

FORUM

Conventional Jurisdictional Approaches to Protecting Submarine Cables and Pipelines

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Abstract

Damage caused to underwater infrastructure has increased in frequency over the past few years. Incidents in the North Sea and the Baltic Sea have shown that anchor-dragging ships can easily cause disruption to internet or electrical networks, along with examples of other methods of deliberate harm, such as the use of explosives. The main legal challenges to the protection of critical offshore infrastructure lie outside the limits of the territorial sea. Relevant treaty law grants stronger legal protections to wrecks, unmanned platforms and floating buoys than to cross-border submarine telecommunications and power cables or gas and oil pipelines. Whilst the legal framework is fragmented and contains significant gaps, the United Nations Convention on the Law of the Sea permits coastal States to enforce their laws for the protection of submarine cables and pipelines outside the territorial sea. Based on the effects doctrine and the protective principle, coastal States can extend their criminal jurisdiction over deliberate damage to submarine cables and pipelines connected to their territory. Furthermore, recent incidents in Europe show that suspected stateless ships can be interdicted by the coastal State.

Keywords: submarine cables; submarine pipelines; prescriptive jurisdiction; enforcement jurisdiction; adjudicative jurisdiction; UNCLOS; coastal State jurisdiction; flag State jurisdiction; navigational regimes; stateless ships

1. Introduction

Damage caused to underwater infrastructure by ships is increasingly common, as illustrated by numerous incidents over the past few years, including off the coasts of Norway, the British Shetland Islands and the Mediterranean coast of France, as well as in the Taiwan Strait (see Figure 1).¹ Recent incidents in the Baltic Sea have

¹ S Bashi, 'Taiwan's Undersea Cables in Maps: Can the Island Count on Its Internet?' *TaiwanPlus* (23 May 2025) <<https://www.taiwanplus.com/news/highlights/connected/2505222003/taiwans-undersea-cables-in-maps-can-the-island-count-on-its-internet>>; T Newdick, 'Norwegian Undersea Surveillance Network Had Its Cables Mysteriously Cut' *The Drive* (11 November 2021) <<https://www.thedrive.com/the-war-zone/43094/norwegian-undersea-surveillance-network-had-its-cables-mysteriously-cut>>; L Kirk, 'Mysterious Atlantic Cable Cuts Linked to Russian Fishing Vessels' *EUObserver* (26 October 2022) <<https://euobserver.com/nordics/156342>>;

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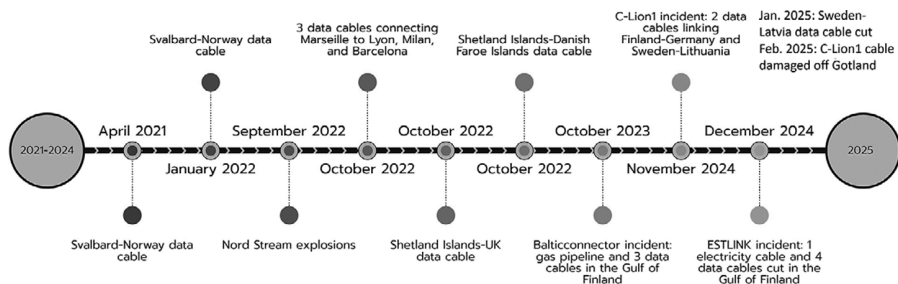


Figure 1. Timeline of cable cuts and damage to pipelines in Europe 2021–2025 (author's own, based on Infografix software).

demonstrated how a single anchor-dragging ship can cut a submarine data or electricity cable or cause a rupture of a submarine pipeline (e.g. the Balticconnector, a natural gas pipeline between Finland and Estonia).² The attack on the three Nord Stream pipelines further shows that methods such as explosives may also be used in sabotage or terrorist operations to destroy critical offshore infrastructure.³

These incidents have provoked general interest in the effectiveness of the current legal regime governing harm to submarine pipelines and cables. In this context, the article discusses the extent to which the coastal State can enforce its laws at sea (enforcement jurisdiction). The literature indicates that there are gaps in the framework of enforcement jurisdiction.⁴ However, the literature pays insufficient attention to the significance of prescriptive (law-making) jurisdiction.

The extent to which the coastal State may exercise its prescriptive jurisdiction determines, for example, whether it can decide to initiate criminal proceedings in

¹ 'Fibre Optic Cable Sabotage Causes Global Internet Slowdown' *Brussels Times* (25 October 2022) <<https://www.brusselstimes.com/311704/fibre-optic-cable-sabotage-causes-global-internet-slowdown>>; 'Damaged Cable Leaves Shetland Cut Off from Mainland' *BBC News* (20 October 2022) <<https://www.bbc.com/news/uk-scotland-north-east-orkney-shetland-63326102>>.

² A Lott, 'The Baltic Sea Cable-Cuts and Ship Interdiction: The C-Lion1 Incident' (*Articles of War*, 26 November 2024) <<https://lieber.westpoint.edu/baltic-sea-cable-cuts-ship-interdiction-c-lion1-incident>>; R Roslund, I Kempainen and T Joukanen, 'Katso, miten tankkeri kyntää datakaapeleiden yli – Suomi ehkä esti vielä pahemmat tuhotyöt, sanoo tutkija' *Yle Uutiset* (27 December 2024) <<https://yle.fi/a/74-20133635>>; 'Finland, Sweden Investigate Suspected Sabotage of Baltic Sea Telecoms Cable' *Reuters* (21 February 2025) <<https://www.reuters.com/world/europe/sweden-investigates-possible-breach-undersea-cable-baltic-sea-prime-minister-2025-02-21>>.

³ I Gozzi, 'Nord Stream: Denmark Closes Investigation into Pipeline Blast' *BBC News* (26 February 2024) <<https://www.bbc.com/news/world-europe-68401870>>. For a discussion of the Nord Stream explosions in the context of the law of naval warfare, see A Lott, 'Did an Alleged Ukrainian Attack against the Nord Stream Pipelines Violate the Law of Armed Conflict?' (*The NCLOS Blog*, 21 November 2023) <<https://site.uit.no/nclos/2023/11/21/did-an-alleged-ukrainian-attack-against-the-nord-stream-pipelines-violate-the-law-of-armed-conflict>>.

⁴ See, e.g. D Burnett, T Davenport and R Beckman (eds), *Submarine Cables: The Handbook of Law and Policy* (Brill 2013); W Heintschel von Heinegg, 'Protecting Critical Submarine Cyber Infrastructure: Legal Status and Protection of Submarine Communications Cables under International Law' in K Ziolkowski (ed), *Peacetime Regime for State Activities in Cyberspace* (NATO CCD COE Publication 2013) 291; H Ringbom and A Lott, 'Sabotage of Critical Offshore Infrastructure: A Case Study of the Balticconnector Incident' in A Lott (ed), *Maritime Security Law in Hybrid Warfare* (Brill Nijhoff 2024) 155.

respect of the suspected intentional damaging of a submarine cable or pipeline outside the limits of its territorial sea. Thus, not making the fullest permissible use of the coastal State's prescriptive jurisdiction might impede the effective governance of the risks of deliberate harm to submarine cables and pipelines.

One State may orchestrate a covert operation to damage another coastal State's submarine cables and pipelines. States can involve non-State actors in such operations, such as certain crew members of trawlers or cargo ships that drag their anchors along the seabed. This enables the State to maintain plausible deniability over its role in the entire operation. Yet even such suspected State-inspired operations can be the subject of a coastal State's domestic measures.⁵ Provided that the targeted coastal State has adopted the relevant domestic laws, it may use its enforcement and adjudicative jurisdiction to take measures against the suspected ship and its crew that have been used as proxies by another State. Failure to react to suspected intentional damage to submarine cables and pipelines will only embolden the perpetrators to continue inflicting further damage to them. The coastal State's inaction would send a signal that the perpetrators of such operations do not face any serious consequences, hence the need for States to adopt relevant prescriptive controls. However, first, they need clarity on the basis of their prescriptive jurisdiction.

This article discusses whether the effects doctrine and the protective principle provide a potential legal basis for such prescriptive jurisdiction. These legal concepts grant coastal States jurisdiction over foreign nationals or ships outside the territorial sea if their conduct has an effect within the territory of the coastal State, or threatens its fundamental interests (e.g. attempts to damage critical offshore infrastructure). The practical use of the effects doctrine and the protective principle to increase the legal protection of submarine cables and pipelines located outside the limits of the territorial sea is also discussed in the context of potential amendments to the coastal State's domestic legislation.

