Surveying submarine cable routes: international law issues

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Overview

- Preliminary remark on applicable law
- Areas under coastal State sovereignty: maritime internal waters, archipelagic waters and territorial sea
- Areas within functional coastal State jurisdiction: EEZ and continental shelf
- Areas beyond coastal State jurisdiction

Preliminary remarks

- Sources of the law: UNCLOS 1982 and customary international law; on submarine cables largely coincide?
- UNCLOS provisions need interpretation; some “constructive ambiguity” included, and developments continue requiring evolving interpretations
- Interpretation of UNCLOS: subsequent practice important

Areas under coastal State sovereignty

- Full coastal State authority over cables: laying, maintenance and operation, including cable route surveying
- Surveying activities are explicitly mentioned as not covered by the right of innocent passage: art. 19(2)(j) UNCLOS (plus art. 21(1)(g))
- Straits: art. 40; archipelagic waters: art. 54
- Coastal State prior permission required: discretionary powers / conditions

Areas under coastal State functional jurisdiction

- EEZ (200M) and CS (200M plus beyond)
- Contiguous zone (24M): not relevant
- EEZ: art. 58, CS: art. 79: freedom of laying <u>transit</u> submarine cables (cf paragraph 4 of art. 79)
- Surveying of route for transit cables is part of freedom (art. 58, paragraph 1)

Surveying is not MSR

- Surveying, including hydrographic surveying, is an activity not covered by the concept of marine scientific research (MSR) as used in UNCLOS
- No definition of MSR: in principle broad notion, but certain activities potentially covered were excluded by specific regulation in UNCLOS: resource exploration, (hydrographic) surveying

Areas beyond national jurisdiction

- Artt. 87 and 112 UNCLOS: freedom to lay submarine cables beyond the continental shelf
- Includes freedom to survey cable routes