The Hague Centre
for Strategic Studies

NATO Seminar on
Seabed Security

Coping with Sabotage and Seabed Security Threats in the Baltic Sea

A Regional Maritime Security Policy

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March 2025

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A Regional Maritime Security Policy

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March 2025

This HCSS paper is part of a series of guest contributions following the NATO Seminar on Seabed Security, organised by TNO and HCSS, in close cooperation with the Dutch Ministries of Defence and Infrastructure & Water Management, on March 27, 2025.

Table of Contents

Abstract

The risk for seabed security threats in the Baltic Sea has increased significantly in the last decade, with constant doubtful maritime accidents that resulted in broken communication cables laid on the ocean floor, leading to enormous financial losses. Marine sabotage crimes affecting multiple nations, require the development of a regional maritime transport policy, addressing seabed security threats based on a regional agreement and respective convention, since any policy must be implemented under the rule of law. This paper analyses the development of a regional agreement for cooperation in maritime security, among all the affected States in the Baltic, to protect critical marine infrastructure with the expansion of the Convention on the Protection of the Marine Environment of the Baltic Sea Area (the "Helsinki Convention") and the respective Baltic Marine Environment Protection Commission – also known as the "Helsinki Commission" or "HELCOM" as established in 1974 pursuant to this Convention to include maritime security. The authors concluded that the development of such agreement and respective security policy is highly feasible, because besides the limited Russian territory in the Baltic Sea, all waters belong either to the territorial sea or the Exclusive Economic Zone (EEZ) of one of the involved States and there is not "High Seas" in the Baltics which facilitates this alternative.

1. Introduction

Maritime Security is "the state of being free from the threat of unlawful acts such as piracy, armed robbery, terrorism, or any other form of violence against ships, crews, passengers, port facilities, offshore installations, and other targets at sea or in coastal areas".[1] The part of this concept addressing "other targets at sea", shall be understood as the inclusion of seabed security threats and sabotage to critical marine infrastructure, like communication cables. Maritime security is a pillar of Ocean Governance, but also one of its most critical challenges.

Ocean governance means the coordination of different uses of the ocean focusing on the protection of the marine environment. It is also defined as the necessary process to sustain the ecosystem structure and respective functions.[2] An effective ocean governance must be in accordance with the international rule of law and respective principles, standard procedures, national legal frameworks and integrated policies, which must be overarched by the national interests, addressing areas related to sustainable development and integrated coastal zone management, maritime security and protection of critical marine infrastructure like seabed cables, which requires the assessment and establishment of strategies and actions at a regional level, based on information sharing and knowledge management.

Ocean governance can be divided into two main areas: high seas and coastal State governance. These are based on rules established in the United Nations Law of the Sea Convention (UNCLOS) and principles of international law as the "right of freedom of navigation", "right of transit passage", "right of innocent passage", "Right of archipelagic sea lanes passage", "the right of visit", "flag State control", "freedom of fishing" and the "freedom of the high seas". Thought According to Article 21 of UNCLOS,[3] the coastal state has sovereign rights over its territorial sea. Article 3 on the breadth of the territorial sea establishes 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. Besides, Article 55 on the Specific legal regime of the Exclusive Economic Zone (EEZ), establishes that it is an area beyond and adjacent to the territorial sea. The breadth of the EEZ is established under Article 57, which writes that "the exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured".[4]

Under peaceful times the law of the sea, which encompasses a series of international agreements and conventions, provides the legal framework for national rights and international obligations at sea and it is the cornerstone for international security cooperation. However, the maritime domain is heavily regulated under the San Remo Manual on International Law Applicable to Armed Conflicts at Sea. Under war, several provisions established in this regulation would affect those mentioned above and in tandem commercial ship operation.

It is under maritime law enforcement at national level that the coastal State exercise its sovereignty exclusive rights regarding maritime safety and security through Port State Control, monitoring of traffic and respective vessel inspection. This shall be done in accordance with the established in other International Conventions, Codes and Regulations from

1 Max, Mejia. Law and Ergonomics in Maritime Security. Lund: Department of Design Sciences, Lund University, (2007).

2 D. Pyć. Global Ocean Governance, Global International Journal on Marine Navigation and Safety of Sea Transportation, (2016). Vol. 10 N.1, 159-162.