This article first focuses on the jurisdiction regarding damage to cross-border submarine cables and pipelines and artificial islands, installations and structures in the exclusive economic zone (EEZ) and on the continental shelf. Section 2 underlines that, from a legal perspective, the cables and pipelines that link the coastal State to its offshore infrastructure (e.g. oil and gas rigs, windfarms) are treated differently from those which do not and instead link countries or the coastal State's islands (e.g. Svalbard and Hawaii) to its mainland. Section 3 distils from the fragmented legal framework the potential legal basis for exercising enforcement jurisdiction in respect of offshore infrastructure beyond the outer limits of the territorial sea. Section 4 examines the recent practice relating to some of the European coastal States, measures in respect of foreign ships suspected of not having nationality that might pose a threat to their maritime security.

⁵ For example, Finland interdicted and arrested the tanker *Eagle S* for the cable cuts on Christmas Day of 2024. The *Eagle S* forms part of the Russian shadow fleet. See, e.g. MW Bockmann, 'Russia-Linked Cable-Cutting Tanker Seized by Finland "Was Loaded with Spying Equipment"' *Lloyd's List* (27 December 2024) <<https://www.lloydslist.com/LL1151955/Russia-linked-cable-cutting-tanker-seized-by-Finland-was-loaded-with-spying-equipment>>.

2. Criminal jurisdiction over damage to submarine cables and pipelines in the EEZ and on the continental shelf

An analysis of the protection of submarine cables and pipelines in the EEZ and on the continental shelf does not require an extensive discussion on the wider jurisdictional powers in these maritime zones, although one needs to be sensitive to the general limits on resource-related sovereign rights and the protection of high seas freedoms.⁶ According to Article 56(1) of the United Nations Convention on the Law of the Sea (UNCLOS),⁷ the coastal State has sovereign rights for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. Sovereign rights include associated rights to install and regulate submarine pipelines and cables to and from offshore installations (Article 79(4) UNCLOS). Jurisdiction over cables and pipelines to offshore platforms is implicitly expansive since it is connected to the coastal State's exclusive control over the natural resources in its EEZ and continental shelf.

On the continental shelf and in the EEZ, all States enjoy the freedom of the laying of submarine cables and pipelines (Articles 58(1), 79(1) and 87(1)(c) UNCLOS). It thus follows that cables or pipelines located in the EEZ and on the continental shelf may or may not have any connection to the coastal State.⁸ There are potentially four types of submarine cables and pipelines depending on the nexus with different States: first, those connecting offshore platforms to the mainland coast; second, those connecting the coastal State to other States; third, those that traverse the coastal State's EEZ or continental shelf, but connect only between third States. The fourth type are those which connect a coastal State's islands to the mainland. These often lie on the landward side of the system of straight baselines or within the limits of the territorial sea and thus in most cases fall clearly under the coastal State's full jurisdiction. However, they may also be partly located in areas beyond the coastal State's jurisdiction (e.g. in relation to Hawaii) or in its EEZ and on its continental shelf (e.g. in relation to Svalbard), in which cases the applicable legal framework is similar to the second category of cables and pipelines that connect the coastal State to other States.

Thus it is not necessarily the case that damage to every type of cable or pipeline confers jurisdiction on the coastal State in relation to such an act. Nor does submarine infrastructure outside the limits of the territorial sea fall under the jurisdiction of the flag State (unlike it would with ships). This raises questions over the proper jurisdictional basis required for States to prescribe against such harmful acts.

Here, it is worth noting that there are extensions of the territoriality principle for establishing prescriptive jurisdiction when deemed necessary to protect the vital interests of the coastal State. In particular, under Article 303(2) in combination with

⁶ For a comprehensive analysis of the coastal State's jurisdiction in the EEZ, see, e.g. Z Sun, *Finding a Balance in the Exclusive Economic Zone: Conflict and Stability in the Law of the Sea* (CUP 2025).

⁷ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS).

⁸ S Kaye, 'International Measures to Protect Oil Platforms, Pipelines, and Submarine Cables from Attack' (2007) 31 TulMarLJ 377, 418.

Article 33 UNCLOS, the coastal State may presume that the removal from the seabed of objects of an archaeological and historical nature outside the limits of the territorial sea, but within the limits of the coastal State's contiguous zone, without its approval is equated with a violation of the coastal State's laws on its sovereign territory. As such, the coastal State's prescriptive and enforcement jurisdiction, which it may exercise over its territorial sea, exceptionally extends to a maritime area outside the limits of its territorial sea.

Furthermore, the following analysis shows that a similar level of exclusive jurisdiction that stems from the extension of territoriality and sovereign rights is granted to the coastal State in its EEZ and on its continental shelf over artificial islands, structures and installations. However, cross-border submarine cables and pipelines are generally considered as being excluded from the concepts of structures and installations. Article 60(2) UNCLOS provides that the coastal State has exclusive jurisdiction over installations and structures in its EEZ, whereas the coastal State's jurisdiction regarding submarine cables and pipelines is narrower under Article 79(2) and (4) UNCLOS. Consequently, the international law of the sea currently grants stronger legal safeguards to the protection of wrecks, unmanned platforms and floating buoys than to cross-border submarine telecommunications and power cables or gas and oil pipelines that are essential to the functioning and wellbeing of States' populations.

2.1. Jurisdiction for the protection of artificial islands, structures and installations

To extend the prescriptive jurisdiction for the protection of artificial islands, structures and installations, the coastal State can make the fullest use of the zonal approach of UNCLOS. The establishment of safety zones around offshore infrastructure serves as an example of how to do this.⁹ However, according to the majority view in legal scholarship,¹⁰ cross-border submarine cables and pipelines are excluded from the

⁹ For a discussion of safety zones in the context of the protection of critical offshore infrastructure in peacetime and in naval warfare, see A Lott, 'The Protection of Critical Undersea Infrastructure within and beyond the Limits of the Territorial Sea under the Jus ad Bellum and Jus in Bello' in Lott (n 4) 125, 129–36. Notably, rule 34 of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (International Institute of Humanitarian Law, 12 June 1994) provides that: 'If hostile actions are conducted within the exclusive economic zone or on the continental shelf of a neutral State, belligerent States shall, in addition to observing the other applicable rules of the law of armed conflict at sea, have due regard for the rights and duties of the coastal State, inter alia, for the exploration and exploitation of the economic resources of the exclusive economic zone and the continental shelf and the protection and preservation of the marine environment. They shall, in particular, have due regard for artificial islands, installations, structures and safety zones established by neutral States in the exclusive economic zone and on the continental shelf.' On the other hand, recent State practice (e.g. the attacks against the Nord Stream pipelines) indicates that submarine cables and pipelines could be treated as military objectives. For example, Gudev and Ofitserov-Belsky have found that 'the militarization of submarine civilian infrastructure, in particular the equipping of submarine cables with equipment enabling reconnaissance activities in the Baltic Sea, allows them to be considered part of the military infrastructure.' P Gudev and D Ofitserov-Belsky, 'Protection and Militarization of Undersea Infrastructure in the Baltic Sea: Problem Discourse, Legal Aspects, and Practical Steps' (2025) 68 Pathways to Peace and Security 100 (author's translation).

¹⁰ See, e.g. International Law Association (ILA), 'Submarine Cables and Pipelines under International Law: Interim Report' (2024) 22–23. <<https://www.ila-hq.org/en/documents/ilathi-1>>.

scope of Article 60(4) UNCLOS—unlike other cables and pipelines, platforms and tunnels, such as the German-Danish road and rail tunnel in the EEZ corridor of the Fehmarn Belt, that fall under the legal scope of installations and structures. Structures include, for example, offshore wind farms, gas or oil platforms and tunnels. Installations include cables or pipelines that connect, for instance, wind turbines or oil or gas platforms to the coast, thus permitting safety zones to be established around those submarine cables and pipelines that connect to offshore structures. In this context, the regulation of such cables and pipelines that do not interlink States but instead connect an offshore structure (e.g. oil or gas rig) to the mainland coast, is considered as incidental to the regulation of these offshore objects.¹¹ Examples of artificial islands that are entitled to a safety zone under Article 60(2) UNCLOS include the planned construction of energy islands off Bornholm Island in the Danish EEZ and German EEZ, mainly for producing hydrogen from surplus wind energy.

