



IMO
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PROTECTION OF CABLES AND PIPELINES REGULATIONS

**(Regulations for the Protection of Submarine Cables and Pipelines in the
Territorial Sea, the Continental Shelf and the High Seas)**

**A Legislation Drafting Project submitted in partial fulfilment of the
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1. Introduction	3
2. The Rationale behind the Drafting of the Regulation	9
3. An Overview of the Draft Regulations	15
<i>3.1 Introduction</i>	15
<i>3.2 An Overview of the Regulations for the Protection of Submarine Cables and Pipelines in the Territorial Sea</i>	16
<i>3.3 An Overview of the Regulations for the Protection of Submarine Cables and Pipelines on the Continental Shelf</i>	18
<i>3.4 An Overview of the Regulations for the Protection of Submarine Cables and Pipelines on the High Seas</i>	20
<i>4. Conclusion</i>	21
Annex A: Subsidiary Legislation 226.04 – the Protection of Cables and Pipelines Regulations in the Territorial Sea	23
Annex B: Subsidiary Legislation 535.03 – the Protection of Cables and Pipelines Regulations in the Continental Shelf	23
Annex C: Subsidiary Legislation 234.60 – the Protection of Cables and Pipelines Regulations in the High Seas	23

1. Introduction

The general impetus of maritime security often focuses on the more glaringly obvious concerns, such as piracy, smuggling and trafficking, but an important and oft overlooked Achilles's heel of any State, is the vulnerability of the submarine cables that the State relies upon for constant communication to, and energy access from, the rest of the world's networks. These cables, aside from linking the State to the electrical board and providing electricity and internet access to the entire island, as in Malta's case, also transmit our personal data for the purposes of telephony and mobile phone connectivity.

In the European Union, personal data is highly protected,¹ and it is therefore imperative that one does not lose sight of the dangers of cyber subterfuge via this unprotected underwater infrastructure. According to Michael Sechrist, a former International Relations Associate at Harvard Kennedy School, "an attack on the cables' control systems could devastate the world's economies – presenting a different kind of internet 'kill switch' altogether – shutting down world commerce, and doing it all with the click of a mouse."² Furthermore, while espionage is not a novel concept by any means, the further globalisation of the economy and the rise of information and transactional data that passes through such cables means that cyber warfare is an increased threat that ought to be adequately catered for in Maltese law, ensuring that the island is not left vulnerable to such malicious interference.

According to a report published by StableSeas in 2019,³ fibre-optic cables on the ocean floor are responsible for the transmission of 97% of intercontinental communication and

¹ The GDPR (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)) can be said to be one of the most advanced data protection frameworks with the highest penalties around the world.

² Nicholas Kazaz, 'Subsea Cable Damage Claims: The Legal Approach' [2020] (March) Submarine Telecoms Forum Magazine; Rishi Sunak, 'Undersea Cables Indispensable, Insecure' [2017] Policy Exchange <<https://policyexchange.org.uk/publication/undersea-cables-indispensable-insecure/>> accessed 8 May 2021.

³ John Filitz, 'Threats From Below: Undersea Fiber-Optic Cable Criticality' (*Stable Seas*, March 2019) <https://www.stableseas.org/sites/default/files/fiber_optic_cables.pdf> accessed 8 May 2021; Alison Diana, 'Cyber Subterfuge and Curious Sharks Threaten the World's Subsea Fiber-Optic Cables' (The Edge, 5 July 2020) <<https://www.darkreading.com/theedge/cyber-subterfuge-and-curious-sharks-threaten-the-worlds-subsea-fiber-optic-cables--/b/d-id/1337746>> accessed 8 May 2021.

are responsible for more than 15 million financial transactions, with a daily worth of over \$10 trillion.

Cables and pipelines have also made recent headlines, with Brexit disputes paving the way for France to threaten to cut off power to Jersey.⁴ Situations like this one really serve to underscore the heavy reliance many States, especially island States, have on cables and pipelines.

The discussion surrounding the protection of submarine cables and pipelines is imperative when one considers their importance. The term “submarine cables and pipelines” in the context of international law was defined in the mandate of the International Law Association (ILA) Committee on Submarine Cables and Pipelines Under International Law. The mandate states that “there are two main types of submarine cables: submarine communications cables used to transmit data communications and submarine power cables used to transmit electrical power. Submarine pipelines, on the other hand, are used for the transportation of crude oil and natural gas resources.”⁵ Submarine cables and pipelines are all made to be used underwater, as the name implies, but they fulfil various functions and are not all manufactured of the same material, allowing for a differentiation in their importance on an international scale.⁶ Submarine cables and pipelines are vital to the good functioning of many of the services we are reliant upon as a country nowadays. In 2010, the United Nations General Assembly lamented that “fibre optic submarine cables transmit most of the world’s data and communications and hence are of vital importance to the global economy and all States’ security”⁷, and continues to consistently recognise their importance even today. On a more locally relevant scale, Malta does not in and of itself have any natural fossil fuels, and hence remains partially reliant on cables

⁴ Daniel Boffey, 'France threatens to cut off power to Jersey in post-Brexit fishing row' [2021] The Guardian <https://www.theguardian.com/uk-news/2021/may/04/france-threatens-to-cut-off-power-to-jersey-in-post-brexit-fishing-row?CMP=Share_AndroidApp_Other> accessed 8 May 2021.

⁵ International Law Association Committee Submarine Cables and Pipelines under International Law, 'Proposal for Establishment of a new ILA Committee on Submarine Cables and Pipelines under International Law' (*International Law Association*, November 2018) <<https://www.ila-hq.org/index.php/committees>> accessed 8 May 2021.

⁶ *ibid.*

⁷ 'Oceans and the Law of the Sea', UN Doc A/res/65/37 A (7 December 2010) Preamble and [121] (adopted by 123 votes to 1, with 2 abstentions) (as cited in as cited in D Guilfoyle, 'The High Seas' in D R Rothwell and others (eds), *The Oxford Handbook of The Law of The Sea* (OUP 2017) 208; UNGA A/RES/75/239 (31 December 2020).

and pipelines for the delivery of electricity from Sicily. Malta is still quite far from being self-reliant through alternative forms of energy such as solar heating and wind turbines, and thus must ensure adequate protection to the cables and pipelines acting as a lifeline. This becomes especially poignant when one takes into consideration the increased difficulty many houses are facing with regard to keeping their homes warm in the winter.⁸

Cables and pipelines are a rather unique aspect of interstate regulation, due to the fact that they can span different maritime zones. For example, pipelines can start within the territory of State A, enter that State's territorial sea, continue into the continental shelf of State A, into the high seas, into the continental shelf of State B (and stop here if they are linked to an oil rig for example), or continue into the territorial sea of State B, and may even make a landfall in the territory of State B. There might also be a third state through which the cables and pipelines pass – making the matter ever more complex.⁹ It is important to take note of the fact that these draft Regulations attempt to protect Maltese-owned cables and pipelines in general, and not merely Maltese-owned cables and pipelines whilst they are in Maltese territorial waters. The reason being that a cable that is damaged 1NM from the baselines of a State, a cable damaged 11NM from the baselines of a State, and a cable damaged 13NM from the baselines of a State, all result in the same set of consequences. If there is damage to any part of the cable, then the entire cable must undergo repairs. The service being transmitted through that cable is disrupted regardless of where the damage is levied. Therefore, the scope of these Regulations will cater to all Malta flagged vessels, regardless of where they are, and any vessel in the territorial waters of Malta, as well as extending the application to any interaction between any vessel and cables and pipelines in the territorial sea or on the continental shelf of Malta, or that have been laid by Malta on the high seas in exercise of Malta's freedoms to do so, thereby ensuring that Malta would be protected in terms of cable and on the basis of the vessel.