3 United Nations. United Nations Law of the Sea Convention (UNCLOS), (1982).

4 Idem.

the International Maritime Organization (IMO), such as the Safety of Life at Sea (SOLAS) Convention, the International Convention for the Prevention of Pollution from Ships (MARPOL), the Convention for Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), and the Maritime Labor Convention.

The international regime addressing the security of the high seas relates to areas that require international cooperation as piracy, maritime terrorism and transnational organized crime (including smuggling of drugs, people, weapons and chemical precursors), among others. However, currently the international legal framework does not regulate sabotage of seabed cables in the high seas. This crime is not addressed in UNCLOS and even the International Convention on the Safety of Life at Sea, 1974 (SOLAS Convention), Chapter XI-2 on "Special measures to enhance maritime security", which enshrined the International Ship and Port Facility Security Code (ISPS) Code focuses on terrorism at sea and it leaves up to Contracting Coastal State governments to determine the extent to which the guidance issued by the IMO is reflected when undertaking Port Facility Security Assessments (PFSA), Ship Security Assessments (SSA), Port Facility Security Plans (PFSP), and Ship Security Plans (SSP) regarding piracy and armed robbery; drug smuggling; stowaways; illegal migration; the security of dangerous goods and sabotage of undersea power and communication cables.[5]

It is the Convention on the High Seas (1958), that preluded UNCLOS which set the four core freedoms of all States coastal and non-coastal, which are "freedom of navigation", "freedom of fishing", "freedom to lay submarine cables and pipelines" and "freedom to fly over the high seas".[6] These principles were further ratified under UNCLOS (1982) in Part VII on the High Seas, Section 1, Article 87 on the freedom of the high seas, including the "freedom to construct artificial islands and other installations permitted under international law. However, UNCLOS only addresses the coastal State's rights to repair and maintain undersea cables in the EEZ, under Article 58 and it fails to regulate sabotage in the high seas, even in the case of terrorist or malicious attacks to interrupt connectivity and inflict damage.

The rationale behind is that UNCLOS, as a treaty between States, does not hold non-State actors responsible. Instead, it is the ship's flag jurisdiction or that of the perpetrator citizenship and not the one from the State that owns the cable, which is the responsible to investigate the incident and determine the correct penalty. But in territorial waters sabotage of submarine cables can be regulated and punished under the jurisdiction of the Coastal State.

In the last year there has been several undersea cables that have been damaged by fishing boats and merchant vessels in different regions of Europe, including Svalbard and the Baltic Sea. Some leaders from different nations have claimed that these are Russian vessels sabotaging undersea communications and power cables, stating that such events are acts of "hybrid warfare" against Western countries supporting Ukraine, calling for improved maritime security.[7]

One of the particularities of the Baltic Sea is that there is not "high seas". The whole area is divided into territorial waters or exclusive economic zones of the coastal States. This opens for a regional agreement and respective security policy to improve the protection of undersea cables and marine infrastructure.

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5 Adriana Avila-Zuniga-Nordfjeld. Building a national maritime security policy, WMU Research Report Series, (2018), citing the International Maritime Organization, (IMO). Guide to maritime security and the ISPS Code, (2012).

6 United Nations Geneva. Convention on the High Seas (29 April 1958).

7 Ander Gillenea. Fishing trawlers, not sabotage, behind most undersea cable damage: UN, France 24, (2025).

The objective of this research effort is to study alternatives to strengthen maritime security in the Baltic Region, to improve protection of undersea power and communication cables, pipelines and other infrastructure lying on the seabed.

The idea is to explore the possibility to develop a regional agreement and the consequent regional maritime security policy as a strategical solution to counter such security threats, by expanding the coverage of The Baltic Marine Environment Protection Commission – also known as the "Helsinki Commission" or "HELCOM" (1974), established pursuant to the Convention on the Protection of the Marine Environment of the Baltic Sea Area (the "Helsinki Convention"), which must be expanded as well.

It is structured in the linear form of introduction, followed by sections discussing first, relevant legal aspects and principles of this alternative. Next, the Helsinki Convention and respective HELCOM will be briefly introduced, and then the general discussion is provided, leading to the necessary conclusions and recommendations.

