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Session on Protecting Submarine Cables: Legal Gaps and Global
Imperatives

**PROPOSAL OF LEGAL FRAMEWORK(S) FOR PROTECTION
OF UNDERSEA INFRASTRUCTURE BASED UPON THE RIGHT
TO PROTECT USES OF SEA**

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CONFERENCE ON
THE LAW OF THE SEA AND THE BLUE
ECONOMY IN THE AGE OF CLIMATE
CRISIS: EMERGING CHALLENGES

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- Atsuko Kanehara, “Enforcement and Other Preventive Measures for Protection of Undersea Infrastructure: : A Right to Protect Uses of Ocean”, Presentation for the Conference on International Law and the Protection of Submarine Cables and Pipelines: Multi-Dimensional Perspective which was held on the 16th and 17th of September 2025, in Singapore, [ENFORCEMENT AND OTHER PREVENTIVE MEASURES FOR PROTECTION OF UNDERSEA INFRASTRUCTURE : A RIGHT TO PROTECT USES OF OCEAN](#) | The Canon Institute for Global Studies
- Atsuko Kanehara, “The Protection of Submarine Cables and Pipelines in Armed Conflict in the Indo-Pacific,” in D. Guilfoyle and J. Maddocks eds, *Armed Conflict and International Law in the Indo-Pacific Region*, Oxford University Press, (2025), Chapter 8, forthcoming
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- Atsuko Kanehara, "Reconsideration of the Distinction between the Use of Arms in Law Enforcement and the Use of Force Prohibited by International Law—With an Analysis of the Inherent Significance of This Issue to Japan,"

https://www.jiia-jic.jp/en/japanreview/pdf/JapanReview_Vol5_02_%20Kanehara.pdf

Talking Points

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PROPOSAL OF LEGAL FRAMEWORK(S) FOR PROTECTION OF UNDERSEA INFRASTRUCTURE BASED UPON THE RIGHT TO PROTECT USES OF SEA

I. Introduction

II. Existing Law (UNCLOS) to Provide Legal Basis for Legal Framework(s) for Protection of Undersea Infrastructure

III. An Entire Sketch of “International Law of Undersea Infrastructure”

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon a Right to Protect Uses of Sea

I. Introduction

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1. Terminology and Coverage of This Presentation

(1) Undersea Infrastructure

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

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

* The protection of undersea infrastructure in territorial sea is ensured by the coastal State jurisdiction as long as it does not hamper innocent passage of foreign vessels.

I. Introduction

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1. Terminology and Coverage of This Presentation (continued)

(3) Protection

[Measures] including prevention before harmful acts take place, and responding measures after they have done

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

[Jurisdiction] Prescriptive, enforcement, judicial jurisdiction

(3) Harmful acts

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

II. Existing Law (UNCLOS) to Provide Legal Basis for Legal Framework(s) for Protection of Undersea Infrastructure

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

(1) The Right of Laying Undersea Infrastructure

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

(2) The Freedom of High Seas

Article 87 (1) (c)

2. Depending on Possible Interpretation of UNCLOS

(1) An “Incidental” Right to the Sovereign Right of Coastal States of EEZ and Continental Shelf on Exploitation of Natural Resources and Production of Energy (Article 56) (Article 77)

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

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

(2) A Right to Construct Structure and Installations

In cases in which undersea infrastructure falls under Article 60

II. Existing Law (UNCLOS) to Provide Legal Basis for Legal Framework(s) for Protection of Undersea Infrastructure

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



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

(1) The Rights (Freedom) of Laying Undersea Infrastructure

: EEZ and Continental Shelf

(2) The Freedom of High Seas

Article 79 (3) and (4) regarding continental shelf

Prescriptive jurisdiction of flag States and nationality States of owners (Article 113 and Article 114)

No explicit provisions on enforcement and judicial jurisdiction

II. Existing Law (UNCLOS) to Provide Legal Basis for Legal Framework(s) for Protection of Undersea Infrastructure

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

👉 2. Depending on Possible Interpretation of UNCLOS

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

No explicit provisions

👉 (2) A Right to Construct Structure and Installations
In cases in which undersea infrastructure falls under Article 60

Article 60 (2)

How about undersea infrastructure in safety zones?

Arctic Sunrise Arbitration (merits)

II. Existing Law (UNCLOS) to Provide Legal Basis for Legal Framework(s) for Protection of Undersea Infrastructure

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

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

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

II. Existing Law (UNCLOS) to Provide Legal Basis for Legal Framework(s) for Protection of Undersea Infrastructure

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Under UNCLOS

Lack of Enough Legal Basis for Legal Framework(s) for Protection of Undersea Infrastructure



Amendment of UNCLOS and even Creation of New Rules

Foundational Analyses Required for Such a Purpose



III.

III. An Entire Sketch of “International Law of Undersea Infrastructure”

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Factors to Be Examined to Recognize the Variety of Undersea Infrastructure



Constructing Elements of An Entire Sketch of “International Law of Undersea Infrastructure”

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

III. An Entire Sketch of “International Law of Undersea Infrastructure”

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1. Functions of Undersea Infrastructure

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

III. An Entire Sketch of “International Law of Undersea Infrastructure”

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1. Functions of Undersea Infrastructure (continued)

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

T. DAVENPORT, HOOVER INST. AEGIS SERIES PAPER NO. 2305, INTENTIONAL DAMAGE TO SUBMARINE CABLE SYSTEMS BY STATES 1 (Oct. 26, 2023), https://www.hoover.org/research/intentional-damage-submarine-cable-systems-states_

III. An Entire Sketch of “International Law of Undersea Infrastructure”

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2. Harmful Acts against Undersea Infrastructure

Thefts, terrorist attacks, and other violent acts

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

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



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

Individuals? (Groups? NGOs?) States?