⁸ National Statistics Office Malta, 'EU-SILC 2019: Material Deprivation and Monetary Poverty' (<https://nsogovmt>, 16 December 2020) <https://nso.gov.mt/en/News_Releases/Documents/2020/12/News2020_202.pdf> accessed 8 May 2021.

⁹ Gemma Andreone, 'The Exclusive Economic Zone' in D R Rothwell and others (eds), *The Oxford Handbook of The Law of The Sea* (OUP 2017) 177-178.

The United Nations Convention on the Law of the Sea¹⁰ (hereinafter referred to as “UNCLOS”, or “the Convention”) is a Convention of massive importance for the effective regulation of the maritime industry throughout the world.

At the time of writing, UNCLOS has a total of 168 parties, 167 of which are States, with the European Union being the 168th party. One of the most notable absentees, is the United States, who helped shape the Convention at the time of drafting, but subsequently refused to sign and ratify the final text. This refusal to sign and ratify was primarily based on a fear of loss of sovereignty over certain deep seabed mining positions¹¹ as well as the possibility of having a precedent set for future endeavours into outer space.¹² Although it still has not technically signed the Convention, even the US recognises UNCLOS as forming part of customary international maritime law.¹³ In spite of the fact that some of the world’s major maritime countries have yet to ratify the Convention, its importance is unparalleled as a comprehensive source of applicable rules within the sphere of international maritime law. One of the major contributors to the Convention as we know it today was Malta’s Ambassador to the United Nations, Arvid Pardo. In 1967 Pardo called for “an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction”, and it is through this that UNCLOS came to be. The Third United Nations Conference on the Law of the Sea was convened in New York in 1973. The Conference ended nearly a decade later, having birthed UNCLOS, which was hailed ‘a constitution for the seas.’¹⁴

¹⁰ United Nations Convention on the Law of the Sea. (Montego Bay, 10 December 1982, entered into force on 16 November 1994). 1833 UNTS 3 (“UNCLOS”).

¹¹ Ronald Reagan, President of the United States, ‘United States Participation in the Third United Nations Conference on the Law of the Sea’ (Speech at The Third United Nations Conference on the Law of the Sea, 29 January 1982) <<https://www.jag.navy.mil/organization/documents/Reagan%20statement%20on%20US%20participation%20in%20the%20Third%20United%20Nations%20Conference%20on%20the%20Law%20of%20the%20Sea.pdf>> accessed 8 May 2021.

¹² James Malone, ‘The United States and the Law of the Sea After UNCLOS III’ [1983] 46(2) Duke Law, Law and Contemporary Problems, 31.

¹³ Singh Verma Aditya, ‘A Case for the United States’ Ratification of UNCLOS’ [2020] Extraordinary and Plenipotentiary Diplomatist <<https://diplomatist.com/2020/05/02/a-case-for-the-united-states-ratification-of-unclos/>> accessed 8 May 2021; William Gallo, ‘Why Hasn’t the US Signed the Law of the Sea Treaty?’ [2016] Voice of America <<https://www.voanews.com/usa/why-hasnt-us-signed-law-sea-treaty>> accessed 8 May 2021; United Nations Convention on the Law of The Sea, S. Hrg. 108-498, Committee On Environment And Public Works United States Senate, One Hundred Eighth Congress, Second Session, March 23, 2004 <<https://www.govinfo.gov/content/pkg/CHRG-108shrg94598/html/CHRG-108shrg94598.htm>> Accessed 8 May 2021.

¹⁴ Division for ocean affairs and the law of the sea, ‘A Historical Perspective’ (United Nations Oceans & The Law of the Sea, Originally prepared for the International Year of the Ocean,

Before the advent of UNCLOS, the law in place that regulated the territorial sea was the 1958 Convention on the Territorial Sea and the Contiguous Zone¹⁵ (hereinafter referred to as “the Territorial Sea Convention”). The Territorial Sea Convention was one of the four Conventions that was agreed upon at the first United Nations Conference on the Law of the Sea, with a view of the codification and unification of customary international law.¹⁶ The third United Nations Conference on the Law of the Sea used the 32 articles of the Territorial Sea Convention as a platform for UNCLOS, which continued to codify the law, and even extended its influence over non-State parties through the mere fact that the widespread reach of UNCLOS resulted in it being considered *de facto* customary international law.¹⁷

One of the main *raisons d’être* behind UNCLOS was the establishment of standard ways of determining baselines, which would then afford a State the ability to calculate its territorial water, contiguous zone and exclusive economic zone. While UNCLOS does not in itself define what is to constitute the territorial waters of a State, it provides that “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.”¹⁸ The same kind of language is used in Article 33(2) which states that “the contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.” As would be expected, the same tone is taken in the determination of the breadth of the exclusive economic zone in article 57, which reads “the exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.” Once the territorial sea has been adequately delineated by the State, one may then move on to understand the right of innocent passage which is granted to “ships of all States, whether coastal or land-locked...through the territorial sea [of a State].”¹⁹

1998) <https://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm> accessed 8 May 2021.

¹⁵ United Nations Convention on the Territorial Sea and the Contiguous Zone. (Geneva, 29 April 1958, entered into force on 10 September 1964). 516 UNTS 205.

¹⁶ Kevin Aquilina, ‘Territorial Sea and the Contiguous Zone’ in D J Attard and others (eds), *The IMLI Manual on International Maritime Law, Volume 1, The Law of the Sea* (OUP 2014) 27.

¹⁷ *ibid.*

¹⁸ UNCLOS (n10), Article 3.

¹⁹ *ibid.*, Article 17.

UNCLOS is important as it sets out the rights and regulations applicable to the coastal State and the interactions between such coastal State and other States.²⁰ UNCLOS also sets the foundational basis for the regulations of submarine cables and pipelines.²¹ Malta is a party to UNCLOS and has been since its inception. Naturally, as a consequence of this, UNCLOS obliges Malta to adhere to certain obligations and enact certain regulations in furtherance of adhering to these obligations. There are some instances in which Malta has yet to enact those regulations and the proposed draft Regulations aim to fill in the gaps where Malta continues to fall short of its obligations under the Convention in relation to the protection of submarine cables and pipelines.

UNCLOS, in its delineation of the various existing maritime zones within the Convention, sets out the different levels of State sovereignty or jurisdiction in the various maritime zones. Whilst this information will be delved into much further below in relation to the regulations pertaining to submarine cables and pipelines within each maritime zone, for the sake of understanding a summary of each is as follows: within the territorial sea the coastal state has sovereignty; within the continental shelf area the coastal State has jurisdiction; and on the high seas there is the freedom to lay such cables and pipelines. For the purposes of these regulations, the focus will be on the territorial sea, the continental shelf and the high seas, and not the exclusive economic zone or the contiguous zone.

In the determination of the rules governing the law of the sea, one is always torn between the interests of the coastal state (the sovereignty, sovereign rights and jurisdictional rights) and the interests of other actors. This holds particular relevance when referring to the rules on the freedom to lay and maintain submarine cables and pipelines in territory that might not belong to the owner of the cables and pipelines. In essence, for many cables and pipelines to fulfil their purpose, they must necessarily transverse more than one sovereign boundary, because they link various States to others for the transportation of data, services, gases or oils or other substances. This transversion through different States necessitates rules thereon, and hence, UNCLOS caters for this throughout.

²⁰ UNCLOS (n10), Article 17.

²¹ UNCLOS (n10).

2. The Rationale behind the Drafting of the Regulation

Submarine cables and pipelines are used for multiple reasons, but primarily, these include the transmission of current – for electrical power – and for telecommunications.²² On the other hand, pipelines are used to transport oil and gas. Submarine pipelines are considered to be the most feasible method for the transportation of crude oil, natural gases and petroleum.²³

This aspect of the law came into the fore in December 2019 when Malta suffered massive damage to its underwater high-voltage interconnector cable – which runs between Malta and Italy - resulting in a nationwide power outage that essentially shut down the island two days before Christmas.²⁴ While this particular incident took place in international waters and not within the territorial waters of Malta or Italy,²⁵ it would be wise to pre-empt the same occurrence within Malta's territorial waters and ensure that in such case, the adequate legal protections are in place to best serve the island and its inhabitants. An important point of note is the environmental risks that are involved when submarine pipelines are damaged. The impact thereto could be catastrophic for the Mediterranean region.