2. Relevant legal aspects and principles

2.1. Right of innocent passage in the territorial sea

Section 3. of UNCLOS establishes the rules applicable to all ships regarding innocent passage in the territorial sea, precising in Article 17 that "*subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea*". Article 18 adds that :

> *"1. Passage means navigation through the territorial sea for the purpose of: (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility. 2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress".*[8]

Article 19 further clarifies the meaning of innocent passage in the sense that it is "innocent" as long as it is not prejudicial to the peace, good order or security of the Coastal State and in conformity with UNCLOS and other rules of international law. Conversely, passage of a foreign vessel shall be considered "prejudicial" if it engages in any of the following activities:

> *(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;*
>
> *(b) any exercise or practice with weapons of any kind;*
>
> *(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;*

[8] United Nations. United Nations Law of the Sea Convention (UNCLOS), (1982).

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;

(e) the launching, landing or taking on board of any aircraft;

(f) the launching, landing or taking on board of any military device;

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;

(h) any act of wilful and serious pollution contrary to this Convention;

(i) any fishing activities;

(j) the carrying out of research or survey activities;

(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;

(l) any other activity not having a direct bearing on passage".[9]

2.2. Right of transit passage in straits used for international navigation

Article 37 of UNCLOS applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone and Article 38 establishes the right of transit passage in these straits, adding that:

"*All ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.*[10]

2.3. Right of innocent passage through archipelagic waters

Article 52 of UNCLOS extends the right of innocent passage through archipelagic waters to ships of all States, subject to the established in article 53 and without prejudice to article 50

9 Idem.

10 Idem.

and clarifies that "*the archipelagic State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its archipelagic waters the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published*".

Naturally the right of protection of the coastal State according to UNCLOS article 25 to take the necessary measures against the transit of vessels engaged in activities that can be prejudicial to the peace, good order or security of the coastal State also applies in the case of archipelagic waters too in conformity with UNCLOS and other rules of international law.

2.4. **Freedom of the high seas**

Article 87 of UNCLOS writes that the high seas are open to all States, whether coastal or landlocked and that freedom of the high seas is exercised under the conditions laid down by this Convention and other rules of international law and it comprises:

"(a) freedom of navigation;

(b) freedom of overflight;

(c) freedom to lay submarine cables and pipelines, subject to Part VI;

(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;

(e) freedom of fishing, subject to the conditions laid down in section 2;

(f) freedom of scientific research, subject to Parts VI and XIII".[11]

It adds that these freedoms shall be exercised by all States with due regard for the interests of other States and regarding their exercise of the freedom of the high seas, also with due regard for the rights under this Convention with respect to activities in the Area.[12]

2.5. **Freedom of navigation**

Freedom of navigation is an old principle of international maritime law. It was enshrined in the chapter Mare liberum (The Freedom of the Seas), written by the legal scholar Hugo Grotius in 1609 and is considered a pillar of the law of the sea. It was later included in the Convention on the High Seas (1958) and further ratified in the United Nations Law of the Sea Convention (UNCLOS), (1982).[13] It establishes that the sea is fundamental for communication and trade and therefore oceans should be free for ships of all nations for trade transport and travel and not controlled by one State. Grotius argued that a country could only claim the area which it was able to administer and control effectively. This argument was also later discussed with regards to the provision addressing the territorial sea.[14]

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11 Idem

12 Idem.

13 Idem.

14 Bill Mansfield. Law of the sea - Control of the oceans (2006), citing Hugo Grotius, Mare liberum (1609).

As mentioned above, UNCLOS refers to the principle of freedom of navigation in several of its articles, like article 36 on "high seas routes or routes through exclusive economic zones through straits used for international navigation; article 58 on "rights and duties of other States in the exclusive economic zone"; article 78 on the "legal status of the superjacent waters and air space and the rights and freedoms of other States" and article 87 on the "freedom of the high seas".

Thus, the "principle of freedom of navigation" encompasses the right of innocent passage in the territorial sea, the right of transit passage in straits used for international navigation, the right of innocent passage through archipelagic waters and of course, the freedom of navigation for the high seas.

