freedom to conduct monitoring activities with a view to preventing intentional damage to a cable or pipeline is a freedom associated with the operation of submarine cables and pipelines (LOSC Article 58(1)).

(2) In exercising this freedom, other interested States must have due regard for the rights and duties of the coastal State (LOSC Article 58(3)) and to the freedoms of other States in the EEZ (LOSC Article 87(2) and 58).⁹⁸ The due regard obligation depends on the nature of the rights and freedoms in question.⁹⁹ At a minimum, this obligation requires sharing the gathered information with the coastal State and with other holders of the freedom to the uninterrupted operation of the particular cable or pipeline in the EEZ. This interpretation of the law is compatible with the good faith and non-abusive exercise of rights under customary international law (and under LOSC Article 300).

(3) Under customary international law and LOSC Article 58(1), all States enjoy freedom of navigation in the EEZ. If monitoring activities are understood as an aspect of freedom of navigation or even more so a freedom of the high seas generally (not listed in the non-exhaustive list of LOSC Article 87(1)), then all States — not

⁹⁷ Note that the arbitral tribunal in the *Chagos Archipelago* arbitration noted that the terms 'refrain from unjustifiable interference' in LOSC Article 194(4) were functionally equivalent to the obligation to give due regard in Article 56(2) or the obligation of good faith in LOSC Article 2(3). See *Chagos Archipelago*, *ibid*, para. 540.

⁹⁸ LOSC Article 58(3) only provides that States exercising the freedom to lay submarine cables and pipelines in the EEZ shall have due regard to the rights and duties of the coastal State and does not state that these States must exercise due regard vis-à-vis the freedom of navigation in the EEZ. However, LOSC Article 58(1) stipulates that in the EEZ the freedoms referred to in Article 87 of navigation and laying of submarine cables and pipelines can be enjoyed by all States without prejudice to coastal or land-locked status. LOSC Article 87(2) refers to the obligation on States to exercise due regard vis-à-vis other States' freedoms, applicable to the EEZ.

⁹⁹ *Chagos Archipelago* (n 96), para. 519; *South China Sea* (n 96), para. 756; *Enrica Lexie* arbitration (n 18), paras. 973-975. See also T. Treves, "Coastal States' Rights in the Maritime Areas under UNCLOS," 12 *Revista de Direito Internacional* (2015) 42; A.J. Hoffmann, 'Freedom of Navigation' (2011) *Max Planck Encyclopedia of Public International Law*, para. 15, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1199?print=pdf>.

only the coastal State and the ‘other interested States’ in relation to a particular cable or pipeline — may be entitled to conduct monitoring activities for any submarine cable or pipeline (landing or transit) in the EEZ of any other coastal State in relation to which they have none of the interests listed in the definition of ‘other interested States’ in Conclusion 2(4). There is contestation about whether monitoring activities fall within freedom of navigation (or even whether they constitute another freedom of the high seas). For instance, in *Nicaragua v. Colombia* (2022), the ICJ did not decide on Nicaragua’s argument that the ordinary meaning of the term ‘navigation’ limits freedom of navigation to the ‘passage of ships or the movement of ships on water and does not include systematic acts of monitoring and tracking’.¹⁰⁰ In his Separate Opinion, Judge Robinson reasoned that the ‘activity of patrolling has no direct relationship with the passage or movement of the Colombian ship, and Colombia is not exercising freedom of navigation’.¹⁰¹ Judge McRae, in his Dissenting Opinion, suggested that Colombia’s monitoring of illegal fishing activities in Nicaragua’s EEZ was an exercise of the freedom of navigation since there were no actions of control or enforcement such as arrests, detention or prosecution that interfered with Nicaragua’s sovereign rights and jurisdiction. Instead, his view was that Colombia’s monitoring of illegal fishing activities in Nicaragua’s EEZ violated the obligation of due regard to the rights and duties of the coastal State.¹⁰² At best, this minimal evidence suggests the contestation surrounding this constitutive element of monitoring activities. This lack of consensus was also reflected among Committee members.

(4) However, Committee members agree that the entitlement (of States other than the coastal State) to conduct monitoring activities in the EEZ can also be founded on the basis of the freedom to lay and operate cables and pipelines in the EEZ as discussed in paragraph 1 of the commentary to this Conclusion. Only ‘other interested States’ in relation to a particular cable or pipeline enjoy this freedom and are entitled to conduct particular monitoring activities for that cable or pipeline, such as detection measures (proximity sensing), including sensing networks.

B. Prevention and Response Measures

Conclusion 13: Measures by the Coastal State with regard to Submarine Cables and Pipelines Connected to Artificial Islands, Installations and Structures in the EEZ and the Continental Shelf

The coastal State in the exercise of its sovereign rights and jurisdiction in the EEZ and the CS may take prevention measures against potential acts of damage or response measures against actual acts of intentional damage to submarine cables and pipelines constructed or used in connection with the exploration of its CS or exploitation of its resources or the operation of artificial islands, installations and structures under its jurisdiction.

Commentary

(1) Under customary international law and LOSC Articles 79(4), 60 and 80, coastal States have exclusive jurisdiction over submarine cables and pipelines constructed or used in connection with the exploration of their CS or exploitation of their resources or the operations of artificial islands, installations and structures under its jurisdiction.¹⁰³ This exclusive jurisdiction spans customs, fiscal, health, safety and immigration laws and regulations and the establishment of reasonable safety zones around submarine cables and pipelines connected to artificial islands, installations and structures, provided that such safety zones meet the requirements set out in LOSC Articles 60 and 80.¹⁰⁴

¹⁰⁰ *Nicaragua v. Colombia* (n 93), para. 51.

¹⁰¹ *Ibid*, Separate Opinion of Judge Robinson, para. 14.

¹⁰² *Ibid*, Dissenting Opinion of Judge *Ad Hoc* McRae, paras. 26 – 28.

¹⁰³ LOSC, Articles 60, 80, 246(1), (2) and (5)(c) and 258.

¹⁰⁴ LOSC, Article 60(2) and (4).