III. An Entire Sketch of “International Law of Undersea Infrastructure”

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

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

[Stakeholders]

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

III. An Entire Sketch of “International Law of Undersea Infrastructure”

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4. Responsible Entities for Acts of Sabotage against Undersea Infrastructure

Individuals (Groups, NGOs)? States?



Issues of the Law of State Responsibility

Issues of the International Criminal Law

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

III. An Entire Sketch of “International Law of Undersea Infrastructure”

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

Undersea infrastructure : Military Objectives?



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

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



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



Proposal of Legal Framework(s) for Protection of Undersea Infrastructure Based upon A Right to Protect Uses of Sea

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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1. Possible Fundamental Idea 1: The Right to Protect Uses of Sea



(1) A legal Framework for Protection of Undersea Infrastructure as (Part of) the Law of the Sea

As to its detail, please see,

- Atsuko Kanehara, “Enforcement and Other Preventive Measures for Protection of Undersea Infrastructure: : A Right to Protect Uses of Ocean”, Presentation for the Conference on International Law and the Protection of Submarine Cables and Pipelines: Multi-Dimensional Perspective which was held on the 16th and 17th of September 2025, in Singapore, [ENFORCEMENT AND OTHER PREVENTIVE MEASURES FOR PROTECTION OF UNDERSEA INFRASTRUCTURE : A RIGHT TO PROTECT USES OF OCEAN | The Canon Institute for Global Studies](#)

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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1. Possible Fundamental Idea 1: The Right to Protect Uses of Sea (continued)

(2) Elements That Construct A legal Framework for Protection of Undersea Infrastructure as (Part of) the Law of the Sea

- ① “The Right to Protect” against Obstruction to Uses of Sea
- ② Legal Basis for the Right to Protect Uses of Sea

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

Please see, II. 1. and 2. of This Presentation

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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1. Possible Fundamental Idea 1: The Right to Protect Uses of Sea

(2) Elements That Construct A legal Framework for Protection of Undersea Infrastructure as (Part of) the Law of the Sea (continued)

③ Subjects of the Right to Protect Uses of Sea; to Protect Undersea infrastructure

Please see, III. 2. and 3. of This Presentation

Case-by-case approach?

[According to the Law of the Sea]

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

Other possibilities?

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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1. Possible Fundamental Idea 1: The Right to Protect Uses of Sea

(2) Elements That Construct A legal Framework for Protection of Undersea Infrastructure as (Part of) the Law of the Sea (continued)

④ Responsible Entities for Harmful Acts to Undersea Infrastructure

The law of the sea: vessel oriented. Wrongdoing vessel's flag State?

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

i) Supremacy of the Jurisdiction that UNCLOS Explicitly Distributes to the Related States, over the Jurisdiction Based upon the Right to Protect Undersea Infrastructure

ii) Due Regard

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

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



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

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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2. Possible Fundamental Idea 2

: The Right to Protect Uses of Sea-General Basic Idea beyond the Law of the Sea?

Reflecting the Characteristics of Undersea Infrastructure in the Existing Laws

(1) The Law of State Responsibility

Special features in sabotage against infrastructure

Difficulty in finding the wrong doers

Difficulty in finding attribution of the sabotage to a State

[Related Issues]

Complicity between individuals and States?

State responsibility? Or, individual (criminal) responsibility?

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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2. Possible Fundamental Idea 2 (continued)

(2) The International Criminal Law

Criminalization of sabotage against undersea infrastructure

Setting prescriptive, enforcement, and judicial jurisdiction

In addition to 1884 Paris Convention for the Protection of Submarine
Telegraph Cables

In addition to Article (s) 113 (and 114) of UNCLOS

[Article 113] Duty of legislative measures for criminalization

[Related issues]

Not only the flag states of the wrongdoing vessels, other entities to be
punished? Who? Operators? Owners? And Other possibilities?

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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2. Possible Fundamental Idea 2 (continued)

(3) The Law of the Use of Force

Sabotage using weapons

The use of force? Armed attack?



An exercise of the right of (individual and/or collective) self-defence

UN Charter Article 2, Paragraph 4 and Article 51

+The 1986 ICJ Nicaragua Case (merits)

[Related issues]

Violent acts by individuals?

Violent acts attributable to a State?

To trigger the right of self-defence, State acts are required?

Or, even individual acts, as such can satisfy the requirements for self-defence?

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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2. Possible Fundamental Idea 2 (continued)

(4) The Law of Armed Conflict

Undersea infrastructure

Military objectives? Or civilian properties?

Depending on mainly functions and stakeholders
of the undersea infrastructure

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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2. Possible Fundamental Idea 2 (continued)

(5) The Law on Dispute Settlement

Stakeholders- Standing to claim responsibility of harmful entities for the sabotage before international courts

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

Depending on the nature of rights and legal interests (individual and/or common, reciprocal and/or multilateral and/or *erga omnes*) stakeholders can be determined.

[Related issues]

The nature of rights and legal interests for the determination whether undersea infrastructure falls under military objectives

IV. Idea of Legal Framework(s) for Protection of Undersea Infrastructure Based upon the Right to Protect Uses of Sea

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3. Possible Fundamental Idea 3

a. With a basis of the (special) Law of the Sea on the Protection of Undersea Infrastructure (Possible Fundamental Idea 1), development in other fields of international law that are examined above (Possible Fundamental Idea 2) by reflecting the special characteristics of undersea infrastructure

Or,

b. Special Law on (the Protection of) Undersea Infrastructure

END

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**Thank You So Much for Your Very
Kind Attention!**