

Joint Committee on the National Security Strategy

Oral evidence: Undersea cables

Monday 19 May 2025

4.30 pm

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Members present: Matt Western (The Chair); Lord Boateng; Bill Esterson; Baroness Fall; Sir Julian Lewis; Edward Morello; Lord Robathan; Lord Sedwill; Emily Thornberry; Baroness Tyler of Enfield; Lord Watts.

Evidence Session No. 3

Heard in Public

Questions 23 - 30

Witnesses

I: Dr Marie Jacobsson, Former Ambassador and Principal Legal Adviser on International Law at the Swedish Ministry for Foreign Affairs; Professor Aurel Sari, Professor of Public International Law at University of Exeter, and Fellow at Supreme Headquarters Allied Powers Europe.

Examination of witnesses

Dr Marie Jacobsson and Professor Aurel Sari.

Q23 The Chair: We continue our inquiry into undersea cables, with our second panel looking at the legal and policy side of this issue. Can I ask you to introduce yourselves briefly?

Dr Marie Jacobsson: I am a former ambassador and principal legal adviser to the Swedish Ministry for Foreign Affairs. I have worked most of my life with maritime security, international security and international law. I also have a background in the Swedish defence area. That is about it. Now I am retired but I still work with these matters.

Professor Aurel Sari: I am a professor of public international law at the University of Exeter. I work primarily on questions of international law that relate to conflict and war. I also have a number of other affiliations but I am here today and speaking primarily in an academic capacity.

Q24 Lord Boateng: Would it be fair to say that in relation to cables sabotaged in international waters, there is currently no effective regime to hold the perpetrators of the damage responsible? Can you share with us your view of the limits and weaknesses, therefore, of the legal framework around threats to undersea cables, and particularly address the issue of the possibility of our detaining vessels and arresting those on them when there is a suspicion that they have caused damage?

Professor Aurel Sari: I am going to give you a very loyal answer to that and say, it depends. It is a yes or no answer—in some areas. Taking a step back, the law of the sea, which is the main legal regime applicable to this question, takes a zonal approach and tries to balance the interests and rights of coastal states with the interests and rights of all other states. Basically, the closer you are to the coast, the larger or more extensive the rights of coastal states like the UK would be. That means in territorial waters, for example, there really are no difficulties. States have extensive sovereign rights in territorial waters. We are talking about waters that are 12 nautical miles out from the coastal baseline. For example, in the English Channel you do not really have any legal difficulties under international law.

There are however difficulties further out to sea. So when you move from the 12 nautical miles of the territorial sea out into the exclusive economic zone, which is the area that runs up to 200 nautical miles and beyond into the high seas, depending on what you want to do, if you are talking about enforcement action, and depending on the type of cable and infrastructure that we are talking about, putting it bluntly, there are some real and large gaps in relation to telecommunication cables that are not exploiting any sovereign rights, which is pretty much all of them. There, international law in the form of the law of the sea does not provide coastal states with a right to take enforcement action.

Lord Boateng: Sweden has some specific and relatively recent experience of this issue. I wonder if you could help us in that regard, Dr Jacobsson, particularly in relation to the capacity and risks of taking a more robust approach to interdicting suspect vehicles. Will that be possible without changing the legal framework? How do we deal with the issue of proving intent in cases when those responsible say, “I didn’t mean to do this, it was all a terrible accident”?

Dr Marie Jacobsson: Yes, we do have some experience, both from the Nord Stream, the pipeline issue, and from our experience with the “Vezhen”; I think that is the vessel that you are thinking of.

As my colleague said—and I share his view entirely—it depends on the issue. When it came to the cable, the pipeline issue, with the Nord Stream explosions in 2022, measures were taken, but none of these measures were beyond what international law, in particular the law of the sea, allowed us to do.

There were examinations of the explosion, and the prosecutor indicated a suspicion of sabotage. But finally, under Swedish jurisdiction, he could

not do anything, and neither could the Danes, so that prosecutor's examination was handed over to Germany.

That experience of the pipeline in 2022 gave the Swedish authorities a very good lesson in co-operation, and the need for co-operation among the national entities—the authorities. Also, there was the experience of close co-operation that took place between Denmark, Germany and Sweden. That is one case.

In the case of the "Vezhen", the vessel that was suspected of having cut a cable in the Baltic Sea, she was taken for further examination. She was asked to move into Swedish territorial waters. The prosecutor finally found that the cable had been cut by accident, so the vessel was released in the early spring.