(2) Coastal States are required to adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, including submarine cables and pipelines connected to artificial islands, installations and structures. These laws and regulations must be no less effective than international rules, standards and recommended practices and procedures.¹⁰⁵

(3) Coastal States may take prevention measures against potential acts of damage to submarine cables and pipelines connected to artificial islands, installations and structures to prevent interference with the exercise of a coastal State's sovereign rights for the exploration and exploitation of its resources in the EEZ. Support for this can be found by analogy in the reasoning of the arbitral tribunal in the *Arctic Sunrise Arbitration*. Here it was affirmed that a coastal State has the right to take measures to prevent interference with its sovereign rights for the exploration and exploitation of its EEZ, and the 'protection of a coastal State's sovereign rights is a legitimate aim that allows it to take appropriate measures for that purpose', albeit such measures must fulfil the tests of reasonableness, necessity and proportionality.¹⁰⁶ The arbitral tribunal found that it would be reasonable for the coastal State to act to prevent: '(i) violations of its laws adopted in conformity with the Convention; (ii) dangerous situations that can result in injuries to persons and damage to equipment and installations; (iii) negative environmental consequences ... and (iv) delay or interruption in essential operations' as all of these 'are legitimate interests of coastal States.'¹⁰⁷ Further, in relation to terrorist attacks, the tribunal found that:

One of the rights of a coastal State in its EEZ that may justify some form of preventive action against a vessel would derive from circumstances that give rise to a reasonable belief that the vessel may be involved in a terrorist attack on an installation or structure of the coastal state. Such an attack, if allowed to occur, would involve a direct interference with the exercise by the coastal state of its sovereign rights to exploit the non-living resources of its seabed.¹⁰⁸

(4) Coastal States may also take response measures after an actual act of damage to submarine cables and pipelines connected to artificial islands, installations and structures has occurred pursuant to its enforcement jurisdiction in relation to laws and regulations concerning its sovereign rights over non-living resources (LOSC Article 77);¹⁰⁹ the operation of artificial islands, installations and structures under its jurisdiction (LOSC Articles 60(2) and 80(2)); and the prevention, reduction and control over pollution from seabed activities (LOSC Articles 208 and 214) as described in paragraphs (1) and (2) above, provided that it has adopted such laws in accordance with the LOSC.

(5) In addition, coastal States may also exercise the right of hot pursuit in LOSC Article 111 if potential or actual acts of damage to submarine cables and pipelines connected to artificial islands, installations and structures constitute a violation of the coastal State's laws and regulations in the EEZ or on the CS, including safety zones around installations, and the coastal State has good reason to believe that the ship has violated such laws and regulations.

Conclusion 14: Measures by the Coastal State with regard to Submarine Pipelines that Land in the Coastal State or Transit in the EEZ and Continental Shelf

Where there are reasonable grounds for believing that a foreign vessel navigating in the EEZ or waters superjacent to the CS of a coastal State intends to engage or has engaged in intentional acts of damage against

¹⁰⁵ LOSC Article 208.

¹⁰⁶ *Arctic Sunrise* (n 31), paras. 324 and 326.

¹⁰⁷ *Ibid*, para. 327.

¹⁰⁸ *Ibid*, para. 314.

¹⁰⁹ *Ibid*, paras. 282-284.

landing or transit pipelines in the EEZ or continental shelf, the coastal State may take all measures to prevent or respond to acts of intentional damage to such pipelines.

Commentary

(1) Coastal States may, under LOSC Article 79(2), take reasonable measures for the prevention, reduction and control of pollution from pipelines, provided that such measures do not impede the laying or maintenance of pipelines or infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in the LOSC.¹¹⁰ Reasonable measures include measures to prescribe and enforce laws and regulations on potential or actual acts of intentional damage against transit or landing pipelines.¹¹¹

Conclusion 15: Measures by Coastal States in the EEZ and Continental Shelf in Respect of Landing Submarine Cables

- (1) Where there are reasonable grounds for suspecting that a foreign vessel navigating in the EEZ or waters superjacent to the CS of a coastal State intends to engage in acts of damage against a submarine cable in the EEZ or CS that makes landfall in the coastal State, that coastal State may take measures to prevent intentional damage against such cables in accordance with international law.
- (2) Where there are reasonable grounds for suspecting that a foreign vessel navigating in the EEZ or waters superjacent to the CS of a coastal State has engaged in acts of damage against a cable in the EEZ or continental shelf that makes landfall in the coastal State, that coastal State may take response measures in respect of intentional damage against such cable in accordance with international law.

Commentary

(1) The term ‘in accordance with international law’ in this Conclusion is intended to cover the prior consent of the flag State, any other grounds for lawful prevention and response measures that may arise in the future, and any applicable circumstances precluding wrongfulness, under existing customary international law, such as state of necessity.

(2) Prior consent of the flag State is the only legal basis for a coastal State to lawfully take prevention or response measures when it has reasonable grounds to suspect that a foreign vessel navigating in its EEZ or CS intends to damage or damages a submarine cable that lands in its territory.

(3) Coastal States have prescriptive jurisdiction in relation to acts of intentional damage against cables (and pipelines) in their EEZ or CS (implied in LOSC Article 58(3)),¹¹² and arguably on the basis of the objective territoriality principle or the *effects doctrine*.¹¹³ However, the existence of prescriptive jurisdiction does not necessarily entail enforcement jurisdiction. At the time of the Conclusions’ adoption, there is no evidence that such enforcement jurisdiction exists under customary international law — albeit future State practice may develop.

(4) There is an absence of extensive State practice (referable to LOSC or to a rule of customary international law) that supports an interpretation of LOSC or the existence of a customary rule pursuant to which the coastal

¹¹⁰ LOSC, Article 78(2).

¹¹¹ Klein (n 76), 100.

¹¹² See discussion in ILA Third Report (n 5), paras. 85-86. There have been reports that Estonia is amending its Penal Code to apply its criminal law to acts committed in the EEZ or on the CS that damage energy or communication cables, pipelines, electricity generation equipment or traffic control facilities connected to Estonian territory: See ‘Estonia tightening criminal law to protect underwater infrastructure’ *The Baltic Times*, 16 May 2025 at https://www.baltictimes.com/estonia_tightening_criminal_law_to_protect_underwater_infrastructure/.

¹¹³ See discussion in ILA Third Report (n 5), para. 87.

State's own freedom to lay, and thus to operate without obstruction cables in its EEZ or on its CS, also entails an entitlement of the coastal State to take prevention or response measures against suspected or actual acts of intentional damage against landing cables located in these maritime zones.¹¹⁴

(5) Separately, if the term 'incident of navigation' under LOSC Article 97(1) encompasses damage to submarine cables and pipelines, coastal States are not entitled to arrest or detain vessels.¹¹⁵ LOSC Article 97(1) provides that in the event of a collision or any other 'incident of navigation' in the EEZ or high seas, involving the penal or disciplinary responsibility of the master or any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.¹¹⁶

(6) The decisions of international courts and tribunals do not clarify whether the term 'incident of navigation' encompasses damage against cables or pipelines. Recent State practice, in the form of a domestic court decision, supports the view that the term 'incident of navigation' encompasses damage to cables or pipelines. The case *Eagle S* involved a Cook Islands-registered vessel suspected of damaging a power cable connecting Finland and Estonia and four data cables in Finland's EEZ. The vessel was arrested by Finnish law enforcement authorities after it was invited to sail into the Finnish territorial sea. A Finnish District Court reasoned that the events were an 'incident of navigation' within LOSC Article 97(1).¹¹⁷ The decision is of a first instance court, and its main analysis is primarily founded upon domestic law. At the time of the Conclusions' adoption, the decision has been appealed and no ruling has been made by the Court of Appeal.