However, all States have the duty to have due regards all their obligations established in this convention to protect the interest of the coastal State and the marine environment, while all ships must comply with their obligations under international law when exercising the right of freedom of navigation. The rights of protection of the coastal State are established in article 25 of UNCLOS, granting the coastal State the right to take the necessary steps in its territorial sea to prevent passage which is not innocent. It adds that: "*in the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject. The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published*."[15]

Freedom of navigation is also subject to the "principle of the right of visit". Article 110 of UNCLOS, establishes that with the exception where acts of interference derive from powers conferred by a treaty, a warship encountering a foreign ship on the high seas, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

> *"(a) the ship is engaged in piracy;*
>
> *(b) the ship is engaged in the slave trade;*
>
> *(c) the ship is engaged in unauthorized broadcasting and the flag*
>
> *State of the warship has jurisdiction under article 109;*
>
> *(d) the ship is without nationality; or*
>
> *(e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship".*[16]

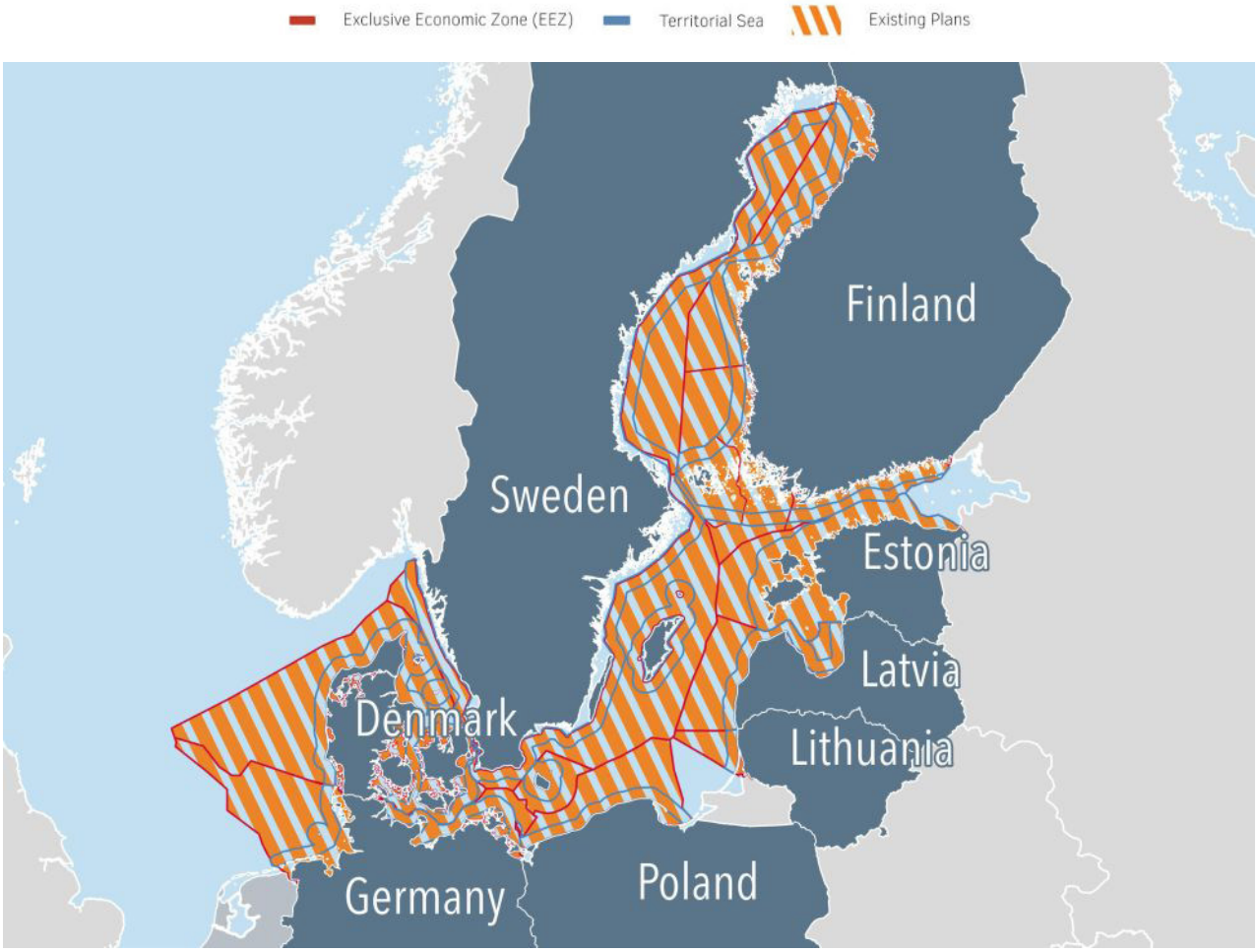
15 United Nations. United Nations Law of the Sea Convention (UNCLOS), (1982).

