



Legal regime regulating the laying and protection of submarine cables and its implementation

Outline

- Current Legal Regime under the United Nations Convention on the Law of the Sea
- Status of the implementation of the Convention

Current Legal Regime

- The United Nations Convention on the Law of the Sea sets out the legal framework within which all activities in the oceans and seas must be carried out
- Its provisions are built on the provisions in the 1958 Geneva Conventions on the High Seas, the Continental Shelf and the Territorial Sea. These were based on the 1884 International Convention for the Protection of Submarine Cables
- The 1884 Convention, as amended by the 1886 Declaration on the Protection of Submarine Cables and the 1887 Protocol on the Protection of Submarine Cables, remains in force

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Laying of submarine cables – sovereignty – territorial sea

- Territorial sea (UNCLOS, Part II)
 - up to 12 nautical miles from the baselines
 - the sovereignty of a coastal State extends to the territorial sea
 - Coastal States have the right to establish conditions for cables entering their territory or territorial sea

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Laying of submarine cables – sovereignty – archipelagic waters

- Archipelagic waters (UNCLOS, Part IV)
 - The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines
 - Archipelagic States are to respect existing submarine cables laid by other States and passing through their waters without making a landfall
 - They are to permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair or replace them

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Laying of submarine cables – jurisdiction – artificial islands

- Coastal States have the right to establish their jurisdiction over cables constructed or used in connection with the exploration of their continental shelf or exploitation of their resources or the operations of artificial islands, installations and structures under their jurisdiction.

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Laying of submarine cables – freedom – exclusive economic zone

- The exclusive economic zone (UNCLOS, Part V)
 - Beyond and adjacent to the territorial sea
 - EEZ shall not extend beyond 200 nautical miles from the baselines
 - All States, whether coastal or land-locked, enjoy the freedom of the laying of submarine cables, and other internationally lawful uses of the sea related to this freedom, such as those associated with the operation of submarine cables

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Laying of submarine cables – freedom – continental shelf

- Continental Shelf (UNCLOS, Part VI)
 - All States are entitled to lay submarine cables on the continental shelf, which extends up to 200 nautical miles and beyond, under specific circumstances
 - The coastal State has the right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources, otherwise it may not impede the laying or maintenance of such cables
 - When laying submarine cables, States shall have due regard to cables or pipelines already in position; possibilities of repairing existing cables shall not be prejudiced

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Laying of submarine cables – freedom – high seas

- High Seas (UNCLOS, Part VII)
 - Beyond the limits of national jurisdiction
 - All States are entitled to lay submarine cables on the bed of the high seas beyond the continental shelf
 - When laying submarine cables, States shall have due regard to cables or pipelines already in position; possibilities of repairing existing cables shall not be prejudiced.

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Breaking or injury of a submarine cable or pipeline - UNCLOS, art. 113

- Obligation of States (UNCLOS, Part VII)
 - Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done willfully or through culpable negligence shall be a punishable offence

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Breaking or injury of a submarine cable or pipeline – UNCLOS, art. 114

- Every State shall adopt the laws and regulations necessary to provide that, if persons subject to its jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs

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Avoiding injury to a submarine cable – indemnification - UNCLOS, art. 115

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

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Implementation and national legislation

- Owners and operators of submarine cables collaborate through the International Cables Protection Committee (<http://www.iscpc.org>).
- The UN Secretariat does not collect specific information regarding the institutional framework or national legislation regarding submarine cables
- Most national laws on maritime spaces seem to focus on incorporating the general provisions of the Convention on jurisdiction
- The implementation of the provisions concerning the breaking or injury of a submarine cable or pipeline may be insufficient
- Flag States are required to implement the Convention in relation to the ships flying their flag

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Conclusions

- **UNCLOS is a clear jurisdictional framework regulating the laying and protection of submarine cables**
 - Beyond the outer limits of the 12 M territorial sea, the coastal State may not (and should not) impede the laying or maintenance of cables.
 - The coastal State has jurisdiction only over cables constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.
 - When laying submarine cables or pipelines, due regard should be paid to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.
 - Every State has an obligation to adopt the laws and regulations to, inter alia, punish willful breaking or injury of a submarine cable or pipeline and for indemnification for loss incurred in avoiding injury to a submarine cable.
 - Due to the fact that beyond the limits of the territorial sea, there is a freedom of laying of cables (with certain limitations and safeguards), cable owners and operators should be able to proceed with their work even in cases of unresolved maritime boundary delimitations regarding the exclusive economic zones and the continental shelf.

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Conclusions

- Concerns with the implementation of international law should be addressed by and through the relevant national Government.
- Diligent implementation by States of the provisions of the Convention is necessary, including through the adoption of national legislation dealing with breaking or injury of cables. Flag States are responsible for enforcing such legislation in respect of ships flying their flag.

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