(7) Applying the customary rules of treaty interpretation (provided in Articles 31-32 of the Vienna Convention on the Law of Treaties) to LOSC Article 97(1), the ordinary meaning of the terms 'any other incident of navigation', read in their immediate context of 'collision' and 'concerning a ship', is that the terms do not capture damage of cables or pipelines from ships (or, at the very least, it is unclear whether they do).

(8) The commentary to the ILC 1956 Draft Articles on the Law of the Sea observed that damage to 'submarine telegraph, telephone or high-voltage power cable or to a pipeline' may be regarded as an incident of navigation (draft Article 35).¹¹⁸ The 1956 Draft Articles and their accompanying commentary constitute part of the preparatory works of the Geneva Convention on the High Seas and the latter's Article 11(1). This is because the negotiators relied on the 1956 ILC Draft Articles as part of the negotiating conference documents. There is no evidence that the same is the case in the Third UN Conference on the Law of the Sea ('UNCLOS III'). However, the 1956 ILC Draft Articles with their commentary may constitute other supplementary means of interpretation for LOSC Article 97(1). Nevertheless, the weight to be attributed to this commentary is dependent on whether they are reflective of the agreement of the negotiating States at UNCLOS III.¹¹⁹

(9) There is no evidence that the definition of 'incident of navigation' was discussed at UNCLOS III. Nevertheless, State silence during negotiations does not mean that a claimed interpretation can be supported.

¹¹⁴ One example of a coastal State arresting a vessel for damage to landing submarine cables in its EEZ is the arrest by Finnish authorities of the vessel the *Eagle S*, a Cook Islands-registered vessel. See also ILA Third Report (n 5), paras. 51-55.

¹¹⁵ See also discussion in *Enrica Lexie* (n 18), para. 650. Note that this case did not deal with an incident of navigation involving cables and pipelines, and its reasoning is not relevant for this analysis.

¹¹⁶ LOSC Article 97, read with Article 58(2).

¹¹⁷ *Eagle S* (Criminal case against Davit Vadatchkoria and others), Helsinki District Court, Case No. R 706/2025/12270, Judgment of 3 October 2025, 15-16.

¹¹⁸ ILC, 'Articles Concerning the Law of the Sea with Commentaries' in Yearbook of the International Law Commission, Vol. II, p. 281, commentary to Article 35, para. 2. In 1955, an ILC Member suggested that if draft Article 35 covered damage to submarine pipelines, cables and other installations, it should be plainly stated. The Special Rapporteur confirmed that draft Article 35 covered such damage but preferred reference to this in the commentary, leading to the reference in the commentary to Article 35 of the 1956 ILC Draft Articles: 1955 ILCYB, Vol. 1, 22.

¹¹⁹ Special Rapporteur Waldock, Third Report on the Law of Treaties, [1964] ILCYB, Vol. II, at 58[21].

The better view is that silence in the preparatory works does not support any particular interpretation and instead may be evidence of the opposite intention.¹²⁰ Had the drafters of the LOSC intended to expand the exclusive jurisdiction of flag States and of States of nationality of the master or any other person in the service of the ship to exclude any other State, and especially the coastal State in instances where damage of cables and pipelines is intended or has been committed by vessels in the EEZ or on the CS, it would be expected that negotiating States would have at least mentioned this possibility during negotiations. They did not. Hence, it cannot credibly be argued that the drafters of the LOSC intended to do anything other than not intend to encompass this scenario within the term and effects of an ‘incident of navigation’ under LOSC Article 97(1).

(10) It follows that acts of intentional damage against cables (or pipelines) are not an ‘incident of navigation’. However, as shown in paragraphs (3) and (4) of the commentary to the present Conclusion, there are no grounds other than the prior consent of the flag State that allow the coastal State to take prevention measures against acts of intentional damage against landing cables on the EEZ or on the CS of a coastal State.

(11) Finally, if a coastal State takes prevention measures against potential acts of intentional damage against a landing cable in its EEZ or on its continental shelf (without the flag State’s prior consent), it will violate its obligation to abstain from interference with freedom of navigation. The wrongfulness of the coastal State’s conduct will be negated if the cumulative conditions of state of necessity, under customary international law, are met:¹²¹ (1) an essential interest is at risk; (2) a threat to such interest rises to the level of intensity of ‘grave and imminent peril’; (3) the State has no other means to safeguard its essential interest; and (4) the essential interests of other States are not seriously impaired by the breach. ‘Essential interests’ capture particular interests of the State and its people, and cover situations where energy security or telecommunications security are at risk. However, it would be exceptional for state of necessity to apply given that the State’s essential interests must be threatened by a grave and imminent peril. An example might be where a coastal State’s energy supply or communications are almost entirely dependent on the integrity of a particular cable or pipeline due to the State’s geographical circumstances or conditions of its infrastructure connection.

(12) Under customary international law, the condition of a state of necessity will not be met for response measures, such as boarding, arresting and/or instituting proceedings against a vessel and its crew, where the threat of grave and imminent peril no longer exists.

Conclusion 16: Measures in the EEZ and Continental Shelf by Other Interested States Exercising the Freedom to Lay Submarine Cables and Pipelines

- (1) Where there are reasonable grounds for suspecting that a foreign vessel in the EEZ or the superjacent waters of the CS of a coastal State intends to engage in intentional acts of damage against a cable or pipeline in that EEZ or CS, other interested States exercising the freedom to lay submarine cables and pipelines and conducting activities associated with the operation of submarine cables and pipelines may take measures to prevent intentional damage in accordance with international law.
- (2) Where there are reasonable grounds for suspecting that a foreign vessel in the EEZ or the superjacent waters of the CS of a coastal State has engaged in intentional acts of damage against a cable or pipeline in that EEZ or CS, other interested States exercising the freedom to lay submarine cables and pipelines and conducting

¹²⁰ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, (Judgment on Preliminary Objections of 12 December 1996) [1996] ICJ Rep 803, 814-815; *European Molecular Biology Laboratory Arbitration (EMBL v. Germany)*, (Award) [1990] 105 ILR 1, 55-56. On State silence, see D. Azaria, *State Silence Across International Law: Meaning Context and Developments* (OUP 2025).

¹²¹ ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts’ (2001), Article 25.

activities associated with the operation of submarine cables and pipelines may take response measures in accordance with international law.