Lord Boateng: Was proof of intent an issue? You say they found that it was an accident, but was it that they could not get any evidence upon which a jury could be certain that it was not an accident, or was it genuinely an accident?

Dr Marie Jacobsson: I think it was genuinely an accident. I do not have access to all the documentation because there are certain restrictions to getting all the evidence. But I think it was very clear: the prosecutor would not have let the vessel go had he had any remaining suspicion that this was not an accident.

Q25 **Lord Sedwill:** We heard from an earlier panel that, in effect, in international waters, the tools for holding any vessel accountable for this kind of action are very limited. Given that it would take years to agree a stronger legal framework through UN mechanisms, is there a case for pursuing novel interpretations of international law? We have done it in other areas—when reinterpreting international humanitarian law, for example. Could we consider the laws on piracy or criminal damage or criminal negligence as mechanisms by which we could strengthen the framework, particularly in international waters? Perhaps we could start with you, Professor, and then it would be interesting to get a brief observation from Dr Jacobsson as well.

Professor Aurel Sari: In response to the gap that I briefly described earlier, you can do two things. One is to use the authority that the existing law provides to its full extent. I know your question was not directed to that, but there is a bit of work to be done there, for the UK in particular.

Looking at novel interpretations, yes, a number of ideas and suggestions have been put out in the literature, including by states. As a general point, I would say that, of course, it is possible to be forward-leaning—it is possible to come up with novel interpretations—but, by definition, these are novel. They are not tested. And most likely, given the kind of states and threats that we are talking about, there will be some kind of retaliation or, at the very least, pushback.

In other words, it becomes a question of legal risk. How much appetite for legal risk do the UK or other states have to push some of these interpretations? I will give you just one or two examples of what could be done.

You just mentioned piracy. It has been suggested that piracy laws could be relied upon. In principle, it is possible if you look at the definition of piracy under the UN Convention on the Law of the Sea. Article 101 talks about one ship causing damage to property; so it is not just about damage to other ships, but damage to property. In other words, in principle, cable-cutting would fall within that definition. However, to be covered, such damage would have to be committed for private ends.

Immediately, that introduces a little bit of a difficulty if you are concerned about the Russias and the Chinas, and other state actors. You cannot say in the same breath that this is potentially attributable to a state and also to piracy, because they are mutually exclusive categories.

So that is one issue, but I think the bigger problem is that relying on piracy and basically reinterpreting Article 101 in this way is novel. It is controversial. By definition, you will get some pushback.

There are other things that you can do as well. For example, you can rely on Article 113, which requires flag states to first prohibit causing wilful, deliberate or negligent damage to submarine cables, and then to take enforcement actions. In other words, states have to police their own nationals and their own ships on the high seas and everywhere else.

Now, that is an obligation imposed on flag states, and some have suggested that it does not necessarily exclude coastal states such as the UK saying, "Look, we do not have an obligation to penalise this sort of conduct, but it is not prohibited either. So we can establish and exercise UK jurisdiction on the same basis". In principle, again, that is not a bad argument. But it runs into difficulty with what is known as exclusive flag state jurisdiction on the high seas. So, in principle, the UK could extend its domestic laws to submarine cables being damaged on the high seas, but if it were to enforce that jurisdiction—enforce those laws—that would run into the exclusive flag state jurisdiction of other states, which is set out in Article 92 of the UN Convention on the Law of the Sea.

So, again, it is a sort of halfway solution, but it does not quite get you there. That is the problem with a lot of these novel interpretations: they may get you some way, but none of them gets you fully there, and, by definition, all of them are controversial.

Lord Sedwill: Can I just briefly pursue that example you mentioned earlier, where piracy, for example, is essentially defined as being only by private interests rather than by state interests?

We know that, in this area, states use private enterprise, in effect, to carry out acts on their behalf. So at the very least, in that case, it might increase the jeopardy to those individuals if we know that they are acting

on behalf of states. Would that be fair, or am I missing something?

Professor Aurel Sari: In a situation where you are relying on piracy laws, if you have boarded and detained a ship, and you are accusing it of piracy, it is unlikely that—if there is a state sponsor behind it—the state sponsor would put up their hand and say, “Actually, it is not a pirate ship, it is not for private enterprise, it is a proxy. We have sponsored and arranged this thing”.