Malta has six submarine cables that are currently in use.²⁶ Malta has also recently been looking into the installation of a gas pipeline between Malta and mainland Europe.²⁷ The fact that Malta, an island that is still very reliant on trade and interactions between neighbouring countries for food, electricity and oil and gas, has not yet taken advantage

²² Hakan Karan, Sami Aksoy and Kubra var Turk (eds), 'Legal Status of Submarine Cables, Pipelines and ABNJ' [2017] (1) Ankara University Research Center of the Sea and Maritime Law <<https://cil.nus.edu.sg/publication/global-regulation-submarine-cables-pipelines-similarities-differences-gaps/>> accessed 8 May 2021

²³ *ibid.*

²⁴ MaltaToday staff, 'Nationwide power-cut hits Malta just two days before Christmas' [2019] MaltaToday <https://www.maltatoday.com.mt/news/national/99400/nationwide_powercut_hits_malta_just_two_days_before_christmas#.YJZ-kGYzZb9> accessed 8 May 2021

²⁵ 'Survey ship arrives on site of damaged interconnector cables' [2020] The Malta Independent <<https://www.independent.com.mt/articles/2020-01-05/local-news/Survey-ship-arrived-on-site-of-damaged-interconnector-cables-6736218067>> accessed 8 May 2021

²⁶ 'Submarine Cable Map' (*TeleGeography*) <<https://www.submarinecablemap.com/#/>> accessed 8 May 2021

²⁷ Julian Delia, 'Energy minister doubles down on interest in Malta-Sicily pipeline' [2021] Times of Malta <<https://timesofmalta.com/articles/view/energy-minister-doubles-down-on-interest-in-malta-sicily-pipeline.842982>> accessed 8 May 2021.

of its right to regulate these industries and topics in a way that would benefit the country, its people, its economy and the marine environment which is so important globally as well as financially is an issue that needs to be tackled – sooner rather than later. It is also beneficial for Malta to regulate that which it is conventionally entitled, and sometimes required, to regulate in order to eliminate any possible lacunae that may arise in the case of an incident.

According to UNCLOS, Article 87 ensures that all States have access to the high seas in order to be able to have freedom of navigation, freedom of overflight, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations, freedom of fishing and freedom of scientific research.²⁸ These rights are not unfettered, and are limited insofar as being in line with the Convention as a whole and other rules of international law, as well as other limitations.²⁹ The laying of cables and pipelines is impacted by various regimes, that is the territorial sea, archipelagic waters, exclusive economic zone and the continental shelf, and Article 112 of UNCLOS which establishes that all States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf. Furthermore, UNCLOS also caters for situations of damage to such cables and pipelines – both intentional and accidental scenarios.³⁰

When UNCLOS was still in its preliminary stages, a report was drawn up by the ILA which was referenced in the Virginia Commentary on the UNCLOS,³¹ that states that focus was on criminal law in the provisions of the Convention but not civil jurisdiction. This avoidance of the civil aspect of liability extends naturally to a lack of case law on the subject. Criminal liability relating to cables and pipelines is afforded within UNCLOS, but civil liability is not touched upon. This sets the stage for a situation wherein the Courts of a State are left to their own devices when determining fault and meting out the according liabilities in civil claims for liability following damage to cables and pipelines within the jurisdiction of that Court. Articles 113 – 115, which will be delved into further

²⁸ UNCLOS, Article 87.

²⁹ *ibid.*

³⁰ D Guilfoyle, 'The High Seas' in D R Rothwell and others (eds), *The Oxford Handbook of The Law of The Sea* (OUP 2017) 207-208; UNCLOS, Articles 112 – 115.

³¹ United Nations Convention on the Law of the Sea 1982: a Commentary, Volume III – (ed. Nordquist)

below, are some of the provisions relating to liability. The issue arises when one notes that these provisions are very specific and do not allow for many situations in which civil liability may be attributed to the damaging party.

UNCLOS makes provisions for innocent passage, enshrining within its Article 17 the right to innocent passage.³² Article 18 of UNCLOS defines “passage”³³ and Article 19 sheds light on what is meant by “innocent passage”, listing the situations in which passage would be non-innocent for the purposes of understanding what constitutes innocent passage by exclusion.³⁴ Innocent passage is defined as being “innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.”³⁵ Innocent passage, as explained above, as a general rule is granted to ships of all States through a State party’s territorial waters, but for the sake of clarity and understanding, the Convention also delineates a list of activities that would be considered to be prejudicial to the peace, good order or security of the coastal State when in the territorial sea, that would hence not fall within the definition of innocent passage.³⁶ This list includes but is not limited to any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State,³⁷ exercise or practice with weapons of any kind,³⁸ the launching, landing or taking on board of any aircraft³⁹ or any military device,⁴⁰ interfering with any systems of communication or any other facilities or installations of the coastal State,⁴¹ and any other activity not having a direct bearing on passage.⁴² Article 21 lists the laws and regulations which the coastal State may adopt in “conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea” which include laws or regulations relating to the protection of cables and pipelines.⁴³ Therefore it may be inferred from this Article, that Malta may very well adopt

³² UNCLOS, (n10), Article 17.

³³ *ibid*, Article 18.

³⁴ *ibid*, Article 19.

³⁵ *ibid*, Article 19(1).

³⁶ *ibid*, Article 19(1).

³⁷ *ibid*, Article 19(2)(a).

³⁸ *ibid*, Article 19(2)(b).

³⁹ *ibid*, Article 19(2)(e).

⁴⁰ *ibid*, Article 19(2)(f).

⁴¹ *ibid*, Article 19(2)(k).

⁴² *ibid*, Article 19(2)(l).

⁴³ *ibid*, Article 21(1)(c).

laws relating to the liability of vessels that damage cables and pipelines whilst conducting innocent passage through Malta's territorial waters.

Article 79 of the Convention lists certain provisions relating to cables and pipelines on the continental shelf, and states that all states are entitled to lay such on the continental shelf in accordance with the provisions of the same article.⁴⁴ The provisions of the article set out certain measures that must be taken by the States who wish to lay such cables as well as the duties and obligations of the coastal State on whose continental shelf the cables are being laid. The article states that the coastal State may not impede the laying or maintenance of cables or pipelines subject to its right to take reasonable measures for the exploration or exploitation of natural resources, as well as the prevention of pollution from pipelines. It also states that the delineation of the course for the laying of such pipelines is subject to the consent of the coastal State. It can be inferred from this Article that Malta can do much more than is currently in place, such as ensure proper liability – “reasonable measures” - for individuals whose actions run contrary to the right of Malta to explore the continental shelf or exploit its natural resources. Furthermore, the “consent” that Malta must give for cables and pipelines to be laid, as well as the delineation thereof is also something that needs to be tackled, and this will be done through the setting up of a proper channel, such as application to the Authority, as well as ensuring that all cables and pipelines are adequately noted on Malta's nautical charts. Furthermore, traffic separation schemes may be set up in this regard considering the knowledge garnered through this specific channel of information. Article 79(4) ensures that the coastal State still has jurisdiction over the conditions for cables and pipelines entering its territorial sea or those used in connection with the exploration of its continental shelf. The concept of “due regard” is again reiterated in Article 79(5) which affords the coastal State the same freedom as Article 87 does in relation to the high seas but for the continental shelf.