Article 60(2) UNCLOS stipulates that the coastal State has exclusive jurisdiction over artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations. The same applies with regard to artificial islands, installations and structures on the continental shelf (Article 80 UNCLOS). In this context, it is important that the domestic criminal law of the coastal State is not more restrictive of the protection of offshore infrastructure located in the EEZ or on the continental shelf than international law. However, the exact scope of a coastal State's exclusive jurisdiction under Article 60(2) remains somewhat unclear. This matter has not been extensively explored in the literature. Donald Rothwell mentions that, under UNCLOS, '[n]o precise indicator is given as to how this exclusive coastal State right and jurisdiction is to be exercised'.¹² Among other things, Article 60(2) UNCLOS seems to permit the coastal State's exclusive jurisdiction to criminalise damage to artificial islands, installations and structures. As examined in Section 3, Article 113 UNCLOS imposes an obligation on flag States to criminalise the damage or destruction of a cross-border cable or pipeline located outside the territorial sea by a ship sailing under its flag or by a person under its jurisdiction. By contrast, Article 60(2) UNCLOS potentially enables the criminalisation of damage to cables or pipelines that connect the coastal State's territory to its offshore platforms by individuals of any nationality and by ships sailing under any flag. Unlike Article 113, Article 60(2) UNCLOS does not rest on the flag State's will to exercise its jurisdiction over the suspected ship.

The Proelss' commentaries confirm that the list of issues provided in Article 60(2) is not exhaustive, and that the coastal State may establish and enforce additional environmental regulations and exercise criminal jurisdiction concerning artificial islands, installations and structures or offences committed against them.¹³ Furthermore, it is argued that:

In contrast, in light of the principal of flag State jurisdiction, the rules and regulations enacted by the coastal State based on its exclusive jurisdiction in terms of Art 60(2) cannot

¹¹ See also A Lott, 'Marine Environmental Protection and Transboundary Pipeline Projects: A Case Study of the Nord Stream Pipeline' (2011) 27 *Utrecht Journal of International and European Law* 57.

¹² DR Rothwell, *Islands and International Law* (Hart 2024) 26.

¹³ A Proelss (ed), *United Nations Convention on the Law of the Sea: A Commentary* (CH Beck/Hart/Nomos 2017) 473.

lawfully be extended to supply ships or other vessels flying the flag of a State other than the coastal State which call at one of the objects referred to by this provision.¹⁴

This exception may concern situations where a foreign-flagged ship stays at a port of, for example, an artificial island. The internal affairs concerning the crew members on board the ship at the port remain subject to the jurisdiction of the flag State. By contrast, if a vessel is engaged in support activities in respect of an offshore structure, then the activities on board the ship might no longer be considered purely internal matters. Instead, such actions might be categorised as resource-related activities that are subject to the coastal State's exclusive jurisdiction.¹⁵

In this context, Churchill, Lowe and Sander find that:

[s]ince no qualification is made, such “exclusive jurisdiction” would appear to include both legislative and enforcement jurisdiction, and to be exercisable in respect of both nationals and non-nationals of the coastal State on an artificial island, installation or structure in its EEZ.¹⁶

In addition, Gemma Andreone notes that ‘[i]nvariably, the exercise of exclusive jurisdiction over those spaces implies an assumption of responsibility of the coastal State over all the activities and the events occurring on them’.¹⁷ There is not much case law on this matter, but Andreone refers to a 2012 judgment of the European Court of Justice (ECJ) that rationalises this point using an analogy with the State's territorial jurisdiction.¹⁸ In the *Arctic Sunrise Arbitration*, the Annex VII arbitral tribunal was concerned with the legality of Russia's measures for the protection of a drilling platform in its EEZ and on its continental shelf. The tribunal did not explain how this fell within Article 60(2) but did note that such jurisdiction must be exercised with due regard to the rights and duties of other States, and in a manner compatible with UNCLOS.¹⁹ A similarly inclusive approach to jurisdiction was adopted by the arbitral tribunal in the *South China Sea Arbitration*.²⁰

Based on Articles 60(2) and 80 UNCLOS, the literature on this matter and the 2012 ECJ judgment, it could be argued that the coastal State may exercise its criminal jurisdiction over an offshore windfarm, artificial island, (drilling) platform or tunnel or over the submarine cables or pipelines connecting these objects to the coast.

¹⁴ *ibid.*

¹⁵ Cf *Filleting within the Gulf of St Lawrence (Canada v France)* (1986) 19 RIAA 225, 225–96. This arbitration concerned the interpretation of UNCLOS (n 7) art 62 in respect of conservation and management rights as part of the coastal State's sovereign right to include activities on board vessels. The tribunal considered that filleting was indirectly covered by art 62, allowing for an expansive reading of the coastal State's authority.

¹⁶ R Churchill, V Lowe and A Sander, *The Law of the Sea* (4th edn, Manchester University Press 2022) 268.

¹⁷ G Andreone, ‘The Exclusive Economic Zone’ in DR Rothwell et al (eds), *The Oxford Handbook of the Law of the Sea* (OUP 2015) 172.

¹⁸ Case C-347/10 *A Salemink v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen* [2012] ECLI:EU:C:2012:17, paras 34–35.

¹⁹ *Arctic Sunrise Arbitration (Netherlands v Russian Federation)* (Award, 14 August 2015) UNCLOS Annex VII Tribunal, paras 229–230.

²⁰ *South China Sea Arbitration (Philippines v China)* (Award, 12 July 2016) UNCLOS Annex VII Tribunal, paras 1034–1035.

2.2. Criminalisation of damage to submarine cables and pipelines in the EEZ

By contrast, in the literature, there is to date no indication that any State has sought to criminalise the damaging of submarine cables and pipelines by foreign ships or nationals outside the limits of the territorial sea even if these objects are connected to its territory.²¹ Such a jurisdictional extension would first need to be explicitly stipulated under the coastal State's domestic criminal laws.

In this context, the Estonian Government, for example, has pioneered a draft law for the amendment of its Penal Code that, if passed by the Estonian Parliament, would be applicable also to foreign ships and nationals suspected of damaging submarine cables and pipelines in the Estonian EEZ and on its continental shelf.²² A provision is proposed which expands the applicability of the Estonian Penal Code to acts against the legal rights of Estonia (section 9) in the Estonian EEZ and on the continental shelf to the extent that such acts damage a power or data cable, pipeline, electricity production facility (e.g. an offshore windfarm) or traffic infrastructure (e.g. a road or rail tunnel) that is connected to the Estonian territory (section 2). Such acts would be punishable by a fine (up to 4 billion Euros in the case of legal persons) or up to ten years' imprisonment (section 6).

The Estonian draft law implements Article 113 UNCLOS to the extent that the same maximum punishments would apply (in combination with section 6(2) of the Penal Code) to acts committed on board ships registered in Estonia. The punishments would apply regardless of the location of the ship or aircraft at the time of commission of the offence or the penal law of the country where the offence is committed, if such acts damage or destroy a submarine power or data cable or a submarine pipeline that is used for the coastal State's vital (critical) services (section 6 of the draft law). Notably, the broader use of terms is intentional, since viewed separately not every submarine data cable will be considered 'critical infrastructure' (e.g. if the matter should be decided upon by a court), but submarine data cables connected to the coastal State's territory are all meant to sustain the coastal State's critical services.²³ Thus, the cutting of just one of

²¹ ILA (n 10) 29. Notably, the UK Parliament has recently recommended that for increasing legal protections against 'malicious cable damage', '[t]he Government's review of legislation must pay particular attention to strong deterrents, such as major fines and criminal liability, that can be applied to private actors suspected of working for or on behalf of foreign states'. Joint Committee on National Security Strategy, 'Subsea Telecommunications Cables: Resilience and Crisis Preparedness' (2025, HL 179, HC 723) 40.

²² Cf *Regina v Keyn* (1876) 2 Ex Div 63, as a result of which the Territorial Waters Jurisdiction Act 1878 was passed to rectify the gap in criminal jurisdiction concerning foreign vessels passing through the English territorial sea. The draft Estonian law and its explanatory note are available on the webpage of the Estonian Parliament: see *Karistusseadustiku ja kriminaalmenetluse seadustiku muutmise seadus (karistusõiguslik jurisdiktsioon ja merealuse taristu lõhkumine)* 656 SE <<https://www.riigikogu.ee/tegevus/eelnoud/eelnou/60c1b7d3-a643-4fdb-a63d-766b8fc976d2/karistusseadustiku-ja-kriminaalmenetluse-seadustiku-muutmise-seadus-karistusõiguslik-jurisdiktsioon-ja-merealuse-taristu-lohkumine>>. On 8 October 2025, the Estonian Parliament held the first reading of the draft act. For an English translation of the Estonian Penal Code, see <<https://www.riigiteataja.ee/en/eli/507052025001/consolide>>.

²³ According to the Estonian Emergency Act, a vital service is a service that has an overwhelming impact on the functioning of society and the interruption of which is an immediate threat to the life or health of people or to the operation of another vital service or service of general interest or causes major environmental damage and has a major impact on the economy of the State and national defence. A vital service is regarded in its entirety together with a building, piece of equipment, staff, reserves and other similar facilities indispensable to the operation of the vital service. See *Hädaolukorra seadus (Emergency Act) 2017*, section 2(4) <<https://www.riigiteataja.ee/en/eli/510062025005/consolide>>.

the many submarine data cables connected to the coastal State's territory would be a punishable offence, irrespective of whether it causes significant disruption to the internet services of the coastal State.

