



CIMA / COLP Regional Workshop on Submarine Cables

Beijing, PR China, 7-8 May 2009

Workshop Report

1. A regional workshop on submarine cables was held in Beijing on 7-8 May 2009. The workshop was jointly organized by China Institute for Marine Affairs (CIMA) and the Center for Oceans Law and Policy (COLP) at the University of Virginia, with active participation by the International Cable Protection Committee (ICPC).
2. The workshop was the first of its kind in Asia. It brought together government officials, industry representatives and academic experts from Australia, China, Japan, Republic of Korea, U.S.A. and other regions to discuss the legal and practical issues concerned with the laying, protection and repair of submarine cables. In addition, the President of the International Tribunal for the Law of the Sea in Hamburg, Judge Jose Louis Jesus, attended the workshop and made a presentation on the resolution of disputes regarding the interpretation and application of the provisions on submarine cables in the 1982 UN Convention on the Law of the Sea.
3. The keynote address at the workshop was delivered by the Director-General, Department of Sea Area and Islands, State Oceanic Administration (SOA). SOA is the lead agency in China on submarine cables and pipelines with the responsibility to ensure the effective functioning of the international submarine cable networks that carry 95% of internet traffic to China. Cable breaks were sometimes caused by improper fishing techniques or vessel practices. There is a need for joint cooperation among all stakeholders to ensure the protection of cables and the immediate repair of damaged or broken cables.

4. Presentations in Session One provided the necessary context about submarine cables in the region. Representatives from the ICPC and the cable industry in China made presentations providing background on submarine cables in the region, on industry practices with regard to the protection and repair of cables, and on the major causes and problems in the region with respect to the protection and repair of submarine cables. In addition, CIMA researchers made a presentation on the experience and lessons learned from managing submarine cables.
5. Presentations in Session Two focussed on the legal and policy issues concerning the laying, protection and repair of submarine cables. The representative and international legal advisor of the ICPC, outlined the provisions in international treaties on the laying, protection and repair of submarine cables. Representatives from China, Japan and Korea made presentations on their national laws and policies on submarine cable management. The representative from Singapore made a presentation on the relationship between the national and international legal regimes.
6. The presentations in the first two sessions provided the background necessary for a discussion of the law and policy issues between industry representatives, government officials and academics. The discussion in Session Three began with comments and recommendations from cable industry representatives with practical experience dealing with the regulatory procedures in the region on the laying, protection and repair of submarine cables. The representative from Australia outlined the laws of Australia and New Zealand on cable protection zones. A lively exchange of ideas took place between industry representatives, government officials and academics. During the course of the discussion a consensus was reached on the following points:
 - (1) Submarine cables are critically important to the social and economic development of every State. Necessary measures ought to be taken to ensure that submarine cables are protected and that damaged cables are repaired in a prompt manner. There is also a need to enhance awareness of the important contribution of submarine cables to sustainable development and of the urgent issues concerning the protection and repair of submarine cables.
 - (2) The differences between legal regimes under the 1982 UNCLOS for territorial seas, EEZs and Continental Shelves with regard to submarine cables were noted. The need to align state laws, policies and practices in line with the relevant UNCLOS provisions was discussed. Further, the intensive use of the EEZ and the methods of fishing employed in the region require that Governments and industries closely cooperate in order to develop good practices with a view to ensuring effective protection of submarine cables and efficient repair of damaged cables in the EEZ and on the continental shelf.
 - (3) States in the region are encouraged to adopt legislation for better protection of submarine cables. The possibility of establishing submarine cable protection zone was raised and discussed. States should consider ways to ensure consistent enforcement of domestic submarine cable protection laws with respect to fishing and other vessels that historically have been identified as an important source of cable faults from damage caused by fishing gear in contact with the seabed and anchors.