From a practical point of view, although piracy has to be committed for private ends, I do not think that necessarily prevents you from taking action, for the reasons that I just mentioned.

Dr Marie Jacobsson: I think there are always possibilities for meeting new situations under the law of the sea. I would be very reluctant to open up a discussion of whether or not to renegotiate the law of the sea convention, because you do not want to end up in a situation like that in a General Assembly, with voting and consensus and everything.

So we have to use other means and other tools, but the most important thing is not to be overly interpretive or positive about new interpretations. There is one thing that every state should have in mind when dealing with this: it is a question of reciprocity. Our own vessels are likely to be subject to the same acts that we perform on other state vessels. That is important.

There are opportunities to continue discussing this within the IMO and in other fora. Also, the co-operation that takes place now in the Baltic Sea among the NATO states and others is a good example of how you slowly but surely build a new form of practice. I am not meaning state practice in the legal sense, but you are building up a non-tolerance against these acts, and that will take us further.

I warn strongly against putting too much emphasis on coastal states’ jurisdiction because you risk creeping jurisdiction. As my colleague just pointed out, I would emphasise the flag state’s responsibilities. Port state and flag state responsibilities are a road that we could examine further.

Q26 **The Chair:** Picking up on that last point, Dr Jacobsson, it seems that these flag states are an anachronism from another era and that there needs to be wholesale change in this sphere. To what extent are these flag states getting in the way of proper investigation by not co-operating with how these investigations are being done?

Dr Marie Jacobsson: In some respects, it boils down to them perhaps not even being members of the IMO, not being subject to the rules on the safety and security measures that flag states are obliged to take on insurance and the safety of the crew and the people on board. Those flag states that we suspect do not live up to their obligations but are members of the IMO, for example, can be approached, but that needs to be a collective approach. A single state cannot approach another flag state that is not living up to its obligations, but it could be done collectively.

The Chair: Professor Sari made a couple of points a moment ago around piracy. Why have we not updated a lot of this legislation of the sea, recognising that it is not just above the sea but below the sea and now infrastructure? What has prevented us making changes to the law to allow investigations to be made easier?

Dr Marie Jacobsson: The law of the sea is updated all the time through implementation agreements under the UN Convention on the Law of the Sea and through other treaties. For example, after 9/11 there was a new protocol, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. There are a number of conventions. It is not fair to say that the law of the sea is not updated.

I would be concerned about the convention being updated. The UN Convention on the Law of the Sea as a framework has served very well. It also encourages co-operation and further treaties, but you need more. You cannot have every state on board from the beginning. It is a "slowly but surely" development, but it is possible.

Professor Aurel Sari: I think that there are two main reasons. First, even though these arrangements have been around for decades, ultimately many of them come back to a balance of interests. That balance of interests is still very much there; you have the dilemma of trying to make sure that coastal states and other states get a good deal out of it. Circumstances change, but whether you are looking at the 1970s, the 1950s or current times, it will still require a balancing. We are looking at dilemmas which, by their very nature, are very difficult to resolve. They require compromises. That is one reason why we could try to update, but ultimately it will still be finding a compromise, maybe a slightly different one.

Secondly, to update, for example, the UN Convention on the Law of the Sea would be opening Pandora's box. We are talking about 168 states, which would all have to agree. You may then want additional states to sign up to build international consensus. A reason why we talk about grey-zone conflict is that there are states which are quite happy with some of these gaps and uncertainties. They do not want them to be resolved, they do not want those gaps to be filled. It will be very difficult to reach a common agreement with Russia, China and other nations.

The Chair: What is realistic for us to achieve in the next few years in bringing about some sort of control in this environment?

Professor Aurel Sari: There are two sides to this: the non-legal side is not my area, but we should not just look at the law for solutions. There are many things that you can do within the current framework by, for example, enhancing your capabilities. When we look at the legal solutions to the problem, there may be some room for forward-leaning interpretations but, as we discussed, you will find pushback and potentially retaliation. We have seen Russia doing just that in relation to Estonia.

My suggestion would be to stay within the existing legal framework using existing legal authorities to their full extent, which the UK is not doing, and exploiting international co-operation. Dr Jacobsson mentioned the co-operation between NATO member states in the North Sea and the Baltic Sea. That is where you are on relatively safe legal ground. There is still some mileage there to find legal solutions.