16 Idem.

3. The "Helsinki Convention", HELCOM and its expansion to include maritime security

The Baltic Sea is a shallow waters basin with a total area of 397,978 km², and an average depth of only 54m in north-eastern Europe. It is bordered by eight NATO[17] and EU[18] member states which are 1) Denmark, 2) Germany, 3) Poland, 4) Lithuania, 5) Latvia, 6) Estonia, 7) Finland and 8) Sweden, and Russia. It is connected with the North Sea through the Kattegatt, Øresund, the Great Belt and the Little Belt.[19]

Figure 1. Geographical Division of the Baltic Sea[20]



17 North Atlantic Treaty Organization.

18 European Union.

19 The European MSP (Maritime Spatial Planning Platform), European Union, (2025) citing Furman, E., Pihlajamäki, M., Välipakka, P., & Myrberg, K. (2013). The Baltic Sea: Environment and Ecology.

20 The European MSP (Maritime Spatial Planning Platform), European Union, (2025).

Its marine ecosystem is a breeding and nursery ground for many fish and invertebrates, while deeper waters provide habitat for pelagic fish, like herring and sprat. Its vulnerability called for a regional marine protection policy. This led to the constitution of the Convention on the Protection of the Marine Environment of the Baltic Sea Area – also known as the "Helsinki Convention", originally signed in 1974 by all Baltic Sea coastal countries, including Russia and the European Union,[21] focusing on safety and the protection of the marine environment from all sources of pollution, the preservation of the biological diversity and the promotion of sustainable use of marine resources. The Baltic Marine Environment Protection Commission, also known as the "Helsinki Commission" (HELCOM) was simultaneously established to achieve these goals pursuant to the "Helsinki Convention".[22]

HELCOM is an intergovernmental organisation and constitutes a regional platform for safety and environmental policy making with a rotating chairmanship between the Contracting Parties every two years.[23] This Convention could be expanded to include provisions about maritime security as well as the HELCOM commission to develop a maritime security policy and standard procedures to cope with seabed security threats.

The fact that the eight Contracting Parties are members of the European Union and NATO facilitate its expansion to cover policies regarding not only safety and environmental protection of the Baltic Sea, but also maritime security for submarine cables and seabed infrastructure since a sea that is not secure, could not be safe either and securing undersea power, communication and pipelines would contribute to safety robustness of the marine basin and its ecosystem.

Regional standard procedures for inspection, flag state control and maritime security incident investigation, as well as equal and stricter penalties for sabotage among all the involved States may contribute to a more robust seabed security and effective deterrence of such threats, as illustrated in the model below (after an eventual expansion of the Helsinki Convention and respective commission, HELCOM), developed by the author.

21 As contracting and signatory parties.

22 HELCOM, accessed in March 2025.

23 Idem.


International Rule of Law
Contracting Party 1
Contracting Party 2
Contracting Party 3
Contracting Party 4
Contracting Party 5
Contracting Party 6
Contracting Party 7
Contracting Party 8
National Interests
Maritime Policy
Maritime Security Policy
Juridical Framework "The Helsinki Convention"
Allocation of Human & Material Resources
Regional Maritime Security Policy
Ocean Governance
Strategies & Actions & HELCOM

4. General Discussion

A clear distinction between a maritime safety policy and a maritime security policy is essential for the protection of the maritime domain. The implementation of a regional maritime security policy would require a deep and scientific analysis of the region, identify current security threats or risks related to seabed security, including barriers for government cooperation to establish counter-terrorism measures jointly based on three dimensions: a) the general understanding of maritime security from both the civilian and naval operations b) the identification of security threats and effective implementation of regulations and codes related to maritime security and c) maritime security governance and policy making procedures.

Regrettably, these two disciplines have been mixed in several concepts which difficult the implementation of policies and regulations, generating confusion. For example, the IMO describes Maritime Domain Awareness (MDA) "*as the effective understanding of anything associated with the maritime domain that could impact security, safety, the economy or the marine environment*".[24] This concept has also been used by the US Navy and NATO. There is no generally accepted conceptualization of Maritime Security Awareness (MSA). In previous research Nordfjeld et. al, (2021) developed this concept as "*the effective understanding of any aspect related to the maritime domain that can affect the security of ports, ports facilities, its stakeholders and users, ships and its crews; along with the territorial sea and international waters, including the marine environment, as the key element for a proactive and efficient response against maritime security threats*".[25]

To achieve an effective Maritime Security Awareness, it is fundamental to develop and implement a robust maritime security culture across all actors with interests and duties related to the maritime domain, for the clear and early identification of maritime security threats through information and knowledge sharing, team-cooperation and coordination of action response to (seabed) security incidents, preventing attacks and safeguarding the sea and marine infrastructure, deterring, disrupting or destroying such security threats.[26]

However, the existence of a multiplicity of actors from multiple governments complicates the implementation of deterrence measures when dealing with security threats. It also complicates the attempts from the different Designated Authorities and Administrations to assign duties among all stakeholders to cope with maritime security risks, arise security awareness and implement deterrence measures to counter terror attacks at sea and sabotage to seabed cables while ensuring compliance with maritime security guidelines.