As required by Article 113 UNCLOS, the breaking or injury of a submarine cable or pipeline (against Estonia or by Estonian nationals or ships registered in Estonia on the high seas) would be punishable, whether done wilfully or through culpable negligence. The exception stemming from the criminal law rule of necessity would apply to the extent that the act would not be unlawful if the person commits the act in order to avert a direct or immediate danger to their legal rights or those of another person, and if the means chosen are necessary for the aversion of the danger and the interest protected is evidently of higher importance than the interest subject to damage.²⁴

It seems to be implicit that a State that fails to criminalise activities under domestic law exposes itself to a potential inter-State claim under Part XV UNCLOS. Any State Party that is a victim of a cable cut or pipeline rupture due to an anchor-dragging foreign-flagged ship would be entitled to commence arbitration under Annex VII UNCLOS against the flag State for not meeting its obligation of result under Article 113 UNCLOS. The dispute would not be subject to any of the exceptions to compulsory dispute settlement under Article 298 UNCLOS, for example, maritime boundary delimitation, historic bays and titles and military activities conducted by warships or government ships and aircraft. Such 'strategic litigation' does not provide a definite answer to the problem addressed in this article, but it could have significance for the practice of vessels and States (including those flying flags of convenience), so that the current small minority of States that have met their obligation to implement Article 113 UNCLOS could eventually become the majority.

Estonia's legislative proposal illustrates how the effects doctrine and the protective principle under international law can be implemented by a coastal State to extend the legal protection of its submarine cables and pipelines. Wolff Heintschel von Heinegg,²⁵ Aurel Sari²⁶ and others²⁷ argue that Article 113 UNCLOS does not prevent coastal States from extending their criminal laws to the submarine cables and pipelines that are connected to their territory. The coastal State's criminal jurisdiction over the destruction or damage of submarine cables and pipelines located in its EEZ and on its continental shelf could derive from, for example, the effects doctrine and protective principle,²⁸ provided that the cable or pipeline is connected to the territory of the coastal State.²⁹

Estonia's recent legislative proposal is focused on the cables and pipelines that are located in its EEZ and on its continental shelf. There are no submarine cables or pipelines that would head from Estonia's territory to the high seas and the Area (that is,

²⁴ Estonian Penal Code (n 22) section 29.

²⁵ Heintschel von Heinegg (n 4) 291, 311.

²⁶ A Sari, 'Protecting Maritime Infrastructure from Hybrid Threats: Legal Options' (Hybrid Council of Europe Research Report No 14, March 2025) 29.

²⁷ In the context of the Balticconnector incident, see the discussion in Ringbom and Lott (n 4) 173.

²⁸ In the context of the Eagle S incident, this was explicitly confirmed by the Helsinki District Court. See Helsingin Käräjäoikeus, Judgment No 1035 6447 (3 October 2025) 10 (in Finnish, on file with the author).

²⁹ See further ILA (n 10) 28–29.

the seabed and the ocean floor and subsoil thereof, beyond national jurisdiction). However, unlike in the Baltic Sea and many other regional seas, submarine cables in much of the rest of the world are predominantly located in the high seas and the Area (by contrast, submarine pipelines are mostly situated within the limits of the EEZ and continental shelf). It must therefore be examined whether any legal protections for submarine cables in areas beyond national jurisdiction exist.

In principle, the effects doctrine and protective principle may also serve as the legal basis for the coastal State's prescriptive jurisdiction over a foreign-flagged ship that is suspected of damaging submarine cables beyond the EEZ and the continental shelf. In theory, the protective principle and the effects doctrine can be invoked by the coastal State that is connected to the cable in respect of criminal acts against it on the high seas and in the Area as long as the effects of the damage caused to a cable are felt by the coastal State. In this context, the important limitation is the coastal State's physical connection to the cable, since otherwise damage to a cable would likely result in legal quagmire from the perspective of jurisdictional conflicts with other States. This is due to the interconnectedness of cyberspace and the fact that each data cable usually, but not always (especially in the case of cables connecting islands of a particular State to its mainland), supports the internet traffic of numerous States. Thus, in order to reduce the level of potential jurisdictional conflicts, it would be first and foremost the prerogative of the State that is connected to the cable to exercise its jurisdiction against the suspected vessel in maritime areas beyond national jurisdiction. The legal basis for taking enforcement action against the suspected ship in such areas is unclear and essentially untested, but it could stem from such legal concepts as the plea of necessity, piracy, terrorism, the flag State/captain's consent, stateless ships or special treaty clauses (see Section 3).

The effects doctrine refers to a situation in which the coastal State has jurisdiction outside its territorial sea over a foreign national or ship if the conduct of the vessel, or those on board the vessel, has a substantial effect on the territory of the coastal State.³⁰ In the context of offshore infrastructure, the protective principle is concerned with the question of whether the damage poses a threat to the fundamental interests of the coastal State.³¹ The above criteria would be satisfied if the damage or destruction of submarine cables and pipelines causes significant harm to the population of the coastal State (e.g. disruptions in internet connectivity or electrical networks).

Since submarine cables and pipelines belong to legal entities, an additional basis for determining the coastal State's criminal jurisdiction stems from the passive personality principle that is concerned with whether a crime pertains to the property of the coastal State's nationals.³² In this context, it is relevant to determine if the submarine cable or pipeline belongs to a legal entity registered in the coastal State.³³ It is possible, but

³⁰ *ibid*; SS "*Lotus*" (*France v Turkey*) (Judgment) [1927] PCIJ Ser A No 10, 23, 25.

³¹ ILA (n 10) 29.

³² *ibid*.

³³ D Azaria and G Ulfstein, 'Are Sabotage of Submarine Pipelines an "Armed Attack" Triggering a Right to Self-Defence?' (*EJIL:Talk!*, 18 October 2022) <<https://www.ejiltalk.org/are-sabotage-of-submarine-pipelines-an-armed-attack-triggering-a-right-to-self-defence>>. See also Lott (n 9) 140.

perhaps rather unlikely, that the coastal State's exercise of prescriptive jurisdiction over cables and pipelines located outside the limits of the territorial sea but connected to their territory would trigger protests from other States.³⁴ Such jurisdiction essentially fills a gap without interfering with the jurisdiction of other States over those objects.

2.3. Adjudicative jurisdiction: Reflections on the *Eagle S* case

It is as yet unclear whether the Estonian legislative amendments permit a case to be brought before an Estonian court against members of the crew of a ship suspected of intentionally dragging its anchor to damage Estonia's underwater infrastructure. It is difficult to tell if the damage to submarine cables and pipelines due to the dragging of anchors or their heavy chains has been caused deliberately. Yet the fact that the *NewNew Polar Bear* and the *Yi Peng 3* dragged their anchors on the seafloor for over 150 kilometres, and the *Eagle S* had dragged its anchor for close to 100 kilometres by the time it was stopped, suggests that the damage in the Balticconnector, C-Lion1 and EstLink 2 incidents was at least in part due to significant negligence and poor seamanship. In 2025, the Chinese captain of the *NewNew Polar Bear* was taken into custody for the 2023 Balticconnector incident and charged, inter alia, with 'a breach of navigation safety protocols by failing to ensure the ship had enough anchors'.³⁵ Finland charged the captain, first and second officers of the *Eagle S* with aggravated sabotage and aggravated telecommunications interference in the EstLink 2 incident.³⁶

The challenges that the coastal State faces in exercising its adjudicative jurisdiction over incidents of navigation that result in damage to the coastal State's submarine cables or pipelines in its EEZ are illustrated by the handling of the *Eagle S* case by the Finnish judiciary. In October 2025, the Helsinki District Court dismissed the charge in the *Eagle S* case. Based on the facts of the case, the court concluded that the Finnish criminal law does not apply to anchor-dragging in the Finnish EEZ and on the continental shelf in cases where the incident results in the cutting of cables connected to the Finnish territory. The District Court found that:

There was no allegation of the defendants' having intentionally damaged the cables referred to in the charge. According to the charge, they had, however, been aware of the poor state of repair of the anchor windlass and had intentionally neglected their duties and were guilty of lawbreaking on that basis. ... [T]he act did not result in the kinds of consequences to

³⁴ For a somewhat different conclusion, see Sari (n 26) 30: 'Assuming that coastal states are entitled to extend their domestic criminal law to foreign vessels suspected of damaging their submarine cables in the EEZ, such authority would be meaningless unless it also implied a right to take measures necessary to enforce those rules. Although not without merit, this argument is open to objections. In essence, it takes the right of coastal states to exercise criminal jurisdiction on board foreign vessels, as recognized in Article 27 UNCLOS, and extends its applicability from the territorial sea into their EEZ. Whether doing so is compatible with UNCLOS remains an open question.'