- Q27 **Baroness Tyler of Enfield:** I want to pursue the issue of the effectiveness of international legal co-operation. I gather that the UK Government are involved in numerous international co-operation efforts. All sorts of global fora are looking at this issue. How effectively are the UK Government co-ordinating with their international partners. Are there improvements that they could make in the policy and legal framework to protect cables more than they are being protected at the moment?

Professor Aurel Sari: That is a good question. I am not best placed to answer it, unfortunately. I am broadly aware of some of the steps that the UK Government are taking. A lot of it is aimed towards practical steps, with collaboration within the NATO context and with EU partners. In terms of the legal environment, I am not aware in detail of what the UK Government are doing, so I must defer on that question, with my apologies.

Dr Marie Jacobsson: I cannot comment on what the UK can do or is doing, but it strikes me that most states, including my own, need to do their homework. We have an array of organisations and authorities in our own state—the coastguards, the marines, the police, the private sector and so on. Their rules of engagement and way of co-operating are not always the most efficient.

In the Baltic Sea area, we have tried to learn from this. There is a major examination of how we can improve this in Sweden. It is striking how much the domestic national laws and regulations are preventing us from being 100% effective. We must look at what can we do in our backyard before we go out.

- Q28 **Baroness Tyler of Enfield:** To pursue that point for a minute, given what you have just said about the domestic frameworks that countries are dealing with, do we need a completely new international legal framework? Would that help, or do countries need to be addressing their own national legal structures?

Dr Marie Jacobsson: The international legal framework is very useful as it is right now. We could make even better use of it if we were able to make our internal structures and co-operation more efficient. There is a lot to do; that view that is shared by practitioners out in the field.

Baroness Tyler of Enfield: Professor Sari, I know you want to come in. I have just one follow-up question. You gave a sense that you did not feel that we could work within existing international legal frameworks and structures. What improvements would you recommend? There are clearly still problems and issues that are not being solved.

Professor Aurel Sari: At the international level, I do not think there is much debate on this. The clear, well-recognised gap is in relation to protection of submarine cables—telecommunication cables in particular—which are not exploiting any of the economic resources of the exclusive economic zone.

We simply transit through that area or transit out on to the high seas. There is just not anything on that. Clearly, there is a need for that protection. I do not think that should be too difficult to balance in respect of the rights of coastal states versus the rights and interests of other states.

Again, the difficulty is: how do you do it? Do you have separate convention protocols? Do you change UNCLOS? The mechanics and the process are difficult. Also, as I mentioned earlier, given that some states would like to benefit from that grey area, getting real international consensus is difficult. But, to me, that is the obvious problem, and the obvious solution would be to fix it at the international level.

But if I may come back to making the most of what we already have—and Dr Jacobsson mentioned this—one example from UK domestic legislation is the famous Submarine Telegraph Act of 1885, which implements a convention from 1884 for the protection of submarine telegraph cables.

That is very often flagged up in the UK; so, when you look at the literature, there is domestic legislation that protects submarine cables—but only telegraphic ones. Out of some 64 submarine cable systems in the UK, as far as I am aware, none—zero—is a telegraphic cable.

So the UK seems to be one of those flag states that do not quite comply with their Article 113 obligations, by not having specific legislation on the books. That piece of very ancient legislation does not cover what the UK would have to do as a flag state.

Baroness Tyler of Enfield: Thank you. That is helpful.

Q29 **Lord Boateng:** I wonder if I could press you both on the effectiveness of intergovernmental organisations in this area. Would either of you say that the International Telecommunication Union is a body that is likely to assist in relation to deterring action against undersea cables and prioritising the security of digital communications?

I ask this given that one of its main funders is China, which provided \$7.5 million in 2023, and when its previous boss, the Chinese engineer Houlin Zhao, proposed various measures that Sweden, the United Kingdom and the United States all felt it necessary as democratic nations to oppose?

Going forward, can we really have much faith in that body being of much assistance in this area?

Professor Aurel Sari: It is probably appropriate to be sceptical in relation to that organisation and potentially many other organisations as

well; I do not want to speculate too much on how sceptical we should be. But I suggest that the bigger problem, or difficulty, with the International Telecommunication Union is its remit. What we are looking at is a law of the sea problem, and that organisation is not responsible for that area, or that problem.

Lord Boateng: Dr Jacobsson, do you have any comment about the ITU or, indeed, the UN, with the veto in the Security Council of both Russia and China? Are these bodies likely to be of much assistance? Do we need a new organisation?