Commentary

(1) Other interested States have no lawful ground for taking prevention or response measures against foreign vessels suspected of intending to engage in or vessels suspected of having caused intentional acts of damage against a cable or pipeline in the EEZ or the continental shelf of a coastal State without the prior consent of the flag State.¹²² If prevention measures against a foreign vessel occur without the flag State's prior consent, state of necessity may apply if the conditions under customary international law are satisfied.¹²³ This means that state of necessity may, at best, be available vis-à-vis the States that import or export energy via the cable or pipeline or are the recipients of telecommunications services, given that only these States could have essential interests that are threatened by a grave and imminent peril. All other conditions of a state of necessity would also need to be met.¹²⁴

Conclusion 17: Measures by All States in the EEZ and Continental Shelf

- (1) All States may exercise their right of approach vis-à-vis foreign vessels in the EEZ of another State if there are reasonable grounds to suspect that the vessel intends to engage or has engaged in intentional acts of damage against a cable or pipeline in the EEZ or continental shelf, and may request the vessel to give information regarding its identity and port of registry, last and next port of call, and other relevant information required to establish if the suspicions are founded.
- (2) All States may board a ship that is without nationality or a ship that is of the same nationality as the boarding State in the EEZ.
- (3) All States may also take prevention and response measures in accordance with international law, with the prior consent of the flag State, as well as any applicable circumstances precluding wrongfulness, under existing customary international law, such as state of necessity.

Commentary

(1) Under customary international law, it is not unlawful for a warship to draw near a foreign vessel on the high seas to observe its flag or nationality. This right of approach is exercisable where there are reasonable grounds to suspect a vessel is engaged in threatened or actual damage to submarine cables and pipelines in the EEZ or CS.¹²⁵

(2) In addition, LOSC Article 110 (read with LOSC Article 58 (2)) allows a warship which encounters a foreign ship in the EEZ to visit a vessel where there are reasonable grounds for suspecting that the ship is without nationality, as described in paragraph (7) of the commentary to Conclusion 7.¹²⁶ A ship without nationality does not enjoy protection under international law.¹²⁷ Accordingly, if there are reasonable grounds to suspect that a ship traversing an EEZ of a third State is without nationality, the warship may proceed to verify the ship's right to fly its flag and it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration. If the suspicions prove to be unfounded and provided that the ship

¹²² See ILA Third Report (n 5), paras. 51-55.

¹²³ See paragraphs 11 and 12 of commentary to Conclusion 15.

¹²⁴ Ibid.

¹²⁵ Douglas Guilfoyle, 'Article 110: Right of Visit,' in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 770.

¹²⁶ See note 63.

¹²⁷ See note 64.

boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.¹²⁸

(3) As discussed above, the LOSC is silent on what the boarding State can do after ships have been confirmed to be without nationality, and specifically, whether they can be seized by the boarding State and subjected to their laws. There are two views on this: (1) statelessness subjects the ship and those aboard it to the full prescriptive, enforcement and adjudicative jurisdiction of the boarding State equivalent to what it would have over one of its own flagged vessels; or (2) jurisdiction over the stateless ship exists only if there is a jurisdictional nexus justifying arrest and/or to extend its laws to those on board a stateless ship and enforce its laws against them.¹²⁹ State practice on the issue of the effect of a vessel's statelessness is not clear and subsequent practice in this field will further clarify the law.¹³⁰

(4) All States may also take prevention or response measures with the prior consent of the flag State, as well as any applicable circumstances precluding wrongfulness, under existing customary international law, such as state of necessity.

(5) The Committee discussed the argument that intentional acts of damage to submarine cables and pipelines fall under the definition of 'piracy' pursuant to LOSC Article 101.¹³¹ As explained in the Committee's Third Report, the argument is as follows: piracy consists of 'any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed ... (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State'.¹³² Thus, 'deliberately damaging a section of submarine cable outside the territorial sea would be an act of violence or depredation against property in a place beyond any State's jurisdiction and would thus constitute piracy within the meaning of Article 101 (a) (ii).'¹³³ This is because the term 'outside the jurisdiction' of any State in the 1956 ILC Draft Articles covered acts committed by a ship against persons or property 'on an island constituting *terra nullius* or on the shores of an unoccupied territory'¹³⁴ and that it is therefore 'not incompatible with this intention to apply it to another *terra nullius* (or perhaps *res communis*), the seafloor area beyond national jurisdiction.'¹³⁵ If acts of damage to submarine cables and pipelines are piracy under LOSC Article 101,

¹²⁸ LOSC Article 110(3).

¹²⁹ Douglas Guilfoyle, 'Article 110: Right of Visit,' in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Beck/Hart 2017) 771-772. Churchill, Lowe and Sander (n 59), 404; Global Maritime Crime Programme, *Maritime Crime: A Manual for Criminal Justice Practitioners*, 40, 55.

¹³⁰ Andrew Norris, 'Rudderless and Adrift: States' Unwarranted Timidity Respecting Stateless Vessels,' [2025] 106 *International Law Studies*, 101, 105. There have been recent reports of States exercising the right of visit vis-à-vis ships in the EEZ by justifying such boarding on the basis that such ships were suspected of flying false flags and hence deemed 'stateless.' For a discussion of the case of the US boarding of the vessel '*Marinera*,' see Rob McLaughlin and Conor McLaughlin, 'A Law of the Sea Assessment of the US boarding of the *Bella 1/ Marinera*,' *Just Security*, 14 January 2026. For a discussion of France's seizure of the vessel the '*Grinch*,' see Jessica Rawnsley, 'France seizes suspected Russian 'shadow fleet' tanker,' *BBC*, 23 January 2026. In both these cases, the vessels and crew were arrested and subject to further proceedings on the basis that these vessels had breached sanctions on Russian oil exports, although one of the vessels was subsequently released after paying a fine: 'Seized Shadow Tanker is Departing Scotland Bound for US Reports,' *Maritime Executive*, 26 February 2026; Jessica Rawnsley, 'France releases suspected Russian 'shadow fleet' tanker after fine paid.' *BBC*, 17 February 2026.

¹³¹ LR Wrathall, 'The Vulnerability of Subsea Infrastructure to Underwater Attack: Legal Shortcomings and the Way Forward' (2010) 12 *San Diego International Law Journal* 223, 256; DR Burnett and MP Green, 'Security of International Submarine Cable Infrastructure: Time to Rethink?' in MH Nordquist, R Long and R Wolfrum (eds), *Legal Challenges in Maritime Security* (Martinus Nijhoff 2008), 557, 557-580; Douglas Guilfoyle et al., 'The Final Frontier of Cyberspace: The Seabed Beyond National Jurisdiction and the Protection of Submarine Cables,' (2022) 71 *International and Comparative Law Quarterly* 657, 670-674.

¹³² LOSC Article 101(a) (ii).

¹³³ Guilfoyle et al., *ibid*, 'The Final Frontier of Cyberspace,' (n 131), 671.

¹³⁴ 1956 ILC Draft Articles (n 118), Article 39.