³⁵ 'Captain Appears in Hong Kong Court on Charges from 2023 Pipeline Break' *Maritime Executive* (9 May 2025) <<https://maritime-executive.com/article/captain-appears-in-hong-kong-court-on-charges-from-2023-pipeline-break>>.

³⁶ 'Eagle S Captain, Two Officers to Face Trial over Suspected Sabotage of Undersea Cables' *Yle News* (11 August 2025) <<https://yle.fi/a/74-20176864>>.

Finland's energy supply or telecommunications that are required to satisfy the statutory definition of criminal mischief or aggravated criminal mischief.³⁷

The Court found that the cable cuts resulted in 'very serious economic losses within the meaning of the statutory definition of the offence pursued by the alternative charge, i.e. aggravated criminal damage',³⁸ but concluded that it lacked jurisdiction to decide on the case. The District Court found that the flag State (Cook Islands) and the defendants' (captain, first and second officer) State of citizenship had penal jurisdiction in the case, since the dragging of the anchor was caused by a failure of the anchor securing mechanism, and hence the cable cuts should be classified as an incident of navigation under Article 97 UNCLOS on penal jurisdiction in an incident of navigation.³⁹ Surprisingly, the District Court afforded protection to the freedom of navigation under the standard enjoyed on the high seas, ignoring the fact that, according to Article 58(2) UNCLOS, Article 97 applies to the EEZ in so far as it is not incompatible with the legal regime of the EEZ (Part V UNCLOS). Furthermore, the District Court found that, 'the application of Finnish criminal law is also opposed by Article 113 of UNCLOS ... [since] only cable damage caused by a Finnish citizen and a Finnish ship outside Finnish territory would be dealt with in accordance with Finnish law'.⁴⁰

In essence, the District Court assessed the incident from the perspective of the freedom of navigation as it applies in areas beyond national jurisdiction, but the Eagle S incident did not occur on the high seas. The cables were cut on the Finnish continental shelf and in the Finnish EEZ. Pursuant to Article 58(2) UNCLOS, the applicability of Article 97 UNCLOS (and, consequently, the flag State/nationality jurisdiction) is limited by the extent of the coastal State's sovereign rights and jurisdiction (e.g. fishing, extraction of oil and gas, marine environmental protection, protection of installations and structures). By contrast, the District Court found that the only possible limitation to the flag State/nationality jurisdiction in the case of the Eagle S incident could stem from intentionality, basing this argument on the International Law Association's 2024 Interim Report on 'Submarine Cables and Pipelines under International Law',⁴¹ including the sources discussed therein, such as the International Law Commission's (ILC) 1956 Draft Articles on the Law of the Sea⁴² and *The Enrica Lexie Incident*.⁴³ The District Court found that:

the events described in the indictment were directly related to the movement and steering of the vessel, as is evident from the *Enrica Lexie* decision. It has not even been alleged in the

³⁷ 'Käräjäoikeuden ratkaisu EagleS -alukseen liittyvässä rikosasiassa' (District Court of Helsinki Press Release, 3 October 2025) <<https://tuomioistuimet.fi/karajaoikeudet/helsinginkarajaoikeus/fi/index/tiedotteet/2025/karajaoikeudenratkaisueagles-alukseenliittyvassarikosasiassa.html>>.

³⁸ *ibid*; Finland's Deputy Prosecutor General appealed the case.

³⁹ Helsingin Käräjäoikeus, Judgment of 3 October 2025 (n 28) 15. Article 97 UNCLOS stipulates that, 'in the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of 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'.

⁴⁰ Helsingin Käräjäoikeus, Judgment of 3 October 2025 (n 28) 15 (author's translation).

⁴¹ ILC (n 10) 16.

⁴² ILC, 'Articles Concerning the Law of the Sea with Commentaries' in, UNYBILC vol II (1956) UN Doc A/CN.4/SER.A/1956/Add.1. 265.

⁴³ *The Enrica Lexie Incident (Italy v India)* (Award, 21 May 2020) UNCLOS Annex VII Tribunal, paras 650–653.

case that the vessel's anchor was used to intentionally damage cables in the manner described in the legal literature above. The issue was therefore a maritime accident within the meaning of Article 97 of the Convention on the Law of the Sea.⁴⁴

The District Court based its deliberations on the Report's subchapter 2(a) entitled 'Areas beyond national jurisdiction' and turned a blind eye to subchapter 2(b) entitled 'Areas beyond sovereignty but within national jurisdiction'. The latter would have provided the District Court with the relevant scholarly input on the matter at hand. Among other relevant legal bases, the District Court could have at least addressed its potential adjudicative jurisdiction under UNCLOS based on Finland's jurisdiction in its EEZ for the protection and preservation of the marine environment (Article 56(1)(b)(iii) UNCLOS). The Report's subchapter 2(b) even elaborates on the potential relevance of universal jurisdiction granted under the piracy clause in respect of damage caused to private property outside the limits of the territorial sea (see Table 1).

It could be argued that the criminal law jurisdiction in the Eagle S case was based on three grounds: (1) public—to sustain the coastal State's critical services (protective principle and the effects doctrine); (2) private—to protect private property on the seabed against violent acts (potentially, Article 101(a)(ii) UNCLOS); (3) environmental protection—the prevention of marine pollution from the immediate threat to the Balticconnector gas pipeline (Articles 56(1)(b)(iii) and 79(2) UNCLOS).

The District Court explicitly put emphasis on the fact that the EstLink 2 power cable cut by the Eagle S carried electricity mostly from Finland to Estonia (and not in the opposite direction).⁴⁵ While the Finnish power market was largely unaffected, the cutting of the EstLink 2 raised electricity prices in Estonia by about a tenth in the winter and spring months, and threatened the Baltic States' exit from the Russian electric grid and the successful synchronisation with the Continental European electric grid in February 2025.⁴⁶ Thus, the consequences to the Baltic States of the cable cuts reportedly due to anchor-dragging by the Eagle S were more significant based on the 'scale and effects' test that the District Court used in its judgment.⁴⁷ The District Court deemed the damage caused to the Finnish telecommunications sector to be on a relatively small scale (*verrattain vähän*),⁴⁸ even though the operator of the C-Lion1 cable stated to the District Court that the anchor-dragging resulted in the loss of all direct data transmission between Germany and Finland that was dependent on the C-Lion 1 and that '[t]he damage jeopardised operations that require real-time connectivity, such as trading on the stock exchange'.⁴⁹ He also explained that, '[m]ultiple simultaneous damage [to submarine cables] could cause, for example, the internet to not work if the servers are outside Finland'.⁵⁰ The Eagle S cut four submarine data cables and could have cut many more had it not been intercepted by the Finnish authorities.

⁴⁴ Helsingin Käräjäoikeus, Judgment of 3 October 2025 (n 28) 15 (author's translation).

⁴⁵ *ibid* 13.

⁴⁶ A Lott, 'Christmas Day Cable Cuts in the Baltic Sea' (2025) 190 *Tidskrift i Sjöväsendet* 61, 62.

⁴⁷ Helsingin Käräjäoikeus, Judgment of 3 October 2025 (n 28) 12–13.

⁴⁸ *ibid* 12.

⁴⁹ *ibid* 11 (author's translation).

⁵⁰ *ibid*.

3. Enforcement jurisdiction over damage to submarine cables and pipelines

UNCLOS does not expressly elaborate on the coastal State's enforcement jurisdiction over damage to cross-border submarine cables and pipelines in the EEZ and on the continental shelf. In the long term, the adoption of, for example, an implementing agreement of UNCLOS on the protection of critical offshore infrastructure outside the limits of the territorial sea might enable this security gap to be filled.⁵¹ However, it is unclear if there is sufficient global support for the adoption of such a treaty. For a couple of decades, Robert Beckman has called for the adoption of a new treaty on the protection of submarine cables.⁵² Furthermore, one of the main limitations of such an approach is that the agreement would be binding only on those States that have become parties to it. Therefore, such a progressive development of the law would be unlikely to address the security gap in the foreseeable future. In the short term, States can consider reinterpreting the current law or promoting new regional customary law on the protection of submarine cables and pipelines in areas that have been most impacted by sabotage and suspected intentional damage to these objects, such as in the Baltic Sea.