Article 112 of UNCLOS enshrines the notion that all States are entitled to lay submarine cables and pipelines on the high seas beyond the continental shelf.⁴⁵ Stemming naturally from the right to lay submarine cables on the high seas, is Article 113, which binds States through the use of the word “shall”, to “adopt the laws and regulations necessary to

⁴⁴ UNCLOS, (n10), Article 79.

⁴⁵ *ibid*, Article 112.

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...shall be a punishable offence.”⁴⁶ The implication of Article 113 does not leave much room for interpretation, the Convention is crystal clear in its requirement that States ought to hold criminally liable any wilful or culpably negligent breakage or injury to any submarine cable or pipeline on the high seas any vessel flying its flag.⁴⁷ The criminal liability envisaged in this article⁴⁸ does not naturally extend to the continental shelf or to the territorial sea, but it is limited to the high seas, as the State already has jurisdiction over the continental shelf and the territorial sea due to State sovereignty.

Article 114 also imposes a positive obligation upon State parties to the Convention to adopt laws and regulations necessary to provide those owners of submarine cables or pipelines subject to its jurisdiction beneath the high seas shall bear the cost of repairs if they cause a break in or injury to another cable or pipeline when laying or repairing their own pipeline. Thereafter, in Article 115,⁴⁹ the Convention also ensures that States adopt those laws necessary to ensure that the owners of ships who have sacrificed an anchor, net or other fishing gear in order to avoid injuring a submarine cable or pipeline are indemnified for their losses. In Articles 114 and 115, the Convention provides for a specific situation that conceives of the notion of civil liability in relation to submarine cables and pipelines on the high seas.

As referred to above, Article 87 of the Convention grants the right to States to lay cables and pipelines, but – as evidenced through a careful examination of the liability provisions, namely 113-115 above – the right to lay cables without further safeguards in place has allowed for a situation to subsist where civil liabilities are not catered for in UNCLOS and further, not encouraged by the Convention to be drawn up nationally either.

⁴⁶ UNCLOS, (n10), Article 113.

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.*, Article 115.

Article 87(2)⁵⁰ states that the freedoms afforded to States through the wording of the previous sub-article,⁵¹ namely the freedom to lay submarine cables and pipelines, “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.”⁵² The concept of ‘due regard’ can be split into the procedural and the substantive obligation. The procedural aspect determines that which the Parties need to actively do in order to comply with the due regard rule, whereas the substantive obligation is how the rule is implemented in situations of conflict.⁵³ Due regard and what it entails has been examined by the Courts in various judgements throughout the years.⁵⁴

That being said, the concept of due regard does seem to entail a level of responsibility, and through Article 87(2) it may be inferred that Malta has some level of responsibility towards the cables and pipelines that are laid on the high seas, and therefore it naturally follows that catering to this responsibility necessitates a legislative intervention, and as such, that is precisely what these Regulations have set out to achieve. Through the implications of Article 87(2) a case could clearly be made for Malta to legislate in this regard in order to safeguard the protection and ensure that due regard is indeed catered for in terms of these cables and pipelines as well as ensure a level of control without breaching Article 89 of the Convention.

In summation, the right to lay cables and pipelines in the territorial sea stems from the coastal State’s sovereignty; on the continental shelf all States may lay cables and pipelines, but coastal States have the right to impose conditions and delineate the direction of where these cables and pipelines will be laid; and on the high seas all States have freedom to lay cables and pipelines but they must have due regard to the interest of other States. The requirement of “due regard”, the “adoption of laws and regulations in respect of the protection of cables and pipelines” and the “reasonable measures” can only be

⁵⁰ U N CLOS, (n10), Article 87(2)

⁵¹ *ibid*, Article 87(1).

⁵² *ibid*, Article 87(2).

⁵³ Prof. David Attard’s lecture at the International Maritime Law Institute of 5 May 2021 on Due Regard; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius, [1965] ICJ

⁵⁴ Examples of judgements that have tackled the concept of Due Regard include but are not limited to: North Sea Continental Shelf Cases (Germany v Denmark; Germany v Netherlands), judgement, [1969] ICJ Rep 3; Anglo-Norwegian Fisheries Case (United Kingdom v Norway), Judgement of 18 December 1951, [1951] ICJ Rep 116.

ensured through control and the levying of civil and criminal liability in situations that are still not covered by Maltese law.

Above all, it is important to recognise that the Convention, in its preamble makes the following pertinent declaration: “Affirming that matters not regulated by this Convention continue to be governed by the rules and principles of general international law.”⁵⁵ Principles of general international law would support the creation of a framework that streamlines the process and has within its aims the filling of certain lacunae in the legal framework surrounding the liability regime of cables and pipelines.

Further to the provisions of UNCLOS, the United Nations General Assembly Resolution 75/239 adopted in December 2020 also continued to underscore the importance of adequate regulation of cables and pipelines: “Recognizing that fibre-optic submarine cables transmit most of the world’s data and communications and hence are vitally important to the global economy and the national security of all States, conscious that these cables are susceptible to intentional and accidental damage from shipping and other activities and that maintenance, including the repair, of these cables is important, noting that these matters have been brought to the attention of States at various workshops and seminars, and conscious of the need for States to adopt national laws and regulations to protect submarine cables and render their wilful damage or damage by culpable negligence punishable offences.”⁵⁶ This UNGA Resolution⁵⁷ continues to illustrate the various lacunae present under Maltese law and the need for amendment.

3. An Overview of the Draft Regulations

3.1 Introduction

In light of the foregoing, the Regulations shall be divided into three different sets of Regulations, owing primarily to their different nature in terms of the varied maritime

⁵⁵ UNCLOS, (n10), Preamble.

⁵⁶ UNGA A/RES/75/239 (31 December 2020) 5-6

⁵⁷ *ibid.*

zones regulating each different set of rules. These Regulations shall be explained separately hereunder. Submarine cables and pipelines are present in all maritime zones, and because of the different flag State rights that operate under each separate maritime zone, these require the implementation of an effective and holistic approach in order to be tackled most adequately. Therefore, the protection of submarine cables and pipelines from a Maltese point of view will be split into three different regulations, those for the territorial sea, those applying to the continental shelf, and those relating to the high seas. In this way the Regulations will be more straightforward and defined in the terms of where they are to apply and in which set of circumstances they would be relevant.

3.2 An Overview of the Regulations for the Protection of Submarine Cables and Pipelines in the Territorial Sea

In so far as the Regulations for the Protection of Submarine Cables and pipelines within the territorial sea, such Regulations will fall within the ambit of Chapter 226 of the Laws of Malta, that is the Territorial Waters and Contiguous Zone Act (the Act) and become subsidiary legislation thereto. The Act, as described above, affords the Maltese Prime Minister the capacity to enact regulations in order to regulate the passage of vessels through Maltese territorial waters in a number of circumstances.⁵⁸ This Subsidiary Legislation 226.04 (hereinafter referred to as SL 226.04) aims to fill the gaps relating to all cables and pipelines that pass through the Maltese territorial sea and the liability regime thereto. The liability foreseen will be both of a civil and of a criminal nature, ensuring that financial interests are protected and further ensuring that adequate punishment is attributed to the malicious, reckless or negligent acts of others. These Regulations will apply to cables and pipelines, either locally or foreign owned within the Maltese territorial sea should the claimants opt to take up suit in Malta. It is important to remember that the *raison d'être* behind these Regulations is primarily the protection of cables and pipelines (whether Maltese owned or foreign owned). Furthermore, one of the measures to be adopted insofar as innocent passage is concerned, is the right to designate sea lanes and traffic separation schemes as provided for in Article 22 of the Convention where it is made clear that the coastal State may require foreign ships that are exercising the right of

⁵⁸ Sarah Pace Warrington, *Limiting Innocent Passage: The Protection of Vulnerable Island States* (2017) 59.

innocent passage through its territorial sea to use sea lanes and traffic separation schemes as the coastal State may designate or prescribe for the regulation of the passage of ships.⁵⁹

