

International Maritime Law Institute (7 April 2026)
**PROTECTION OF UNDERSEA
INFRASTRUCTURE
: THE RIGHT TO PROTECT USES OF OCEAN**

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https://cigs.canon/en/article/20241224_8535.html

 [My Lecture in at IMLI in 2024](#)

• Atsuko Kanehara, "Japan's Request of Extradition of the Founder of Sea Shepherd: Recovery and Maintenance of the Common Interests of International Society and the Inherent Interests of Japan, a Sovereign State,"

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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,"

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Talking Points

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PROTECTION OF UNDERSEA INFRASTRUCTURE : A RIGHT TO PROTECT USES OF OCEAN

I. Introduction

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

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

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

I. Introduction

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1. Focus of This Lecture

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

Rather than focusing upon (contents) of preventive measures themselves, including responding measures if appropriate

Not dealing with responsibility for harm to undersea infrastructure

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

Existing law on the protection of undersea infrastructure, UNCLOS and customary law

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

I. Introduction

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2. Terminology and Coverage of This Lecture

(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

In territorial seas, coastal States have sovereignty to protect undersea infrastructure unless preventing innocent passage of foreign vessels

I. Introduction

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2. Terminology and Coverage of This Lecture (continued)

(3) “Prevention” “Preventive”



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

Including responding measures

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

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

(3) Harmful acts

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

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

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

(1) The Right of Laying Undersea Infrastructure

EEZ (Article 58)

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. a right to undersea infrastructure (submarine cables) transporting energy from offshore facilities to land

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

(2) A Right to Construct Structure and Installations

In cases in which undersea infrastructure falls under Article 60

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

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

c. f. prescriptive jurisdiction: in principle, sovereign States have prescriptive jurisdiction in any sea areas

Regarding foreigners, beyond jurisdictional sea areas, enforcement jurisdiction is exercised with legal grounds under international law

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

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

(2) The Freedom of High Seas

No explicit provisions on enforcement jurisdiction for protecting these rights to lay undersea infrastructure

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

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

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

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

[2. Depending on Possible Interpretation of UNCLOS

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

No explicit provisions on enforcement jurisdiction for protecting such a right to lay undersea infrastructure

- 👉 (2) A Right to Construct Structure and Installations

In cases in which undersea infrastructure falls under article 60

Article 60 (2) (👉 Next slide)

How about undersea infrastructure in safety zones?

Arctic Sunrise Arbitration (merits)

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

Article 60, Paragraphs 1, and 2 (UNCLOS)

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of: (a) artificial islands; (b) installations and structures for the purposes provided for in article 56 and other economic purposes; (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

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

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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 Preventive Measures

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Under UNCLOS

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



Amendment of UNCLOS and even Creation of New Rules

Foundational Analyses Required for Such a Purpose

👉 III.

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

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

 **in detail in the following slides**

1. Function
 2. Harmful Acts against Undersea Infrastructure
 3. Entities that Incur Harm by Acts of Sabotage against Undersea Infrastructure
- Individuals (undersea infrastructure owned by individuals),
States (i. e. State owned undersea infrastructure)

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

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4. Responsible Entities for Acts of Sabotage against Undersea Infrastructure

Individuals (private vessels), States (State owned vessels, warships, military ships)

5. Acts of Sabotage: an “armed attack?” by States (even by individuals?)

International crimes (terrorist attacks by individuals)?

6. Undersea Infrastructure : military objectives? under the law of armed conflict

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

1. Functions of Undersea Infrastructure

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

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

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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



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

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

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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. Characteristics of Undersea Infrastructure from a Perspective of Legal Regulation

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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. Characteristics of Undersea Infrastructure from a Perspective of Legal Regulation

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4. Responsible Entities for Acts of Sabotage against Undersea Infrastructure

Individuals (Groups, NGOs)? States?



(1) Issues of the Law of State Responsibility

Attribution of act of individuals to States

(2) Issues of the International Criminal Law

- 1884 Paris Convention for the Protection of Submarine Telegraph Cables

- Criminalization of sabotage against undersea infrastructure under many countries' domestic laws

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

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

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

Threshold for violence to be “armed attacks”

Violent acts by individuals, but to be “armed attacks”



Exercise of the right of self-defence

6. Undersea infrastructure : military objectives?

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



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



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

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

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Formulation of New Rules to Protect Undersea Infrastructure

Fundamental Idea: the Right to Protect Uses of Sea

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

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

e. g. sabotage against undersea infrastructure

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

👉 My lecture at IMLI in 2024

• Atsuko Kanehara, ”The Houthi Rebels’ Attack against Japan-Related Vessel in the Red Sea: An Idea of ‘the Right to Protect Uses of Sea’,”

https://cigs.canon/en/article/20241224_8535.html

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

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

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Formulation of New Rules to Protect Undersea Infrastructure

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

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

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

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

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

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Formulation of New Rules to Protect Undersea Infrastructure

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

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

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

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

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

2. Depending on Possible Interpretation of UNCLOS

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

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

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

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

Formulation of New Rules to Protect Undersea Infrastructure

3. Subjects of the Right to Protect Uses of Sea

e. g. to protect undersea infrastructure

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

2. Harmful Acts against Undersea Infrastructure

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

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

[stakeholders]

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 (land)

Other possibilities?

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

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Formulation of New Rules to Protect Undersea Infrastructure

4. Responsible Entities for Harmful Acts to Undersea Infrastructure

(1) The law of the sea: vessel oriented

Wrongdoing vessel's flag State?

(2) Related Issues

- A possible shift from acts of individuals to those of States under the law of State responsibility

Attribution of individual acts to States under the law of State responsibility

Complicity between Individuals and States?

- **Acts of Sabotage: an “Armed Attack?”**

 **Usually by States**

Violent acts by individuals, but to be “armed attacks”



Exercise of the right of self-defence

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

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(3) Crimes under international criminal law and/or domestic laws

Crimes committed by individuals

- UNCLOS Articles 113 and 114

 **next slide**

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

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

Article 113

Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 114

Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline Every State shall adopt the laws and regulations necessary to provide that, if persons subject to its jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

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

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Formulation of New Rules to Protect Undersea Infrastructure

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

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



Proposed and considered above

(2) Due Regard

Article 56, Paragraph 2 in EEZ

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

Article 87, Paragraph 2 at high seas

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

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Formulation of New Rules to Protect Undersea Infrastructure

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

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

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



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

(related issue)



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

(related issue)

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

END

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