The current protection regime for cross-border submarine cables is primarily based on the Convention for the Protection of Submarine Telegraph Cables (Paris Convention).⁵³ The treaty has only a limited number of States Parties. It is also unclear whether the Paris Convention reflects customary international law, as asserted by the United States (US).⁵⁴ Ultimately, this question is for an international court or tribunal to decide, particularly because there is very limited State practice under the Paris Convention in relation to the boarding of a foreign vessel suspected of damaging cables connected to the coastal State outside the territorial sea.⁵⁵ Article 10 Paris Convention stipulates, *inter alia*, that the coastal State's representatives 'may demand from the captain or master the production of the official documents proving the nationality of the said vessel' and 'formal statements of the facts may be prepared by the said officers, whatever may be the nationality of the vessel incriminated'. Considering the unclear legal status of this provision and the limited State practice in its application, it is unlikely that any party to the Paris Convention is currently interested in exploring the limits of Article 10,⁵⁶ especially since boarding would only allow for the inspection of the vessel's documentation and questioning of the crew under Article 10.

⁵¹ See R Pedrozo, 'Implementing Agreement to Enhance Protection of Critical Undersea Infrastructure' (2025) 106 ILS 146, 147–72.

⁵² R Beckman, 'A New International Convention or Protocol' (Workshop on Submarine Cables and the Law of the Sea, Centre for International Law, National University of Singapore, 15 December 2009) <<https://cil.nus.edu.sg/wp-content/uploads/2009/10/Robert-Beckman-Session-6.pdf>>; R Beckman, 'Protecting Submarine Cables from Intentional Damage: The Security Gap' in D Burnett, T Davenport and R Beckman (eds), *Submarine Cables: The Handbook of Law and Policy* (Brill 2013) 281, 293–94.

⁵³ Convention for the Protection of Submarine Telegraph Cables (adopted 14 March 1884, entered into force 1 May 1888) 1901 ATS 1.

⁵⁴ ILA (n 10) 16.

⁵⁵ D Guilfoyle, TP Paige and R McLaughlin, 'The Final Frontier of Cyberspace: The Seabed beyond National Jurisdiction and the Protection of Submarine Cables' (2022) 71 ICLQ 663.

⁵⁶ For example, it is unclear whether the flag State needs to be a State Party to the Paris Convention to enable the coastal State to board the suspected ship and what the limits are in practice for the questioning of the crew by the coastal State authorities.

In the case of cable cuts due to anchoring or trawling, the coastal State does not have the right to board a vessel flying a foreign flag for environmental protection considerations. A break or damage to a cable does not cause marine environmental pollution. Rather, it is favourable to the marine environment, including to fish.⁵⁷ Marine pollution is defined in Article 1(1)(4) UNCLOS as ‘the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities’. The energy that enters the marine environment as a result of an electricity or data cable cut is insignificant, since the transmission of the energy should stop instantly as a result of the cable cut.

By contrast, the rupture of an operational underwater oil or gas pipeline has a significant impact on the marine environment, since a considerable amount of oil or natural gas is released. Based on this, the coastal State may apply its legislation to a vessel suspected of polluting the marine environment, even beyond the outer limits of its territorial sea. The 2023 Balticconnector incident, in which the Hong Kong-flagged NewNew Polar Bear is suspected of damaging the Balticconnector pipeline and the submarine cables in the Gulf of Finland with her anchor, demonstrated that, in principle, a coastal State may exercise its right of hot pursuit under Article 111 UNCLOS to enforce its laws on the protection and preservation of the marine environment against an anchor-dragging foreign-flagged ship that has caused oil pollution or gas leaks.⁵⁸ Article 79(2) UNCLOS stipulates that the coastal State has the right to prevent, reduce and control pollution originating from pipelines. A coastal State may exercise its sovereign right to protect the marine environment if there is reason to believe that a ship has damaged a submarine pipeline in the coastal State’s EEZ or on its continental shelf.

A collision with an underwater pipeline caused by anchor-dragging can be considered a maritime casualty (especially if the vessel loses its anchor), since Article 221(2) UNCLOS defines maritime casualty to include ‘other incident of navigation or other occurrence on board a vessel’. Article 221(1) UNCLOS stipulates that the provisions for the protection of the marine environment under UNCLOS do not:

prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.⁵⁹

⁵⁷ B Taormina et al, ‘A Review of Potential Impacts of Submarine Power Cables on the Marine Environment: Knowledge Gaps, Recommendations and Future Directions’ (2018) 96 *Renewable and Sustainable Energy Reviews* 380.

⁵⁸ On the right of hot pursuit in the context of the protection of critical offshore infrastructure, see A Lott, ‘Unconventional Legal Approaches to Protecting Underwater Infrastructure’ (The Hague Centre for Strategic Studies, 2025) 5–6; H Ringbom, ‘New Threats—Old Rules: Law of the Sea Issues Raised by Suspected Attacks on Submarine Infrastructure in the Baltic Sea’ (2025) 56 *ODIL* 399.

⁵⁹ UNCLOS (n 7) art 221(1).

Therefore, both Articles 79(2) and 221 potentially grant the coastal State the right to board a foreign-flagged vessel that has been caught dragging its anchor and potentially prosecute its crew members if the damage to the marine environment is significant.⁶⁰

The example of cable cuts and pipeline damage due to anchoring serves to demonstrate that there are significant differences between the legal regimes of distinct categories of offshore infrastructure. The coastal State's enforcement jurisdiction in respect of the protection of critical offshore infrastructure is summarised in Table 1 based on the following three categories of offshore infrastructure:

- i. Artificial islands, installations and structures, including platforms, windfarms and tunnels as well as cables and pipelines connecting them to the mainland.
- ii. Cross-border submarine pipelines.
- iii. Cross-border submarine data and power cables.

Table 1 demonstrates that the legal protection of submarine cables and pipelines outside the limits of the territorial sea relies on a patchwork of various legal bases for taking enforcement measures against ships suspected of damaging submarine cables, pipelines and other objects of vital importance for the coastal State. Despite the incoherent and incomplete legal framework, legal scholars and practitioners are increasingly aware of the coastal State's right to enforce its laws at sea, particularly those in the Baltic Sea region given the high number of recent incidents, and especially in respect of new challenges brought about by hybrid warfare at sea.

4. The interdiction of suspected vessels without nationality

Increasingly, threats to submarine cables and pipelines in the Baltic Sea and the North Sea have been associated with ships belonging to the Russian shadow fleet.⁶¹ Furthermore, recent incidents in the Gulf of Finland have indicated that some ships belonging to the Russian shadow fleet are treated as stateless ships. In April 2025, Estonia instructed the suspected stateless ship *Kiwala* to enter the Estonian territorial sea while the ship was on its way to the Russian ports via the narrow EEZ corridor in the Gulf of Finland. Just like the *Eagle S*, which was suspected of causing the Christmas Day 2024 cable cuts in the Gulf of Finland and subsequently arrested by Finland (see Section 2), *Kiwala* complied with Estonia's order and was boarded by the Estonian authorities in its territorial sea. During the inspections, the Estonian authorities identified 40 deficiencies concerning the European Union-sanctioned and uninsured *Kiwala* and it was confirmed that its inclusion in the flag State registry had been suspended.⁶²

The US Commander's Handbook on the Law of Naval Operations takes the view that a ship could be treated as one without nationality if '[t]he claim of registry or the vessel's

⁶⁰ See Ringbom and Lott (n 4) 170.

⁶¹ For an explanation of the 'shadow fleet', see I Parlov and U Sverdrup, 'The Emerging "Shadow Fleet" as a Maritime Security and Ocean Governance Challenge' in Lott, *Maritime Security Law in Hybrid Warfare* (n 4) 228; E Cavalcanti de Mello Filho, 'From "Flags of Convenience" to "Flags of Deceit": The Future of the Law Governing the Nationality of Ships' (2025) 74(Supp) ICLQ 121.

⁶² Estonia Transport Administration, 'Estonia is Inspecting the Sanctioned Vessel *Kiwala*' (Press Release, 11 April 2025) <<https://www.transpordiamet.ee/en/news/estonia-inspecting-sanctioned-vessel-kiwala>>.

Table 1. Legal basis for protective measures and enforcement jurisdiction in regard to offshore infrastructure beyond the outer limits of the territorial sea⁶³

Protective measures	Artificial islands, installations and structures	Cross-border submarine pipelines	Cross-border submarine cables
Main legal basis	Article 60(4)–(5) + Article 111 UNCLOS	Articles 79(2) and 221 + Article 111(2) UNCLOS if the damage causes or threatens environmental pollution. Article 113 UNCLOS if the pipeline is damaged by a national of the coastal State or a ship flying its flag.	Article 113 UNCLOS if the cable is damaged by a national of the coastal State or a ship flying its flag. Article 10 Paris Convention.
Complementary legal bases	Depending on the circumstances, the main legal basis may be complemented with: i. the plea of necessity (Article 25 of the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts ⁶⁴); ii. piracy clauses (Article 101(a)(ii) UNCLOS); ⁶⁵ iii. terrorism (SUA Protocol; ⁶⁷ Convention for the Suppression of Terrorist Bombings ⁶⁸); iv. flag State/captain's consent; ⁶⁹ and/or v. ship without nationality (Article 110(1)(d) UNCLOS). ⁷⁰		
Spatial limit	The coastal State should send the signal to stop to the foreign ship while that ship is still in the safety zone.	The coastal State may commence hot pursuit while the ship is in its EEZ. Article 113 UNCLOS also applies on the high seas.	The coastal State may commence hot pursuit within an unspecified, but reasonable, time.
The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State (Article 111(3) UNCLOS).			