¹³⁵ Guilfoyle et al., 'The Final Frontier of Cyberspace,' (n 131), 671.

warships of all States may seize the pirate ship, arrest the persons and seize the property on board and the courts of the seizing State may decide upon the penalties to be imposed under LOSC Article 105.¹³⁶ This argument is gaining academic support, especially as it would resolve what is considered to be a gap in the ability of States to prevent intentional acts of damage and respond to such acts after they have happened.¹³⁷ The Third Report noted that this interpretation was legally plausible, but that it was uncertain whether States will accept that they have this right vis-à-vis intentional damage to submarine cables and pipelines under LOSC Articles 101 and 105.

(6) Subsequent to the Third Report, the issue was debated within the Committee. There was a divergence of views. Doubt was expressed about whether submarine cables and pipelines in the EEZ or continental shelf could be considered ‘property outside the jurisdiction of any State’. This contention considers that coastal States exercise limited jurisdiction over such cables and pipelines in the EEZ and continental shelf pursuant to their competence to subject the laying of submarine cables and pipelines on their continental shelf to reasonable measures for: the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines.¹³⁸ It was also suggested that other interested States that are holders of the freedom to lay submarine cables and pipelines may also have jurisdiction over such cables and pipelines, or at least the authority to adopt laws and regulations governing cables and pipelines that would apply in both the EEZ and the high seas.¹³⁹

(7) Ultimately, in light of the above, and the lack of State practice in support of understanding intentional acts of damage to submarine cables and pipelines as piracy within the definition under LOSC Article 101, the majority of Committee members did not consider that these instances constitute piracy, but did not preclude the possibility that LOSC States Parties may agree to such an interpretation in the future. In this regard, the Committee notes the UK Government’s statement issued in response to suggestions by the UK’s Joint Committee on the National Security Strategy to apply piracy provisions to cables that land in the UK:

The Government does not consider reliance on UNCLOS piracy provisions to be an appropriate solution to tackling malign activity against submarine cables and pipelines. Various international partners, including major maritime States, share this view. Any measure taken to tackle this issue—including extending criminal jurisdiction—must be consistent with UNCLOS. The Government does not consider it necessary or appropriate to commission and publish an external legal opinion on this issue.

The Government would underscore both the reciprocity risk of adopting novel interpretations of UNCLOS, as discussed in the report, and the potential to undermine the international legal framework. It is essential to avoid adopting positions that could be used to our detriment by other States.¹⁴⁰

Conclusion 18: Treaty-Based Rights

Subject to the regime of the EEZ, States may have rights of interference that derive from treaties.

Commentary

¹³⁶ LOSC, Article 105.

¹³⁷ See note 131.

¹³⁸ LOSC Article 79(2).

¹³⁹ See, for example, LOSC Article 114. See also discussion in R. Lagoni, *Legal Aspects of Submarine High Voltage Direct Current (HVDC) Cables* (1998), 13.

¹⁴⁰ UK Government Response to Joint Committee on the National Security Strategy First Report on Submarine Telecommunications Cables: Resilience and Crisis Preparedness, 17 December 2025 at <https://publications.parliament.uk/pa/jt5901/jtselect/jtnatsec/1574/report.html>

(1) Under Article X of the 1884 Convention for the Protection of Submarine Telegraph Cables ('1884 Convention'), warships of contracting parties may board foreign ships suspected of intentionally or by culpable negligence breaking a cable and may require the master to provide documentation to show the ship's nationality so as to make a report to the flag State. The provision applies only to acts that have occurred. Thus, the provision may not be used as a basis for prevention measures. It is also confined to States Parties to the 1884 Convention, presently 39 States, and does not, for example, include damage to submarine power cables and pipelines.¹⁴¹

Conclusion 19: Measures by Flag States in the EEZ and Continental Shelf

- (1) Flag States must adopt laws and regulations necessary to criminalize the breaking or injury by a ship flying their flag, or conduct calculated or likely to result in such breaking or injury, of a submarine cable or pipeline in the EEZ either wilfully or through culpable negligence.
- (2) Flag States must take all necessary measures to ensure that vessels flying their flag do not damage submarine cables and pipelines in the EEZ or CS.

Commentary

(1) Under LOSC Article 113, flag States are obliged to adopt laws and regulations necessary to criminalize the breaking or injury of a submarine cable or pipeline by a ship flying their flag in the EEZ.¹⁴² Such laws and regulations must apply to conduct calculated or likely to result in breaking or injury, but not to persons who acted merely with the legitimate object of saving their lives or their ships after having taken all necessary precautions to avoid such breakage or injury. This is an obligation of result in that flag States are required to adopt such laws and regulations. A failure to do so entails flag State responsibility.¹⁴³ There are examples of States implementing this obligation by adopting national legislation,¹⁴⁴ but as has been observed in previous reports of this Committee as well as in General Assembly Resolutions, this has not been widely implemented by States and when States do have such legislation, the punishments are not sufficient to act as a deterrent.¹⁴⁵

(2) In addition to the direct obligation on flag States to adopt laws and regulations under LOSC Article 113, flag States have a due diligence obligation to ensure that vessels flying their flag do not damage submarine cables and pipelines in the EEZ or CS. Due diligence obligations require flag States to 'deploy adequate means, to exercise best possible efforts, to do the utmost,' to obtain the intended result, and it is the conduct of the flag State and not the result that will determine whether the flag State has complied with its obligations.¹⁴⁶ There are several arguments that support the existence of this due diligence obligation.

¹⁴¹ LOSC did not incorporate Article X of the 1884 Convention but preserves the 1884 Convention Article X right for contracting parties to the 1884 Convention (presently ratified by 39 States): see LOSC Article 110.

¹⁴² LOSC Article 113 and 58(3).

¹⁴³ ITLOS has held that whether an obligation is that of conduct or of result depends on whether States are required to achieve the intended objective or result, which in turn 'depends essentially upon the text of the relevant provision and the overall circumstances envisaged by it.' ITLOS Climate Change Advisory Opinion (n 17), para. 238. See also Articles on State Responsibility which state that 'the obligation under a treaty to enact a uniform law is breached by a failure to enact the law, and it is not necessary for another State party to point to any specific damage it has suffered by reason of that failure.' See ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001) UN Doc A/56/10, Article 2, commentary at para. 9.

¹⁴⁴ New Zealand's Submarine Cables and Pipelines Protection Act 1996 at <https://legislation.govt.nz/act/public/1996/0022/latest/DLM375803.html>; Australia's Submarine Cables and Pipelines Protection Act 1963 at <https://www.legislation.gov.au/C1963A00061/latest/text>

¹⁴⁵ ILA First Report (n 2), paras. 89 – 91; GA Resolution on Oceans and Law of the Sea, A/Res/80/110, para. 166.