Thus, the development of a regional maritime security policy is crucial for the allocation of duties within the framework of maritime security in the region, collaboration among State agencies and respective Government authorities, which would also facilitate the standardization of procedures en penalties regarding sabotage. Ávila-Zúñiga-Nordfjeld, Dalaklis, Mejia & Neri (2021) identified the three obstacles for an effective and efficient allocation of duties within the framework of maritime security in Sweden. "*These are: a) absence of public official and fully updated maritime security incident statistics; b) lack of awareness and knowledge about types of security incidents versus safety accidents, or the so-called safety near-misses and c) poor collaboration among State agencies concerning information sharing about specific*

[24] International Maritime Organization, (2025).

[25] Nordfjeld Ávila-Zúñiga, et.al. Applying the Legal Provisions of the ISPS Code to Streamline Cooperation between Government Authorities Involved in Maritime Security Duties, (2021).

[26] Idem.

security duties. These barriers generate duplication of tasks, preventing relevant work to be considered into maritime security management at different levels and increases operational costs".[27] Most probably other Coastal States from the Baltic Region faces the same challenges as well.

The extension of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, "the Helsinki Convention", from 1974 and respective commission, also known as the "Helsinki Commission" (HELCOM), to include the security discipline is viable since this has already done in the past by the IMO and respective member States with the expansion of UNCLOS, the International Convention on the Safety of Life at Sea, 1974 (SOLAS Convention), that originally was focused on safety to include Chapter XI-2 on "Special measures to enhance maritime security", which enshrined the International Ship and Port Facility Security Code (ISPS) Code. This would highly accelerate the development of a regional maritime security policy, since every policy must be founded on the rule of law and reflect the national interest of the coastal States, that in this case are fully shared.

It must be considered that the implementation of a regional maritime security policy could trigger the reaction in Russia to deploy warships in the area to escort all vessels calling its ports of Saint Petersburg and Kaliningrad, which could somehow imply an extra protection, since they would try to prevent vessels to engage in activities that put in risk the subsea infrastructure, at least from a political perspective. However, it must be highlighted that flag state control and inspection of vessels must be done without discrimination.

5. Conclusions and recommendations

Even though the principle of freedom of navigation applies across the seas of the world, UNCLOS grants the coastal State the right to take the necessary steps in its territorial waters, the EEZ and archipelagic waters to prevent passage which is not innocent or might be prejudicial to its peace, good order or security, including undersea power and communication cables as clearly specified in UNCLOS article 19 subsection (k), which addresses any act meant to interfere with any systems of communication or other facilities or installations of the coastal State. Yet, such countermeasures must be in conformity with UNCLOS and other rules of international law.

Currently sabotage of submarine cables in the high seas is not regulated under the law of the sea. However, the marine basin in the Baltic Sea only includes territorial waters and EEZ areas that belong to different states of the region, which facilitates a standardization of maritime security incident investigation and sabotage penalties along all the concerned countries.

One of the protection measures that could be implemented pursuant is the development of a regional maritime security policy to face maritime security threats and sabotage against seabed cables and marine infrastructure jointly, from a multinational and multidomain perspective, with knowledge and information sharing, equal standard procedures and penalties for this type of crimes.

The development and establishment of a regional maritime security policy would ensure robustness in maritime security and strengthen maritime response awareness preventing

[27] Idem.

duplicity of tasks and ensure deterrence of security threats, benefiting all the concerned Coastal states.

It is recommended to start the negotiations to expand the "Helsinki Convention" and respective commission "HELCOM" to include maritime security, using the existing platform to reduce implementation time and accelerate the development of a regional maritime security policy. This is quite feasible, because even if Russia is also a Contracting Party of the referred convention, they can still exercise the right of reservation, allowing the other nations to continue with the diplomatic process.

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