⁶³ For unconventional legal approaches on this matter, see Lott (n 58). For an example of the implementation of many of the legal bases listed in Table 1, see Estonia's new legislation 'Strengthening Maritime Security' (Kaitseväe korralduse seaduse ja majandusvööndi seaduse muutmise seadus), which came into force on 19 April 2025 <<https://www.riigiteataja.ee/akt/118042025001>>.

⁶⁴ ILC, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries', UNYBILC vol II (2001) UN Doc A/CN.4/SER.A/2001/Add.1.

⁶⁵ Ringbom and Lott (n 4) 186; ILA (n 10) 20.

⁶⁶ Joint Committee on National Security Strategy (n 21) 39–40; Lott (n 46) 6–7; J Hartmann, 'Piracy and Undersea Cables: An Overlooked Interpretation of UNCLOS?' (*EJIL:Talk!*, 6 March 2025) <<https://www.ejiltalk.org/piracy-and-undersea-cables-an-overlooked-interpretation-of-unclos/>>.

⁶⁷ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 222; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (adopted 14 October 2005, entered into force 28 July 2010) 1678 UNTS 304.

⁶⁸ Convention for the Suppression of Terrorist Bombings (adopted 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256. See also ILA (n 10) 52.

⁶⁹ 'The Commander's Handbook on the Law of Naval Operations' (US Navy, US Marine Corps and US Coast Guard, 2022) 4–7. Notably, though, there are '[d]ifferent national legal and policy positions on the right to visit on the basis of master's consent'. D Mandsager et al, 'Newport Rules of Engagement (ROE) Handbook' (2022) 98 ILS 26; M Fink, 'The Right of Visit for Warships: Some Challenges in Applying the Law of Maritime Interdiction on the High Seas' (2010) 49 MLLWR 8, 34–35.

⁷⁰ The Commander's Handbook on the Law of Naval Operations (n 69) 3–13.

display of registry is either denied or not affirmatively and unequivocally confirmed by the State whose registry is claimed'.⁷¹ Notably, in *MV "Saiga" (No 2)*, the International Tribunal for the Law of the Sea concluded that '[d]etermination of the criteria and establishment of the procedures for granting and withdrawing nationality to ships are matters within the exclusive jurisdiction of the flag State'.⁷² In *The Enrica Lexie Incident*, the Annex VII arbitral tribunal found that:

[T]he test under the Convention for establishing a jurisdictional link between a vessel and a State is whether a vessel possesses the nationality of that State, as opposed to whether or not it is found in a public register or flies a flag. A flag may thus be regarded as "visual evidence" or "a symbol" of nationality, but is not determinative for that vessel's nationality.⁷³

The Estonian Transport Administration treated *Kiwala* as a vessel without nationality and referred to Article 110(1)(d) UNCLOS as the legal basis for its enforcement measures.⁷⁴ *Kiwala* was released two weeks later by the Estonian authorities once the deficiencies had been corrected.⁷⁵ The same ship (though renamed as the *Boracay*) was intercepted five months later by France in its EEZ and investigated by the authorities off Saint-Nazaire for less than a week. The French armed forces boarded the ship as a suspected stateless vessel, and the captain was charged for refusing to comply with the orders of the French armed forces.⁷⁶ The Russian President accused France of 'piracy' in international waters (Article 101 UNCLOS),⁷⁷ despite the fact that the interdiction was conducted by the armed forces of a State and it was supported by a legal basis (Article 110(1)(d) UNCLOS).

In May 2025, Estonia interdicted another sanctioned and suspected stateless tanker reportedly belonging to the Russian shadow fleet, the *Jaguar*, as it approached the submarine power cable EstLink 1 that interlinks Estonia and Finland in the EEZ corridor of the Gulf of Finland (the more powerful EstLink 2 power cable was cut allegedly by the anchor of the *Eagle S* on Christmas Day in 2024). The Estonian Minister of Defence referred to Article 110(1)(d) UNCLOS as the legal basis for the maritime interdiction.⁷⁸ This time, however, the ship did not comply with the Estonian warship's order to enter the Estonian territorial sea. Estonia decided not to board the ship from its

⁷¹ *ibid.* On the other hand, in the *MV "Saiga" (No 2)* case, Saint Vincent and the Grenadines argued that a ship retains its flag until it is deleted from the registry: *M/V "Saiga" (No 2)* (Saint Vincent and the Grenadines v Guinea) (1999) 38 ILM 1323. See D Stephens, 'The Role of Courts and Tribunals' in R Warner and S Kaye (eds), *Routledge Handbook of Maritime Regulation and Enforcement* (Routledge 2018) 128.

⁷² *M/V "Saiga" (No 2)* *ibid.*, para 66.

⁷³ *The Enrica Lexie Incident* (n 43) para 1029.

⁷⁴ Estonia Transport Administration (n 62).

⁷⁵ M Tooming and A Whyte, 'Russian "Shadow Fleet" Tanker *Kiwala* Cleared to Leave Estonian Waters' *ERR News* (26 April 2025) <<https://news.err.ee/1609676453/russian-shadow-fleet-tanker-kiwala-cleared-to-leave-estonian-waters>>.

⁷⁶ R Meade, 'France Investigating Shadow Fleet Tanker Linked to Danish Drone Attacks' *Lloyd's List* (30 September 2025) <<https://www.lloydslist.com/LL1154977/France-investigating-shadow-fleet-tanker-linked-to-Danish-drone-attacks>>.

⁷⁷ D Sabbagh, 'French Military Detain Two After Boarding Russia-linked Oil Tanker Suspected of Launching Drones' *The Guardian* (1 October 2025) <<https://www.theguardian.com/world/2025/oct/01/france-oil-tanker-russia-drone-denmark>>.

⁷⁸ V Väino, 'Michal: Eestil oli õiguslik alus lipuriigita tankeri kinnipidamiseks' *ERR Uudised* (21 May 2025) <<https://www.err.ee/1609700751/michal-eestil-oli-oiguslik-alus-lipuriigita-tankeri-kinnipidamiseks>>.

warships, nor from its helicopter and aircraft that were all involved in the operation, and instead escorted the Jaguar until it left the EEZ and entered the Russian territorial sea.⁷⁹

Estonia's maritime interdiction operation was countered by Russia who dispatched a fighter jet to the area which breached Estonia's airspace. In response, the North Atlantic Treaty Organization (NATO) Baltic Air Policing Mission scrambled Portuguese F-16 fighter jets that were stationed in Estonia to shadow the Russian aircraft.⁸⁰ In the aftermath of the incident, the chairman of Russia's Maritime Collegium, Mr Nikolai Patrushev,⁸¹ announced that the Russian President supports proposals to start escorting ships belonging to the Russian shadow fleet in the Baltic Sea, and in particular the Gulf of Finland, to the area of operation of NATO's Baltic Sentry mission for the protection of submarine cables and pipelines.⁸² Russian scholars have concluded that attacks against the Russian offshore infrastructure in the Baltic Sea and discriminatory navigational restrictions 'are sufficient grounds for Russia to retaliate against the infrastructure of unfriendly countries in the region'.⁸³

In these three incidents, the coastal State seems to have had reasonable grounds for suspecting that a foreign ship was without nationality. In such circumstances, a foreign warship is justified boarding the vessel on the high seas or in the EEZ (Articles 110(1)(d) and 58(2) UNCLOS). Rob McLaughlin has concluded in relation to stateless ships that a boarding State is authorised to '[b]oard, search, detain, and divert for the purposes of confirming nationality' of the ship and that 'it is arguable that the full suite of boarding State jurisdiction is available to be asserted over the vessel and those in it'.⁸⁴ The US Commander's Handbook asserts in relation to ships without nationality that:

They are not entitled to fly the flag of any State and, because they are not entitled to the protection of any State, they are subject to the jurisdiction of all States. U.S. law expressly provides for jurisdiction over vessels without nationality or a vessel assimilated to be a vessel without nationality. (See 46 U.S.C., § 70502). Stateless vessels may be boarded upon being

⁷⁹ M Peegel and H Wright, 'Navy Escorts Suspected "Shadow Fleet" Tanker out of Estonian Waters' *ERR News* (14 May 2025) <<https://news.err.ee/1609694456/navy-escorts-suspected-shadow-fleet-tanker-out-of-estonian-waters>>.