Dr Marie Jacobsson: No new organisations, please. I cannot comment too much about the ITU, but I do share your scepticism about that. I too think that we cannot rely on that body, for the reason that it is not familiar with the law of the sea problems that we are facing when we talk about protection of underwater cables and pipelines.

We have examples of conventions negotiated in different fora that totally, or basically, neglect much of the law of the sea. So as an initial comment, I would be very sceptical about that.

But when it comes to other organisations, I think the International Maritime Organization takes the crown. What is going on there is down to earth, very practical, and, in a sense, non-political. So I think that we could make much more of the International Maritime Organization, for example, when it comes to flag state responsibilities and how we should interpret maritime security and safety. That is a definite possibility.

Interestingly enough, the Nord Stream pipeline explosions were actually debated in the Security Council on the initiative of Russia. It did not go anywhere, and we are quite grateful for that, I must say.

Q30 **Sir Julian Lewis:** I want to ask you which countries other than the UK embody best practice, whether we can usefully follow their examples, and whether there are any examples that you think we should actively avoid.

While you are thinking about that, I also put it to you that it seems in this situation that people who shamelessly do not observe the law have a great advantage over those who do. If suspect ships could be boarded, impounded, and their crews and owners punished, that would be a major cure to this disease.

Last November, on two successive days, as Dr Jacobsson will know, the Chinese flagship "Yi Peng 3" cut two important cables: one between a Swedish island and Lithuania, another between Helsinki and Germany. Apparently, this ship had been dragging its anchor along the seabed for more than 160 km. However, the responsibility for this apparently lay with the country to which the ship was flagged: China.

So when the Swedes wanted approval to board the ship, which was then anchored in international waters, surprisingly enough, the Chinese Government did not give that permission and the ship was allowed to proceed.

By contrast, I gather that the Estonians are in the process of trying to legislate to enable much more decisive action along the lines that I have just been describing. Have you any observations to make on those possibilities? Are there any models that we should follow, and any you think we should avoid like the plague?

The Chair: I ask you to be fairly brief in your remarks as we are more or less at time.

Professor Aurel Sari: Let me combine those two parts of the question. First, it depends. If you are looking for best practice, it depends on what you consider to be best. I come back to the point I made earlier: we can stay within the existing legal frameworks or we can be somewhat more forward-leaning.

If you are looking at staying within the existing frameworks, one example would be that Australia and New Zealand, as well as the Cook Islands, have adopted or established what are known as cable protection zones. They are strictly within the legal parameters of the UN Convention on the Law of the Sea. They operate only against their own nationals or their own ships, which fly their flag or are within their territorial waters. This is something that the UK could look at. Whether it is worth creating such zones in UK territorial waters, ultimately that is not a legal question. It will be for policy to decide. But that is one example whereby states are utilising the law to its full extent.

In terms of the other side of the equation being more forward-leaning, Finland took quite assertive action in relation to the "Eagle S". In the case of the "Yi Peng 3", Sweden did not do so. It is fine to be assertive and forward-leaning but just be careful what you wish for because, again, there is going to be international criticism. If a state goes around beating its chest, as it were, about compliance with the rules-based international order but then takes shortcuts, inevitably you will get a charge of hypocrisy and double standards that then tends to stick.

Equally, Dr Jacobsson made the point as well: we are talking about principles. If you are making a principled argument that now there are certain liberties that you can take, the same argument will be open to the Russias, Chinas, North Koreas, Irans and anyone else in this world. Is that worth the risk? I come back to the point I made earlier that with forward-leaning interpretations, you can do them but it comes down to how much appetite for legal risk do you have? Be careful what you wish for.

Dr Marie Jacobsson: I will make a few comments on the "Yi Peng 3" because I agree with what was just said. The "Yi Peng 3" was in international waters. It was Hong Kong-flagged. The Chinese Government was approached. We did everything according to the book and the Swedish authorities were on board with the permission of the Chinese, but they could not participate fully in the examination. We got in touch with a proper flag. You can view China as you wish, but it did work according to the book in this particular case.

The Chair: Thank you for your patience. I am aware that we had to start that session slightly late. We had a few technical issues in terms of getting connection with you, Dr Jacobsson. But thank you on behalf of the committee for giving up your time to help and inform us with this inquiry, the second session we have had on undersea cables. Thank you again.