¹⁴⁶ *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Advisory Opinion of 1 February 2011), ITLOS Reports 2011, 10, para. 110; ITLOS Climate Change Advisory Opinion (n 17), para. 233.

(3) First, under customary international law and the LOSC, flag States exercising the freedom of navigation in the EEZ must exercise due regard for the interests of other States in the freedom to lay and operate submarine cables and pipelines.¹⁴⁷ The ordinary meaning of ‘due regard’ is ‘with the proper care or concern for’ or ‘[a]ttention, care, or consideration given to a thing or person; concern for, heed of’, or ‘[a] thing or circumstance taken into account in determining action; a consideration, a motive.’¹⁴⁸ As mentioned above, the due regard obligation does not prescribe any universal rule of conduct. What is required of a State will depend on the relevant circumstances and nature of the rights under consideration.¹⁴⁹ Courts and tribunals have interpreted the obligation of due regard in the EEZ, when read in conjunction with other LOSC obligations (such as the obligations imposed upon nationals of third States fishing in the EEZ under LOSC Article 62(4) and the obligation of States to protect the marine environment in LOSC Article 192) as imposing a due diligence obligation on flag States to take the necessary measures to ensure that nationals and vessels flying their flag are not engaged in illegal, unreported and unregulated (IUU) fishing.¹⁵⁰ By analogy, flag States also have a due diligence obligation to prevent their vessels from damaging submarine cables and pipelines pursuant to their obligation to exercise due regard vis-à-vis the freedom to operate submarine cables and pipelines under LOSC Article 58 (3), read with LOSC Article 113.¹⁵¹

(4) Second, a flag State is required to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag under LOSC Article 94 (1). This includes taking necessary measures that are legitimate to ensure safety at sea, including the construction, equipment and seaworthiness of ships.¹⁵² This is a due diligence obligation as indicated by the use of the words ‘necessary’ and ‘to ensure.’¹⁵³ Ship anchor damage is a leading cause of damage to submarine cables and pipelines, with anchor dragging accounting for approximately 30% of incidents.¹⁵⁴ For example, in both the *Eagle S Case* and the *Yi Peng 3*, improperly secured anchors were the alleged cause of the anchor dragging which resulted in the damage to submarine cables.¹⁵⁵ Depending on the circumstances, failure to take necessary measures to ensure that the master or crew have properly secured anchors or to ensure that the anchor is in a seaworthy condition may amount to a breach of a due diligence obligation.

¹⁴⁷ LOSC Article 58(3) only provides that States exercising the freedom to lay submarine cables and pipelines in the EEZ shall have due regard to the rights and duties of the coastal State and does not state that these States must exercise due regard vis-à-vis the freedom of navigation in the EEZ and vice versa. However, LOSC Article 58(1) stipulates that in the EEZ, the freedoms referred to in Article 87 of navigation and laying of submarine cables and pipelines can be enjoyed by all States without prejudice to coastal or land-locked status. LOSC Article 87(2) refers to the obligation on States to exercise due regard vis-à-vis other States’ freedoms, and this applies in the EEZ.

¹⁴⁸ *Enrica Lexie* (n 18), para. 973.

¹⁴⁹ *Chagos Archipelago* (n 96), para. 519.

¹⁵⁰ *Fisheries Advisory Opinion* (n 96), para. 124; *South China Sea* (n 96), para. 744.

¹⁵¹ In the context of accidental damage, Guilfoyle et al. observe that ‘it would therefore seem reasonable to apply a duty of due diligence to flag States to take appropriate measures in respect of vessels flying their flags to prevent damage to submarine cables in line with both the *Obligations in the Area* and *SRFC* advisory opinions.’ Guilfoyle et al., (n 131), 669. It is not the case that a breach of the due regard obligation will be found in all cases of interference, and it appears to depend upon whether such interference is unreasonable. For example, in *Enrica Lexie*, the arbitral tribunal found that the conduct of the Italian marines on board the *Enrica Lexie* in shooting at Indian fishermen in India’s EEZ to protect the *Enrica Lexie* against an alleged pirate attack was not a breach of the due regard obligation, as Italy had obligations to repress piracy in the EEZ under the LOSC: *Enrica Lexie* (n 18), para. 980.

¹⁵² LOSC Articles 94(3) and (4).

¹⁵³ ITLOS Climate Change Advisory Opinion (n 17), para. 238.

¹⁵⁴ ICPC Viewpoints, ‘Damage to Submarine Cables from Dragged Anchors,’ at <https://www.iscpc.org/publications/icpc-viewpoints/damage-to-submarine-cables-from-dragged-anchors/>.

¹⁵⁵ See discussion in Ewan Sutherland, ‘The Yi Peng and Eagle S Incidents – cutting cables in the Baltic Sea.’ ITS 33rd European Conference 2025 on ‘Digital Innovation and Transformation in Uncertain Times,’ Edinburgh, UK, 29th June – 1 July 2025, International Telecommunications Society (ITS), Calgary.

(5) Third, flag States have an obligation to prevent, reduce and control pollution of the marine environment, and to ensure that activities under their jurisdiction or control are conducted so as not to cause pollution to other States and their environment or to areas beyond national jurisdiction.¹⁵⁶ Accordingly, flag States have a due diligence obligation to ensure that their vessels comply with necessary measures to protect and preserve the environment and prevent, reduce and control pollution that may result from damage to submarine pipelines.¹⁵⁷

(6) The content of the flag State's due diligence in each of the above obligations will depend on the specific context. It is to be determined by each flag State in accordance with its legal system.¹⁵⁸ Nonetheless, it requires the flag State to 'put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective.'¹⁵⁹ Accordingly, even though LOSC Article 113 does not specify any minimum penalties, flag States must ensure that any sanctions for wilful or culpably negligent breaking or injury of cables or pipelines must be sufficient to deter violations pursuant to their due diligence obligation.¹⁶⁰ Moreover, it would also require that flag States enforce any breaches of legislation implementing Article 113 through appropriate proceedings and penalties.

(7) It also warrants note that the failure to adopt necessary measures to ensure that vessels flying their flag do not damage submarine cables and pipelines may give rise to a claim that the flag State has not exercised proper jurisdiction and control over the vessel under LOSC Article 94 (6). Where a State has 'clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised', it may report the facts to the flag State.¹⁶¹ Upon receiving such a report, the flag State shall investigate the matter, and if appropriate, take any action to remedy the situation.¹⁶²

VI. HIGH SEAS AND THE AREA

A. Monitoring

Conclusion 20: Monitoring Activities in the High Seas and the Area

All States may conduct monitoring activities with respect to submarine cables and pipelines beneath the high seas and on the seabed of the Area pursuant to the freedom of the high seas in these maritime spaces, subject to due regard for the rights of other States in the exercise of high seas freedoms and with respect to activities in the Area, as well as for activities permitted under other conventions.