The ability to legislate on this front is bolstered by Article 21 of UNCLOS,⁶⁰ to which Malta is a State Party. Article 21 allows coastal States to adopt rules and regulations in conformity with the provisions of the Convention and other rules of international law relating to innocent passage through the territorial sea, in respect of cables and pipelines.⁶¹ Although this article as aforementioned does not apply to the design, construction, manning or equipment of foreign ships, unless of course they are giving effect to any generally accepted international rules or standards.⁶² UNCLOS goes on to reiterate the importance of due publicity being given to any such laws and or regulations that are implemented in any case.⁶³ Furthermore, the Convention also states that foreign ships that are exercising the right of innocent passage through the territorial sea are to comply with all those laws and regulations as well as generally accepted intentional regulations relating to the prevention of collisions at sea.⁶⁴

The draft Regulations (as found in their totality in Annex A) first define the salient terms used throughout, in order to set the tone for the proper understanding thereof. The Regulations go on to define their scope – the Regulations will cater to all Malta flagged vessels regardless of where they are, and any vessel in the territorial waters of Malta, as well as extending the application to any interaction between any vessel and cables and pipelines in the territorial sea of Malta, thereby ensuring that Malta would be protected in terms of cable and on the basis of the vessel. Furthermore, Part One also sets into motion the procedure for the request from the Authority for any State to lay cables and pipelines in Malta's territorial sea, as well as the requirement that any such cables are then portrayed on the nautical charts. The second part of the Regulations contain the offences and exceptions thereto and lists those acts or omissions that shall constitute an offence under the Regulations. This part also delves into those actions or omissions that might constitute

⁵⁹ UNCLOS, (n10), Article 22.

⁶⁰ *ibid*, Article 21.

⁶¹ *ibid*.

⁶² *ibid*, 21(2).

⁶³ *ibid*, 21(3).

⁶⁴ *ibid*, 21(4).

an exception to such Regulations. The third part of the Regulations goes on to set forth the punishments for the offences contained in Part II of the Regulations. Here, there is a differentiation between acts committed intentionally and those committed through recklessness or negligence – also attaching different punishments to these crimes. This part also makes reference to the General Data Protection Directive and the possibility of cybercrime. The Regulations conclude with the jurisdiction clause, ensuring that the Courts of Malta have jurisdiction over the offences laid down in the Regulations, as well as a clause affording the Minister powers to set into force any traffic separation schemes, and further powers to amend other laws.

3.3 An Overview of the Regulations for the Protection of Submarine Cables and Pipelines on the Continental Shelf

In so far as the Regulations for the Protection of Submarine Cables and Pipelines within the Continental Shelf, such Regulations will fall within the ambit of Chapter 535 of the Laws of Malta, that is the Continental Shelf Act (the Act) and become subsidiary legislation thereto. The Act, as described above, affords the Maltese Prime Minister the capacity to enact regulations in order to regulate the laying, maintenance and monitoring of submarine cables and pipelines.⁶⁵ This Subsidiary Legislation 535.03 (hereinafter referred to as SL 535.03) aims to fill the gaps relating to all cables and pipelines that pass through the Maltese continental shelf area and the liability regime thereto. The liability foreseen will be both of a civil and of a criminal nature, ensuring that financial interests are protected and further ensuring that adequate punishment is attributed to the malicious, reckless or culpably negligent acts of others. These Regulations will apply to cables and pipelines, either locally or foreign owned within the area of the Maltese continental shelf should the claimants opt to take up suit in Malta. It is important to remember that the *raison d'être* behind these Regulations is primarily the protection of cables and pipelines (whether Maltese owned or foreign owned).

⁶⁵ Laws of Malta, Chapter 535, Article 4 (1)(d).

The ability to legislate on this front is bolstered by Article 79 of UNCLOS,⁶⁶ to which Malta is a State Party. Article 79 affords the right to all States to lay cables and pipelines on the continental shelf, and the article goes on to ensure that the coastal State in such case must consent to the delineation of the course for the laying of these cables and pipelines.⁶⁷ The Convention clearly states that nothing in Article 79 affects the right of the coastal State to establish conditions for cables and pipelines entering its territory or territorial sea, or the jurisdiction of the coastal State over cables and pipelines constructed or used in connection with the exploration of its continental shelf or its resources.⁶⁸

The draft Regulations (as found in their totality in Annex B) first define the salient terms used throughout, in order to set the tone for the proper understanding thereof. The Regulations go on to define their scope – the Regulations will cater to all Malta flagged vessels regardless of where they are, and any vessel in the continental shelf area of Malta, as well as extending the application to any interaction between any vessel and cables and pipelines in the continental shelf of Malta, hereby ensuring that Malta would be protected in terms of cable and on the basis of the vessel. Furthermore, Part One also sets into motion the procedure for the request from the Authority for any State to lay cables and pipelines on Malta’s Continental Shelf, as well as the requirement that any such cables are then portrayed on the nautical charts. The second part of the Regulations contain the offences and exceptions thereto and lists those acts or omissions that shall constitute an offence under the Regulations. This part also delves into those actions or omissions that might constitute an exception to such Regulations. The third part of the Regulations goes on to set forth the punishments for the offences contained in Part II of the Regulations. Here, there is a differentiation between acts committed intentionally and those committed through recklessness or negligence – also attaching different punishments to these crimes. This part also makes reference to the General Data Protection Directive and the possibility of cybercrime. The Regulations conclude with the jurisdiction clause, ensuring that the Courts of Malta have jurisdiction over the offences laid down in the Regulations, as well as a clause affording the Minister powers to set into force any traffic separation schemes, and further powers to amend other laws.

⁶⁶ U NCLOS, (n10), Article 21.

⁶⁷ *ibid.*

⁶⁸ *ibid.*, Article 79(4).

3.4 An Overview of the Regulations for the Protection of Submarine Cables and Pipelines on the High Seas

In so far as the Regulations for the Protection of Submarine Cables and pipelines within the high seas, such Regulations will fall within the ambit of Chapter 234 of the Laws of Malta, that is the Merchant Shipping Act (the Act) and become subsidiary legislation thereto. The Act, as described above, affords the Minister responsible for the sector the capacity to enact regulations, rules or orders, or give instructions, for the carrying into operation of any of the provisions of the Merchant Shipping Act.⁶⁹ This Subsidiary Legislation 234.60 (hereinafter referred to as SL 234.60) aims to fill the gaps relating to all Maltese-owned cables and pipelines that pass through the high seas, together with foreign-owned cables and pipelines that may be damaged or otherwise affected by vessels flying the Maltese flag, and the liability regime thereto. The liability foreseen will be both of a civil and of a criminal nature, ensuring that financial interests are protected and further ensuring that adequate punishment is attributed to the malicious, reckless or negligent acts of others. These Regulations will apply to cables and pipelines beneath the high seas, which are subject to breaking or injury by a ship flying the Maltese flag or by a person subject to the jurisdiction of the laws of Malta, done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telephonic communications as enshrined in article 113 of UNCLOS.⁷⁰

It is important to remember that the *raison d'être* behind these Regulations is primarily the protection of cables and pipelines (whether Maltese owned or foreign owned). The ability to legislate on this front is bolstered by Articles 113-115 of UNCLOS,⁷¹ to which Malta is a State Party. Furthermore, one of the measures to be adopted insofar as the high seas are concerned, is the notion that any person subject to Maltese jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, who, in laying or repairing such, cause a break in or injury to another cable or pipeline bearing that cost, as prescribed in Article 114 of the Convention;⁷² as well as providing for indemnity for any owner of a ship who can prove that they have sacrificed an anchor, net or other fishing

⁶⁹ Laws of Malta, Chapter 234, Article 374(1).

⁷⁰ UNCLOS, (n10), Article 113.

⁷¹ *ibid*, Articles 113-115.