- (4) States in the region should consider adopting the practice of using GPS on fishing vessels so that the vessels receive an automatic warning when they approach submarine cables. Effective use of AIS by State authorities in coordination with submarine cable owners is also an area where technology can be used to prevent cable faults.
 - (5) States in the region should consider developing multisectoral or “one window” approach, such as designating a single agency as a focal point, for all permits and requirements relating to the laying and repair of submarine cables in their maritime zones. Such a mechanism should be empowered in coordination with relevant government agencies at the national, regional and local levels to ensure that permits for the laying, maintenance and repair of submarine cables are issued in a timely manner.
 - (6) States in the region are recommended to consider developing procedures within their legal framework that would facilitate cable repair ships to carry out contingency repair in case of cable damage, provided that the cable owners and cable repair ship operators keep the relevant authorities notified on an ongoing periodic basis as to their location and scope of their repair activities.
 - (7) It was acknowledged that operation of submarine cables in “disputed waters” creates special problems. The issue remains to be properly approached and addressed by all parties concerned.
 - (8) Cable companies and cable operators may consider establishing a regional association to facilitate communication and partnership with Government agencies, fishing associations and other users of the seas. Similar regional cable protection organizations have been utilized in other parts of the world. It may provide models to consider in the formation of a regional association(s).
 - (9) Some of the issues relating to the protection and repair of submarine cables, such as providing indemnity by private industry to fisherman who have lost nets or other fishing gear in order to prevent damage to a submarine cable, were also discussed at the workshop.
 - (10) The current international legal regime is inadequate to deal with the intentional or negligent destruction or damage of submarine cables. States in the region should review their national legislation to ensure that they have implemented their obligations under the 1982 Law of the Sea Convention with respect to damage to submarine cables. In addition, the international community should consider the possibility of developing a new global convention which makes it an international crime to wilfully and intentionally cause damage to international submarine cables.
7. The workshop is of the opinion there was a need for a follow-up workshop and follow-up conference. The participant from Singapore stated that he would explore the possibility of the newly established Centre for International Law at the National University of Singapore organizing a follow-up workshop in Singapore so that States in Southeast Asia could address the issues. The representative of COLP stated that it might be possible for the Center to organize a follow-up conference in Hawaii.

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) (1982)

Article 3. Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 21. Laws and regulations of the coastal State relating to innocent passage

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

(c) the protection of cables and pipelines;

Article. 33 Contiguous zone

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

(b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 57. Breadth of the exclusive economic zone

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 58. Rights and duties of other States in the exclusive economic zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and over flight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this

Part.

3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Article 79 Submarine cables and pipelines on the continental shelf

1. All States are entitled to lay submarine cables and pipelines on the continental shelf, in accordance with the provisions of this article.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.

4. Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.

5. When laying submarine cables or pipelines, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 86. Application of the provisions of this Part

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

Article 87. Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It

comprises, *inter alia*, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of over flight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

Article 112. Right to lay submarine cables and pipelines

1. All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.
2. Article 79, paragraph 5, applies to such cables and pipelines.

Article 113. Breaking or injury of a submarine cable or pipeline

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.

Article 115. Indemnity for loss incurred in avoiding injury to a submarine cable or pipeline

Every State shall adopt the laws and regulations necessary to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Article 297. Limitations on applicability of section 2

1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:

- (a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;

Convention on the High Seas (1958)

Article 1

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

Article 26

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.
2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.
3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines

already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 27

Every State shall take the necessary legislative measures 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 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 28

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a 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.

Article 29

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Article 30

The provisions of this Convention shall not affect conventions or other international agreements already in force, as between States Parties to them.

Convention on the Continental Shelf (1958)

Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf.

INTERNATIONAL CONVENTION FOR THE PROTECTION OF SUBMARINE CABLES (1884)

Article 1

The present Convention shall be applicable, outside of the territorial waters, to all legally established submarine cables landed in the territories, colonies or possessions of one or more of the High Contracting Parties.

Article 2

The breaking or injury of a submarine cable, done wilfully or through culpable negligence, and resulting in the total or partial interruption or embarrassment of telegraphic communication, shall be a punishable offense but the punishment inflicted shall be no bar to a civil action for damages. This provision shall not apply to ruptures or injuries when the parties guilty thereof have become so simply with the legitimate object of saving their lives or their vessels, after having taken all necessary precautions to avoid such ruptures or injuries.

Article 3

The High Contracting Parties agree to insist, as far as possible, when they shall authorize the landing of a submarine cable, upon suitable conditions of safety, both as regards the track of the cable and its dimension.

Article 4

The owner of a cable who, by the laying or repairing

of that cable, shall cause the breaking or injury of another cable, shall be required to pay the cost of the repairs which such breaking or injury shall have rendered necessary, but such payment shall not bar the enforcement, if there be ground therefore, of Article 2 of this Convention.