Commentary

¹⁵⁶ *ITLOS Climate Change Advisory Opinion* (n 17), para. 396.

¹⁵⁷ *Ibid*, paras. 236 and 396.

¹⁵⁸ *Fisheries Advisory Opinion* (n 96), para. 138.

¹⁵⁹ *ITLOS Climate Change Advisory Opinion* (n 17), para. 235; *Fisheries Advisory Opinion* (n 96), para. 138 which noted that the flag State has to include 'enforcement mechanisms to monitor and secure compliance with these laws and regulations.'

¹⁶⁰ *Fisheries Advisory Opinion*, *ibid*, para. 138.

¹⁶¹ LOSC Article 94(6).

¹⁶² *Fisheries Advisory Opinion* (n 96), para. 139 where ITLOS found that this obligation equally applies to a flag State whose ships are alleged to have been involved in IUU fishing when such allegations have been reported to it by the coastal State concerned. The case of the prosecution of the master of the Hong Kong registered cargo ship *Newnew Polar Bear* for alleged damage to pipelines and cables in Finland's EEZ is an example of a prosecution by the flag State of the accused vessel but he has not been charged with LOSC Article 113 offences but under an ordinance which allows prosecutors to bring charges against anyone suspected of committing an offence aboard a Hong Kong-flagged vessel: see Winston Qiu, 'Captain of *NewNew Polar Bear* Arrested in Hong Kong over Damaging Pipelines & Cables in the Baltic Sea,' *Submarine Cable Networks*, 9 July 2025, <https://www.submarinenetworks.com/en/nv/news/captain-of-newnew-polar-bear-arrested-in-hong-kong-over-damaging-pipeline-cables-in-baltic-sea>.

(1) Under customary international law (and LOSC Article 87(1)), all States enjoy the freedom to lay (and thus operate) submarine cables and pipelines in the high seas (subject to the regime of the CS), and the entitlement to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf under LOSC Article 112. This freedom includes monitoring activities, because the latter are necessary for the prevention of interruptions to the operation of cables and pipelines.

(2) Any monitoring activities must be exercised subject to the due regard obligation vis-à-vis the rights of other States in the exercise of high seas freedoms, activities in the Area, and other activities recognized in other Conventions, such as activities related to marine genetic resources under the Agreement on Marine Biological Diversity of Areas Beyond National Jurisdiction ('BBNJ Agreement').

B. Prevention and Response Measures

Conclusion 21: Measures by All States in the High Seas and Area

- (1) All States may exercise their right of approach vis-à-vis foreign vessels on the high seas if there are reasonable grounds to suspect that the vessel intends to engage or has engaged in intentional acts of damage against a cable or pipeline in the high seas and may request the vessel to give information regarding its identity and port of registry, its last and next port of call, and other relevant information required to establish if the suspicions are founded.
- (2) All States may board a ship that is without nationality or a ship that is of the same nationality as the boarding State in the high seas.
- (3) All States may also take prevention and response measures with the prior consent of the flag State, as well as any applicable circumstances precluding wrongfulness, under existing customary international law, such as state of necessity.

Commentary

See commentary to Conclusion 17, which applies *mutatis mutandis*.

Conclusion 22: Treaty-Based Rights

States may have rights of interference that derive from treaties.

Commentary

See commentary to Conclusion 18.

Conclusion 23: Measures by Flag States in the High Seas and Area

- (1) Flag States must adopt laws and regulations necessary to criminalize the breaking or injury by a ship flying their flag, or conduct calculated or likely to result in such breaking or injury, of a submarine cable or pipeline in the high seas either wilfully or through culpable negligence.
- (2) Flag States must take all necessary measures to ensure that vessels flying their flag do not damage submarine cables and pipelines in the high seas and Area.

Commentary

See commentary to Conclusion 19, which applies *mutatis mutandis* to the duties of flag States vis-à-vis submarine cables and pipelines in the high seas.

VII. CONCLUDING REMARKS

- (1) The Conclusions and accompanying commentary address the international law governing three specific categories of measures that may be taken by States to protect submarine cables and pipelines: monitoring activities, prevention measures and response measures. Monitoring activities, prevention measures and response measures must be undertaken in accordance with international law. Where applicable, they must satisfy the requirements of necessity, reasonableness and proportionality; must have due regard to considerations of humanity and due process; and they may be carried out only by warships or military aircraft, or other vessels or aircraft clearly marked and identifiable as being on government service and duly authorised. The Conclusions demonstrate that although the international legal framework established in the LOSC and other relevant rules of international law were adopted before our reliance on submarine cables and pipelines increased exponentially, this legal framework still provides an array of tools that can be employed by States to protect such submarine cables and pipelines.
- (2) With regard to monitoring activities in the territorial sea, **coastal States** have the authority to conduct monitoring activities in the territorial sea provided that such activities do not hamper innocent passage. Monitoring activities by **States other than the coastal State** with respect to submarine cables and pipelines in the territorial sea do not constitute innocent passage and require the consent of the coastal State. With regard to monitoring activities conducted by States other than the coastal State consisting of proximity sensing using in-built technologies in submarine cables and pipelines for monitoring activities (as defined in Conclusion 2, paragraph (3)), the coastal State must consent to submarine cables and pipelines being laid in its territorial sea with such in-built technology. It is recommended that operators/owners of cables or pipelines obtain the consent of the coastal State *before* they lay infrastructure with such in-built technology, and to make all necessary arrangements with the coastal State about the legal regime for monitoring via such in-built technology, including the sharing of any data collected.
- (3) With regard to monitoring activities in the EEZ and continental shelf:
 - a. **Coastal States** have the authority to undertake monitoring activities vis-à-vis submarine cables and pipelines constructed or used in connection with the exploration of its CS or exploitation of its resources or the operation of artificial islands, installations and structures under its jurisdiction under LOSC Articles 60, 79(4) and 80; vis-à-vis landing submarine cables and pipelines pursuant to their freedom to operate submarine cables and pipelines under LOSC Article 58 (1); and vis-à-vis landing and transit submarine cables and pipelines pursuant to their jurisdiction to protect and preserve the marine environment under LOSC Articles 56(1)(b)(iii) and 79(2).
 - b. **Other interested States** also have the freedom to conduct monitoring activities with a view to preventing intentional damage to a cable or pipeline located in the EEZ or CS of another State as this is a freedom associated with the operation of submarine cables and pipelines (LOSC Article 58(1)).
- (4) In conducting monitoring activities, coastal States and other interested States are subject to reciprocal obligations of due regard applicable in these maritime zones under LOSC Articles 56(2) and 58(3). The implementation of the due regard obligation depends on the nature of the rights and activities in question. That said, a few observations are pertinent. If a coastal State places external sensors on a cable or pipeline in its EEZ, the placement must be conducted in a way that does not interrupt or otherwise obstruct the transmission of data or carriage of energy. Another example is that the coastal State must share the information gathered regarding potential sources of intentional damage to a cable or pipeline in its EEZ/CS with other interested States with respect to that particular cable or pipeline. Similarly, the due regard

obligation obliges other interested States to share the gathered information with the coastal State and with other holders of the freedom to the uninterrupted operation of the particular cable or pipeline in the EEZ.