⁷² *ibid*, Article 114.

gear in order to avoid injuring a submarine cable or pipeline by the owners of such, as determined by Article 115 of the Convention.⁷³

The draft Regulations (as found in their totality in Annex C) first define the salient terms used throughout, in order to set the tone for the proper understanding thereof. The Regulations go on to define their scope. Furthermore, Part One also sets into motion the procedure for the request from the Authority for any State to lay cables and pipelines on the high seas, as well as the requirement that any such cables are then portrayed on the nautical charts. The second part of the Regulations contain the offences and exceptions thereto and lists those acts or omissions that shall constitute an offence under the Regulations. This part also delves into those actions or omissions that might constitute an exception to such Regulations. The third part of the Regulations goes on to set forth the punishments for the offences contained in Part II of the Regulations. Here, there is a differentiation between acts committed intentionally and those committed through recklessness or culpable negligence – also attaching different punishments to these crimes. This part also makes reference to the General Data Protection Directive and the possibility of cybercrime. The Regulations conclude with the jurisdiction clause, ensuring that the Courts of Malta have jurisdiction over the offences laid down in the Regulations, as well as a clause affording the Minister the power to amend other laws.

4. Conclusion

The Maltese law would follow the example of other countries that are heavily reliant on their proximity to seas and oceans such as Australia, New Zealand and others. Maltese law has already envisioned much of the framework necessary for the good governance of the seas, but the few lacunae need to be filled in order to ensure proactivity and not retroactivity after an issue may come up that requires us to have tools that we do not already have in our possession.

⁷³ UNCLOS, (n10), Article 115.

Following the enactment of these three pieces of legislation, the Criminal Code Chapter 9, Article 326 would require amendment to include the offences envisaged within each set of Regulations. Article 12 in the draft Regulations ensures that the Minister responsible for the sector is empowered to amend other laws in order to ensure this standardisation across the board.

Annex A: Subsidiary Legislation 226.04 – the Protection of Cables and Pipelines Regulations in the Territorial Sea

Annex B: Subsidiary Legislation 535.03 – the Protection of Cables and Pipelines Regulations in the Continental Shelf

Annex C: Subsidiary Legislation 234.60 – the Protection of Cables and Pipelines Regulations in the High Seas

**Annex A: Subsidiary Legislation 226.04 – the Protection of
Cables and Pipelines Regulations in the Territorial Sea**

SUBSIDIARY LEGISLATION 226.04
PROTECTION OF CABLES AND PIPELINES
REGULATIONS IN THE TERRITORIAL SEA

[day] [month], 202²⁵T

LEGAL NOTICE [X] of 2021.

Part I

General Provisions

- 1** The title of these regulations is the Protection of Cables and Pipelines Regulations. Citation
- 2** (1) In these regulations, unless the context otherwise requires: Interpretation
- “the Act” means the Territorial Waters and Contiguous Zone Act; n. Cap. 226
- “internal waters” means all waters landward of the baselines from which the territorial waters are measured and includes any port;
- "Maltese waters" means the internal waters and the territorial waters;
- "maritime enforcement officer" shall have the same meaning as is assigned to it in the Act;
- "relevant vessel or craft" shall have the same meaning as is assigned to it in the Act;
- "ship" means any seagoing vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft;
- "territorial waters" shall have the same meaning as is assigned to it in the Act;
- “traffic separation schemes” shall have the same meaning as is assigned to it in the Act.
- (2) Unless otherwise defined in these regulations or unless the context requires, words and expressions used in these regulations shall have the same meaning assigned to them in the United Nations Law of the Sea Convention.

- 3 These regulations implement those rights and obligations levied upon State parties within the text of the 1982 United Nations Convention on the Law of the Sea in relation to cables and pipelines and the protection thereof.

26

- 4 (1) These regulations shall apply to acts or omissions:
- (a) by a person within the Territorial Sea of Malta or the internal waters of Malta; or
 - (b) by a vessel within the territorial sea of Malta or the internal waters of Malta.
- (2) These regulations shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service except insofar as explicitly stated in article 5(4) below.

Part II

Offences and Exceptions

Offences

- 5 (1) It shall be a criminal offence to engage in conduct which results in any of the subjects falling within Article 4 of these Regulations breaking or injuring, recklessly or by serious negligence:
- (a) a submarine telegraph or telephone cable in such a manner as might interrupt or obstruct telegraphic or telephonic communications;
 - (b) a submarine telegraph or telephone cable in such a manner as might compromise data protection as defined in the General Data Protection Regulation 2016/679;
 - (c) a submarine pipeline; or
 - (d) a submarine high-voltage cable.
- (2) Whosoever shall aid, abet or incite the commission of an offence referred to in the immediately preceding provision shall be guilty of an offence.
- (3) Nothing in these Regulations shall limit or affect the liability for damages of any person in respect of any damage to a submarine cable or submarine pipeline.

- (4) Any person on board or by means of any warship, naval auxiliary or other ship owned or operated by a State and used on government non-commercial service, shall not be held criminally liable but the flag State shall indemnify the State, ²⁷
~~suffering such damage.~~

Exceptions

- 6** (1) Whosoever shall cause the interruption, obstruction or damage referred to in the immediately preceding article shall not apply in the criminal jurisdiction in cases where:
- (a) a breakage of, or an injury to, a cable of pipeline is caused by persons acting with the sole object of saving their lives or their ships; and
- (b) those persons took all necessary precautions to avoid breaking or injuring the cable or pipeline.
- (2) Nothing in this Article shall limit or affect the liability for damages of any person in respect of any damage to a submarine cable or submarine pipeline.
- (3) Whosoever sacrifices an anchor, net, or other fishing gear in order to avoid causing injury or damage to any of those cables and pipelines as listed in article 6(a) through (d), shall be able to indemnify themselves against the owner of such cable or pipeline for the losses incurred.

Part III

Enforcement, Penalties and Jurisdiction

- 7** A maritime enforcement officer, whether on board a relevant vessel or craft or otherwise, may take appropriate action with respect to any person or to any ship within Maltese waters who is reasonably suspected of having committed or of being about to commit an offence under these regulations.
- 8** (1) Whosoever shall commit an offence under these regulations that does not result in the breaking or injury to the cables and pipelines referred to in Article 5, on conviction, be liable to a fine (*multa*) of not more than twelve thousand euro (€12,000) or to imprisonment for a term not exceeding six (6) months or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.
- (2) Whosoever shall intentionally commit an offence under these regulations resulting in breaking or injury to the cables and

Enforcement

Penalties

pipelines referred to in Article 5, shall, on conviction, be liable to a fine (*multa*) of not less than twenty three thousand euro (€23,000) euro and not more than two hundred and fifty thousand euro (€250,000) euro or to imprisonment for a term²⁸ of not less than six (6) months and not exceeding two (2) years or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.

(3) Whosoever shall through recklessness or serious negligence commit an offence under these regulations resulting in breaking or injury to the cables and pipelines referred to in Article 5, shall, on conviction, be liable to a fine (*multa*) of not less than twelve thousand euro (€12,000) euro and not more than thirty thousand euro (€30,000) euro or to imprisonment for a term not less than six (6) months and not exceeding eighteen (18) months or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.

(4) Whosoever shall intentionally or through recklessness or serious negligence commit an offence under Article 5(1)(b) of these Regulations shall be liable under Chapter 586 of the Laws of Malta, but shall further, on conviction, be required to indemnify the owner of the submarine cable or pipeline for all including the expenses disbursed to remedy the damage incurred.

n. Cap. 586

(5) Any person who, in the course of laying or repairing a submarine cable or submarine pipeline, of which the person is the owner, damages another submarine cable or submarine pipeline, is liable for the cost of repairing that damage, and such liability:

(a) is in addition to any other liability to which the person may be subject; and

(b) applies whether or not:

(i) the damage to the submarine cable or submarine pipeline was caused by that person's negligence; or

(ii) the person has been convicted of an offence relating to that damage.