Article 5

Vessels engaged in laying or repairing submarine cables must observe the rules concerning signals that have been or shall be adopted, by common consent, by the High Contracting Parties, with a view to preventing collisions at sea. When a vessel engaged in repairing a cable carries the said signals, other vessels that see or are able to see those signals shall withdraw or keep at a distance of at least one nautical mile from such vessel, in order not to interfere with its operations. Fishing gear and nets shall be kept at the same distance. Nevertheless, a period of twenty-four hours at most shall be allowed to fishing vessels that perceive or are able to perceive a telegraph ship carrying the said signals, in order that they may be enabled to obey the notice thus given, and no obstacle shall be placed in the way of their operations during such period. The operations of telegraph ships shall be finished as speedily as possible.

Article 6

Vessels that see or are able to see buoys designed to show the position of cables when the latter are being laid, are out of order, or are broken, shall keep at a distance of one quarter of a nautical mile at least from such buoys. Fishing nets and gear shall be kept at the same distance.

Article 7

Owners of ships or vessels who can prove that they have sacrificed an anchor, or net, or any other implement used in fishing, in order to avoid injuring a submarine cable, shall be indemnified by the owner of the cable. In order to be entitled to such indemnity, one must prepare, whenever possible, immediately after the accident, in proof thereof, a statement supported by the testimony of the men belonging to the crew, and the captain of the vessel must, within twenty-four hours after arriving at the first port of temporary entry, make his declaration to the competent authorities. The latter shall give notice thereof to the consular authorities of the nation to which the owner of the cable belongs.

Article 8

The courts competent to take cognizance of

infractions of this convention shall be those of the country to which the vessels on board of which the infraction has been committed belongs. It is, moreover, understood that, in cases in which the provision contained in the foregoing paragraph cannot be carried out, the repression of violations of this convention shall take place, in each of the contracting States, in case of its subjects or citizens, in accordance with the general rules of penal competence established by the special laws of those States, or by international treaties.

Article 9

Prosecutions on account of the infractions contemplated in articles 2, 5 and 6 of this convention, shall be instituted by the State or in its name.

Article 10

Evidence of violations of this convention may be obtained by all methods of securing proof that are allowed by the laws of the country of the court before which case has been brought. When the officers commanding the vessels of war or the vessel specially commissioned for that purpose, of one of the High Contracting Parties, shall have reason to believe that an infraction of the measures provided for by this Convention has been committed by a vessel other than a vessel of war, they may require the captain or master to exhibit the official documents furnishing evidence of the nationality of the said vessel. Summary mention of such exhibition shall at once be made on the documents exhibited. Reports may, however, be prepared by the said officers, whatever may be the nationality of the inculpated vessel. These reports shall be drawn up in the form and in the language in use in the country to which the officer drawing them up belongs; they may be used as evidence in the country in which they shall be invoked, and according to the laws of that country. The accused parties and the witnesses shall have the right to add or to cause to be added thereto, in their own language, any explanations that they may deem proper; these declarations shall be duly signed.

Article 11

Proceedings and trial in cases of infractions of the provisions of this Convention, shall always take place as summarily as the laws and regulations in force will permit.

Article 12

The High Contracting Parties engage to take or to propose to their respective legislative bodies the

measure necessary in order to secure the execution of this Convention, and especially in order to cause the punishment, either by fine or imprisonment, or both, of such persons as may violate the provisions of articles 2, 5 and 6.

Article 13

The High Contracting Parties shall communicate to each other such laws as may already have been or as may hereafter be enacted in their respective countries, relative to the subject of the Convention.

Article 14

States that have not taken part in this Convention shall be allowed to adhere thereto, on their requesting to do so. Notice of such adhesion shall be given, diplomatically, to the government of the French Republic, and by the latter to the other signatory Governments.

Article 15

It is understood that the stipulation of this Convention shall in no wise affect the liberty of action of the belligerents.

Article 16

The present Convention shall be brought into force on a day to be agreed upon by the High Contracting Powers.

It shall remain in force for five years from that day, and unless any of the High Contracting Parties have announced, 12 months before the expiration of the said period of five years, its intention to terminate its operation, it shall continue in force for a period of one year, and so on from year to year.

If one of the Signatory Powers denounce the Convention, such denunciation shall have effect only as regards that Power.

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