- (5) With regard to monitoring activities vis-à-vis submarine cables and pipelines laid on the seabed of the high seas and/or the Area, **all States** may conduct monitoring activities with respect to submarine cables and pipelines laid on the seabed of the high seas and/or the Area pursuant to the freedom of the high seas in these maritime spaces as set out in LOSC Articles 87 and 112. Monitoring activities are subject to due regard for the rights of other States in the exercise of high seas freedoms and with respect to activities in the Area, as well as for activities permitted under other conventions.
- (6) With regard to prevention and response measures in the territorial sea, **coastal States** have an extensive (and exclusive) competence to take prevention and response measures vis-à-vis foreign vessels suspected of potential or actual acts of damage to submarine cables and pipelines in the territorial sea. Potential or actual acts of intentional damage against submarine cables and pipelines may either render passage non-innocent under LOSC Article 19 or may be a breach of coastal State laws and regulations on the protection of submarine cables and pipelines or protection of the marine environment under LOSC Article 21. Accordingly, coastal State prevention and response measures are based on their authority to prevent non-innocent passage under LOSC Article 25 or their enforcement jurisdiction over violations of their laws and regulations in the territorial sea.
- (7) With regard to **coastal State** prevention and response measures in the EEZ and continental shelf, the coastal States' authority to take prevention and response measures in the EEZ or CS vis-à-vis foreign vessels suspected of potential or actual acts of intentional damage to submarine cables and pipelines depends on the type of submarine cable and pipeline that is targeted:
 - a. For *submarine cables and pipelines constructed or used in connection with the exploration of its CS or exploitation of its resources or the operation of artificial islands, installations and structures under its jurisdiction*, coastal States may take prevention or response measures against potential or actual acts of intentional damage pursuant to its exclusive jurisdiction over such cables and pipelines under LOSC Articles 60 and 80, read with Article 79 (4).
 - b. For *landing and transit submarine pipelines*, coastal States may take prevention or response measures against potential or actual acts of intentional damage to landing or transit submarine pipelines in their EEZ or CS pursuant to their authority to take reasonable measures for the prevention, reduction and control of pollution from pipelines under LOSC Article 79 (2). Such measures must not infringe or result in any unjustifiable interference with navigation and rights and freedoms of other States as provided for in the LOSC.
 - c. For *landing submarine cables* that make landfall in the coastal State, coastal States may only take prevention and response measures against foreign vessels suspected of potential or actual acts of intentional damage if the prior consent of the flag State has been obtained. If a coastal State takes prevention measures against potential acts of intentional damage against a landing cable in its EEZ or on its CS without the flag State's prior consent, it will violate its obligation to abstain from interference with freedom of navigation. The wrongfulness of the coastal State's conduct will be negated in exceptional circumstances if the cumulative conditions of state of necessity, under customary international law, are met: (1) an essential interest is at risk; (2) a threat to such interest rises to the level of intensity of 'grave and imminent peril'; (3) the State has no other means to safeguard its essential interest; and (4) the essential interests of other States are not seriously impaired by the breach. The

condition of a state of necessity will not be met for response measures where the threat of grave and imminent peril no longer exists.

- (8) With regard to prevention and response measures taken by **other interested States** in the EEZ and continental shelf, other interested States may only take prevention and response measures against foreign vessels suspected of potential or actual acts of intentional damage to submarine cables and pipelines in another State's EEZ or continental shelf if the prior consent of the flag State has been obtained. If prevention measures against a foreign vessel occur without the flag State's prior consent, state of necessity may apply if the conditions under customary international law are satisfied. The condition of a state of necessity will not be met for response measures where the threat of grave and imminent peril no longer exists.
- (9) With regard to prevention and response measures by **all States** in the EEZ and continental shelf, if a State has reasonable grounds to suspect that a vessel traversing the EEZ or waters superjacent to a continental shelf of another State has engaged in potential or actual acts of intentional damage against submarine cables and pipelines in that EEZ or continental shelf, it may exercise its right of approach under customary international law; exercise the right of visit vis-à-vis a vessel that is without nationality or a ship that is of the same nationality as the boarding State pursuant to LOSC Article 110; or take prevention and response measures with the prior consent of the flag State. In the event that prior flag State consent is not forthcoming, the State taking prevention measures may exceptionally rely on the state of necessity to negate the wrongfulness of such conduct if the cumulative conditions of state of necessity have been met. The condition of a state of necessity will not be met for response measures where the threat of grave and imminent peril no longer exists. In addition, States Parties to the 1884 Convention may also exercise the right of visit provided for in Article X of the 1884 Convention if they have reason to believe that a vessel flagged in another State Party has intentionally or by culpable negligence broken a submarine cable located in an EEZ of a State. The majority of Committee members did not consider that intentional damage to submarine cables and pipelines constituted 'piracy' as defined in LOSC Article 101 (which would entitle all States to board, arrest and prosecute the wrongdoing vessel and crew) but did not preclude the possibility that LOSC States Parties may agree to such an interpretation in the future. This conclusion also applies to prevention and response measures by **all States** vis-à-vis intentional damage to submarine cables and pipelines beneath the high seas and laid in the Area.
- (10) Flag States also have obligations to adopt certain measures to protect submarine cables and pipelines. They must adopt laws and regulations necessary to criminalize the breaking or injury by a ship flying its flag, or conduct calculated or likely to result in such breaking or injury, of a submarine cable or pipeline in the EEZ either wilfully or through culpable negligence under LOSC Article 113. Flag States must take all necessary measures to ensure that vessels flying their flag do not damage submarine cables and pipelines in the EEZ or continental shelf.
- (11) The Committee notes that there are limited grounds under the LOSC and/or relevant rules of international law that permit States to take prevention and response measures vis-à-vis potential or actual acts of intentional damage to (1) landing or transit submarine cables in the EEZ and continental shelf and (2) submarine cables and pipelines laid on the seabed of the high seas and Area. These grounds include flag State consent (which may not be forthcoming or may take time), state of necessity (if flag State consent is not provided), right of visit if vessels are without nationality under LOSC Article 110 or right of visit under Article X of the 1884 Convention (limited to breaking of submarine communication cables and to situations where the boarding State and flag State of the suspected vessel are both parties). The Committee's Conclusions in this regard are based on an assessment of existing international legal frameworks. However,

this does not preclude the possibility of future developments in international law addressing this issue (for example, through subsequent agreements or subsequent practice).