(6) Where the person found guilty of an offence under these regulations is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such body corporate or having an authority to take decisions on behalf of that body or having

Annex B: Subsidiary Legislation 535.03 – the Protection of Cables and Pipelines Regulations in the Continental Shelf

SUBSIDIARY LEGISLATION 535.03

PROTECTION OF CABLES AND PIPELINES REGULATIONS IN THE CONTINENTAL SHELF

31

[day] [month], 2021

LEGAL NOTICE [X] of 2021.

Part I

General Provisions

- 1** The title of these regulations is the Protection of Cables and Pipelines Regulations. Citation
- 2 (1)** In these regulations, unless the context otherwise requires: Interpretation
- “the Act” means the Continental Shelf Act; n. Cap. 535
- “baselines” means the lines, joining appropriate points along the coast of Malta, from which the breadth of the territorial waters is measured;
- “continental shelf” means the seabed and subsoil of the submarine areas that extend beyond the territorial waters of Malta to a limit established in accordance with international law, measured from the baselines from which the breadth of the territorial waters is measured; so however that where in relation to States of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective continental shelves, the boundary of the continental shelf shall be that determined by agreement between Malta and such other State or States or, in the absence of agreement, the median line, namely a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial waters of Malta and such other State or States is measured;
- “Prime Minister” shall mean the Prime Minister or any other person designated by the Prime Minister;
- “Malta” has the same meaning as assigned to it by Article 124 of the Constitution of Malta; n. Cap 0

"Maltese waters" means the internal waters and the territorial waters;

"maritime enforcement officer" shall have the same meaning as is assigned to it in the Act;

"ship" means any seagoing vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft;

"territorial waters" shall have the same meaning as is assigned to it in the Act;

(2) Unless otherwise defined in these regulations or unless the context requires, words and expressions used in these regulations shall have the same meaning assigned to them in the United Nations Law of the Sea Convention.

3 These regulations implement those rights and obligations levied upon State parties within the text of the 1982 United Nations Convention on the Law of the Sea in relation to cables and pipelines and the protection thereof.

Scope

4 (1) These regulations shall apply to acts or omissions:

Application

(a) by a person within the continental shelf area of Malta;

(b) by a person on board or by means of a Malta flagged vessel; or

(c) by any person or vessel in any interaction with any cables or pipelines as further defined in article 6 that are within the continental shelf area of Malta.

(2) These regulations shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service except insofar as explicitly stated in article 5(4) below.

5 (1) Prior to the initiation of any State's efforts to lay cables and pipelines on Malta's Continental Shelf, the requesting State shall request consent from the competent Authority in written form.

Notification

(2) The authority will only be considered granted once the delineation of the cables and pipelines has been agreed upon between the requesting State and the competent authority.

~~(3) The competent authority shall ensure that all cables and pipelines are adequately portrayed on the nautical charts.~~³³

Part II

Offences and Exceptions

Offences

6 (1) It shall be a criminal offence to engage in conduct which results in any of the subjects falling within Article 4 of these Regulations breaking or injuring, recklessly or by serious negligence:

(a) a submarine telegraph or telephone cable in such a manner as might interrupt or obstruct telegraphic or telephonic communications;

(b) a submarine telegraph or telephone cable in such a manner as might compromise data protection as defined in the General Data Protection Regulation 2016/679;

(c) a submarine pipeline; or

(d) a submarine high-voltage cable.

(2) Whosoever shall aid, abet or incite the commission of an offence referred to in the immediately preceding provision shall be guilty of an offence.

(3) Nothing in these Regulations shall limit or affect the liability for damages of any person in respect of any damage to a submarine cable or submarine pipeline.

(4) Any person on board or by means of any warship, naval auxiliary or other ship owned or operated by a State and used on government non-commercial service, shall not be held criminally liable but the flag State shall indemnify the State suffering such damage.

Exceptions

7 (1) Whosoever shall cause the interruption, obstruction or damage referred to in the immediately preceding article shall not apply in the criminal jurisdiction in cases where:

(a) a breakage of, or an injury to, a cable of pipeline is caused by persons acting with the sole object of saving their lives or their ships; and

- (b) those persons took all necessary precautions to avoid breaking or injuring the cable or pipeline.
- (2) Nothing in this Article shall limit or affect the liability for damages of any person in respect of any damage to a submarine cable or submarine pipeline.
- (3) Whosoever sacrifices an anchor, net, or other fishing gear in order to avoid causing injury or damage to any of those cables and pipelines as listed in article 6(a) through (d), shall be able to indemnify themselves against the owner of such cable or pipeline for the losses incurred.

Part III Enforcement, Penalties and Jurisdiction

- 8** A maritime enforcement officer, whether on board a relevant vessel or craft or otherwise, may take appropriate action with respect to any person or to any ship within waters superjacent to the continental shelf who is reasonably suspected of having committed or of being about to commit an offence under these regulations. Enforcement
- 9** (1) Whosoever shall commit an offence under these regulations that does not result in the breaking or injury to the cables and pipelines referred to in Article 6, on conviction, be liable to a fine (*multa*) of not more than twelve thousand euro (€12,000) or to imprisonment for a term not exceeding six (6) months or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred. Penalties
- (2) Whosoever shall intentionally commit an offence under these regulations resulting in breaking or injury to the cables and pipelines referred to in Article 6, shall, on conviction, be liable to a fine (*multa*) of not less than twenty three thousand euro (€23,000) euro and not more than two hundred and fifty thousand euro (€250,000) euro or to imprisonment for a term of not less than six (6) months and not exceeding two (2) years or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.

- (3) Whosoever shall through recklessness or serious negligence commit an offence under these regulations resulting in breaking or injury to the cables and pipelines referred to in Article 6, shall, on conviction, be liable to a fine (*multa*) of ³⁵ not less than twelve thousand euro (€12,000) euro and not

more than thirty thousand euro (€30,000) euro or to imprisonment for a term not less than six (6) months and not exceeding eighteen (18) months or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.

- (4) Whosoever shall intentionally or through recklessness or serious negligence commit an offence under Article 6(1)(b) of these Regulations shall be liable under Chapter 586 of the Laws of Malta, but shall further, on conviction, be required to indemnify the owner of the submarine cable or pipeline for all including the expenses disbursed to remedy the damage incurred.

n. Cap. 586

- (5) Any person who, in the course of laying or repairing a submarine cable or submarine pipeline, of which the person is the owner, damages another submarine cable or submarine pipeline, is liable for the cost of repairing that damage, and such liability:

(a) is in addition to any other liability to which the person may be subject; and

(b) applies whether or not:

(i) the damage to the submarine cable or submarine pipe was caused by that person's negligence; or

(ii) the person has been convicted of an offence relating to damage.

- (6) Where the person found guilty of an offence under these regulations is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such body corporate or having an authority to take decisions on behalf of that body or having authority to exercise control within that body, and the offence of which that person is found guilty was committed for the benefit, in whole or in part, of that body corporate, the said person shall for the purpose of these regulations be deemed

to be vested with the legal representation of the said body corporate which shall, on conviction, be liable to the payment of a fine (*multa*) of not less than one hundred and fifty thousand euro (€150,000) euro and not more than three hundred thousand euro (€300,000) euro for any offence committed intentionally, through recklessness or serious negligence, or through lack of supervision or control which has made the commission of the offence possible, and of not less than seven hundred and fifty thousand euro (€750,000) euro and not more than one million and five hundred thousand euro (€1,500,000) euro for any offence committed with intent, including the payment of any expenses disbursed to remedy the damage incurred.

Provided that the liability of the body corporate under this sub-regulation shall be without prejudice to the liability of the persons involved as perpetrators, inciters, or accessories in the offence under these regulations.