⁸⁰ J Ataman, 'Russian Fighter Jet Protects "Shadow Fleet" Vessel in First Such Move by Moscow, Officials Say' *CNN* (21 May 2025) <<https://edition.cnn.com/2025/05/20/europe/russian-fighter-jet-shadow-fleet-intl-cmd>>; H Wright, 'Russian Fighter Jet Breaches Estonia's Airspace' *ERR News* (14 May 2025) <<https://news.err.ee/1609694252/russian-fighter-jet-breaches-estonia-s-airspace>>.

⁸¹ Mr Patrushev is the Russian President's Advisor and former Secretary of the Security Council of Russia and Director of the Russian Federal Security Service.

⁸² 'Putin Backs Proposals to Respond to Baltic Shipping Restrictions' *TASS* (26 May 2025) <<https://tass.ru/politika/24049135>>; V Lauri, 'Experts: Russia Lacks Resources to Escort All of Its Shadow Fleet Vessels' *ERR News* (28 May 2025) <<https://news.err.ee/1609707090/experts-russia-lacks-resources-to-escort-all-of-its-shadow-fleet-vessels>>. According to recent reports, Danish pilots have spotted Russian soldiers wearing military uniforms on board some of the commercial ships forming part of the Russian shadow fleet. See E Braw, 'Russia's Shadow Fleet Is Doing More Than Sanctions-Busting' *Foreign Policy* (2 October 2025) <https://foreignpolicy.com/2025/10/02/russia-shadow-fleet-pushpa-drones/?utm_content=gifting&tpcc=gifting_article&gifting_article=cnVzc2lhLXNoYWVrdy1mbGVldC1wdXNocGEtZHZHjvbmVz&pid=CW941515>.

⁸³ Gudev and Ofitserov-Belsky (n 9) 101 (author's translation).

⁸⁴ R McLaughlin, 'Article 110 of the Law of the Sea Convention 1982 and Jurisdiction over Vessels without Nationality' (2019) 51 *GeoWashIntlLRev* 373, 403–04.

encountered in international waters by a warship or other government vessel and subjected to all appropriate law enforcement actions.⁸⁵

Gudev and Ofitserov-Belsky caution that any navigational restrictions used by the coastal States in the Baltic Sea context could be applied also in other regions, for example, by China or Iran.⁸⁶ In principle, that would be a welcome development in respect of stateless vessels. Any coastal State is legally entitled to interdict suspected stateless and uninsured ships. These ships pose a fundamental challenge to ocean governance as they operate in a legal vacuum where the ordinary line of responsibility over such ships is disrupted because of the missing nationality and insurance of the ship.

However, in the aftermath of the chasing of the *Jaguar* by Estonia, Russia has decided to allocate its fighter jets and warships to escort its shadow fleet.⁸⁷ On the one hand, this could be seen as a potential breach of international law from the perspective of Russia preventing another State from exercising its jurisdiction over suspected stateless vessels. On the other hand, warships and military aircraft are permitted in and over the EEZ and the high seas under the high seas freedom of navigation and overflight (Articles 58(1) and 87(1)(a)–(b) UNCLOS) to escort commercial ships. Should the escorting warship notice that the commercial ship has accidentally dropped its anchor, then it needs to duly inform the crew of the ship, thereby potentially preventing damage to submarine cables and pipelines.

5. Conclusion

The main legal challenges to the protection of submarine cables and pipelines lie outside the limits of the territorial sea. As one of the main victim States of the recent cable cuts in the Baltic Sea, Estonia is preparing to criminalise the damaging of submarine cables and pipelines by foreign ships or nationals outside the limits of the territorial sea if these objects are connected to its territory. The coastal State's criminal jurisdiction over the destruction or damage of submarine cables and pipelines located beyond the outer limits of the territorial sea can derive from, for example, the effects doctrine and protective principle, provided that the damage or destruction of submarine cables and pipelines causes harm to the population of the coastal State (e.g. disruptions in internet connectivity or electrical networks). Such jurisdiction essentially fills a gap without interfering with the jurisdiction of other States over those objects.

However, the use of such prescriptive jurisdiction needs to be coordinated. Otherwise, damage to underwater infrastructure would likely result in potential jurisdictional conflicts with other States that also suffered from the cable cut or pipeline rupture. Damage to a submarine cable or pipeline somewhere in the EEZ or on the high seas would likely cause damage to many States, since the oil or gas pollution may damage the marine environment of numerous coastal States and each data cable

⁸⁵ The Commander's Handbook on the Law of Naval Operations (n 69) 3–13. Cf Churchill, Lowe and Sander (n 16) 404–05; R Barnes, 'Flag States' in Rothwell et al (n 17) 304, 315.

⁸⁶ Gudev and Ofitserov-Belsky (n 9) 101.

⁸⁷ See also the Polish Foreign Minister, Mr Radosław Sikorski's, comments: H Wright, 'Polish Foreign Minister "Shocked" by Shadow Fleet Vessels Sailing without Flags' *ERR News* (16 May 2025) <<https://news.err.ee/1609696521/polish-foreign-minister-shocked-by-shadow-fleet-vessels-sailing-without-flags>>.

usually carries internet to many States. Thus, prescriptive jurisdiction should be used first and foremost by those coastal States that are physically connected to the cable or pipeline by means of having the cable or pipeline's landfall in their territory. For example, cross-border submarine cables and pipelines that have been damaged in the Baltic Sea and North Sea all connect two or more States. In these instances, the coastal State's use of its prescriptive, enforcement and adjudicative jurisdiction is somewhat dependent on which of the victim States interdicts the ship. For example, the *Eagle S* reportedly caused damage to both Estonia and Finland, but the adjudicative jurisdiction against the crew members was used by Finland, since the cables were cut in the Finnish EEZ and the ship was interdicted by the Finnish authorities. The Helsinki District Court dismissed the case and found that the consequences of the cable cuts to Finland did not reach the level of criminal mischief. On the other hand, the consequences of the cable cuts were more severe in Estonia, thereby raising questions of whether an Estonian court might have reached a different conclusion on the *Eagle S* case.

Certain provisions of UNCLOS and other relevant treaties can be applied to enforce the coastal State's laws for the protection of submarine cables and pipelines in the EEZ and on the continental shelf. Yet the protective measures against ships suspected of damaging submarine cables and pipelines need to be distilled from the complex and incoherent legal framework of UNCLOS. For example, the coastal State's more assertive exercise of jurisdiction over marine environmental protection (Articles 79(2), 221) in its EEZ enables it to address not only environmental but also related security problems. In addition, safety zones (Article 60(4)–(5)) and other routing measures, the legal regime of straits (Articles 19–20, 233), piracy (Article 101(a)(ii)) and ships without nationality (Article 110(1)(d)) are all relevant for increasing the legal resilience of critical offshore infrastructure. Furthermore, boarding following the flag State's consent or interdiction due to a widely recognised plea of necessity serves as an additional legal avenue to interdict ships that pose a threat to submarine cables and pipelines. Other treaties, such as those addressing terrorism (the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf and the Convention for the Suppression of Terrorist Bombings) or the Paris Convention, may have relevance depending on the facts of a particular case. However, recent incidents involving the Russian shadow fleet in the Gulf of Finland have led Russia to actively protect ships heading to or coming from its ports from the interdiction of other States.

In this context, cross-border submarine cables and pipelines are treated differently under UNCLOS as compared to those connected to artificial islands, installations and structures, such as offshore wind farms, gas or oil platforms or tunnels. Unlike cross-border submarine cables and pipelines, the coastal State has exclusive jurisdiction over artificial islands, installations and structures, including criminal jurisdiction. Both prescriptive and enforcement jurisdiction are exercisable in respect of nationals and non-nationals of the coastal State that are situated on an artificial island, installation or structure in its EEZ. As a result of the complex, incoherent and incomplete legal framework, coastal States are too often unaware of their rights to enforce their laws at sea for the protection of cross-border submarine pipelines, cables and installations and structures, especially in respect of new challenges brought about by hybrid warfare. When a particular cable cut incident unfolds, the coastal State's authorities may need

guidance to speedily identify the relevant legal basis and determine the potential action plan for solving a particular time-critical situation.

In this context, the drafting of relevant guidelines could increase legal certainty and set the standards in the context of naval operations for the protection of coastal State security, human rights at sea, property of the owners of offshore critical infrastructure, the marine environment and the high seas freedoms, including in the EEZ. Such guidelines could serve to clarify the applicable law and to provide reasoned suggestions on how to interpret or further develop it to face the current challenges in policing at sea.

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