- Jurisdiction **10** (1) The Maltese courts shall have jurisdiction over the offences laid down in these Regulations.
- (2) The aforementioned article is without prejudice to the overall jurisdiction that the Maltese courts shall have to civil cases in relation to such damages.
- Amendment of Other Laws **11** The Prime Minister is further empowered to push for the amendment of other laws in order to ensure that they are brought in line with these Regulations.

**Annex C: Subsidiary Legislation 234.60 – the Protection of
Cables and Pipelines Regulations in the High Seas**

SUBSIDIARY LEGISLATION 234.60
PROTECTION OF CABLES AND PIPELINES
REGULATIONS IN THE HIGH SEAS

[day] [month], 2021

LEGAL NOTICE [X] of 2021.

Part I

General Provisions

- | | | |
|----------|--|----------------|
| 1 | The title of these regulations is the Protection of Cables and Pipelines Regulations. | Citation |
| 2 | (1) In these regulations, unless the context otherwise requires: | Interpretation |
| | "Authority" means the Authority for Transport in Malta; | |
| | "Act" means the Merchant Shipping Act; | n. Cap. 234 |
| | "internal waters" means all waters landward of the baselines from which the territorial waters are measured and includes any port; | |
| | "Maltese owned" shall mean any company controlled and managed in Malta and/or whose direct shareholder or ultimate beneficial owner in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, Subsidiary Legislation 373.01 (PMLFTR) is a Maltese national; | |
| | "Maltese waters" means the internal waters and the territorial waters; | |
| | "maritime enforcement officer" shall have the same meaning as is assigned to it in the Act; | |
| | "Minister" means the Minister responsible for shipping and includes any person acting under their authority; | |

"relevant vessel or craft" shall have the same meaning as is assigned to it in the Act;

"ship" means any seagoing vessel of any type whatsoever, ~~operating in the marine environment and includes hydrofoil-boats, air-cushion vehicles, submersibles and floating craft;~~^{3c}

(2) Unless otherwise defined in these regulations or unless the context requires, words and expressions used in these regulations shall have the same meaning assigned to them in the United Nations Law of the Sea Convention.

3 These regulations implement those rights and obligations levied upon State parties within the text of the 1982 United Nations Convention on the Law of the Sea in relation to cables and pipelines and the protection thereof.

Scope

4 (1) These regulations shall apply to acts or omissions:

(a) by a person on board or by means of a Malta flagged vessel in any interaction with any cables or pipelines as further defined in article 6 that are Maltese-Owned and passing through the high seas;

(b) by a person on board or by means of a Malta flagged vessel in any interaction with any cables or pipelines as further defined in article 5 that are passing through the high seas; or

(c) by a person subject to the jurisdiction of Malta on the high seas in any interaction with any cables or pipelines as further defined in article 5.

(2) These regulations shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service except insofar as explicitly stated in article 5(4) below.

Part II

Offences and Exceptions

Offences **5** (1) It shall be a criminal offence to engage in conduct which results in any of the subjects falling within Article 4 of these Regulations breaking or injuring, recklessly or by serious negligence:

(a) a submarine telegraph or telephone cable in such a manner as might interrupt or obstruct telegraphic or telephonic communications;

40

(b) a submarine telegraph or telephone cable in such a manner as might compromise data protection as defined in the General Data Protection Regulation 2016/679;

(c) a submarine pipeline; or

(d) a submarine high-voltage cable.

- (2) Whosoever shall aid, abet or incite the commission of an offence referred to in the immediately preceding provision shall be guilty of an offence.
- (3) Nothing in these Regulations shall limit or affect the liability for damages of any person in respect of any damage to a submarine cable or submarine pipeline.
- (4) Any person on board or by means of any warship, naval auxiliary or other ship owned or operated by a State and used on government non-commercial service, shall not be held criminally liable but the flag State shall indemnify the State suffering such damage.

Exceptions

6 (1) Whosoever shall cause the interruption, obstruction or damage referred to in the immediately preceding article shall not apply in the criminal jurisdiction in cases where:

(a) a breakage of, or an injury to, a cable or pipeline is caused by persons acting with the sole object of saving their lives or their ships; and

(b) those persons took all necessary precautions to avoid breaking or injuring the cable or pipeline.

(2) Nothing in this Article shall limit or affect the liability for damages of any person in respect of any damage to a submarine cable or submarine pipeline.

(3) Whosoever sacrifices an anchor, net, or other fishing gear in order to avoid causing injury or damage to any of those cables and pipelines as listed in article 5(a) through (d), shall be able to indemnify themselves against the owner of such cable or pipeline for the losses incurred.

Part III
Enforcement, Penalties and Jurisdiction

Penalties

- 7 (1) Whosoever shall commit an offence under these regulations, ⁴¹~~that does not result in the breaking or injury to the cables and pipelines referred to in Article 5, on conviction, be liable to a fine (*multa*) of not more than twelve thousand euro (€12,000) or to imprisonment for a term not exceeding six (6) months or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.~~
- (2) Whosoever shall intentionally commit an offence under these regulations resulting in breaking or injury to the cables and pipelines referred to in Article 5, shall, on conviction, be liable to a fine (*multa*) of not less than twenty three thousand euro (€23,000) euro and not more than two hundred and fifty thousand euro (€250,000) euro or to imprisonment for a term of not less than six (6) months and not exceeding two (2) years or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.
- (3) Whosoever shall through recklessness or serious negligence commit an offence under these regulations resulting in breaking or injury to the cables and pipelines referred to in Article 5, shall, on conviction, be liable to a fine (*multa*) of not less than twelve thousand euro (€12,000) euro and not more than thirty thousand euro (€30,000) euro or to imprisonment for a term not less than six (6) months and not exceeding eighteen (18) months or to both such fine and imprisonment including the payment of any expenses disbursed to remedy the damage incurred.
- (4) Whosoever shall intentionally or through recklessness or serious negligence commit an offence under Article 5(1)(b) of these Regulations shall be liable under Chapter 586 of the Laws of Malta, but shall further, on conviction, be required to indemnify the owner of the submarine cable or pipeline for all including the expenses disbursed to remedy the damage incurred.
- (5) Any person who, in the course of laying or repairing a submarine cable or submarine pipeline, of which the person is the owner, damages another submarine cable or submarine pipeline, is liable for the cost of repairing that damage, and such liability:
- (a) is in addition to any other liability to which the person may be subject; and

n. Cap. 586

(b) applies whether or not:

(i) the damage to the submarine cable or submarine pipeline was caused by that person's negligence; or

42

(ii) the person has been convicted of an offence relating to that damage.

- (6) Where the person found guilty of an offence under these regulations is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such body corporate or having an authority to take decisions on behalf of that body or having authority to exercise control within that body, and the offence of which that person is found guilty was committed for the benefit, in whole or in part, of that body corporate, the said person shall for the purpose of these regulations be deemed to be vested with the legal representation of the said body corporate which shall, on conviction, be liable to the payment of a fine (*multa*) of not less than one hundred and fifty thousand euro (€150,000) euro and not more than three hundred thousand euro (€300,000) euro for any offence committed intentionally, through recklessness or serious negligence, or through lack of supervision or control which has made the commission of the offence possible, and of not less than seven hundred and fifty thousand euro (€750,000) euro and not more than one million and five hundred thousand euro (€1,500,000) euro for any offence committed with intent, including the payment of any expenses disbursed to remedy the damage incurred

Provided that the liability of the body corporate under this sub-regulation shall be without prejudice to the liability of the persons involved as perpetrators, inciters, or accessories in the offence under these regulations.

- Jurisdiction **9** (1) The Maltese courts shall have jurisdiction over the offences laid down in these Regulations.
- (2) The aforementioned article is without prejudice to the overall jurisdiction that the Maltese courts shall have to civil cases in relation to such damages.

Amendment
of Other
Laws **10**

The Minister is further empowered to push for the amendment of other laws in order to ensure that they are brought in line with these Regulations.

