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Submarine Cables and Pipelines: Similarities, Differences and Gaps in ABNJ

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Outline

- I. Development of Legal Regime on Cables and Pipelines
- II. UNCLOS Provisions on Cables and Pipelines:
Similarities and Differences
- III. Conclusions

Development of Legal Regime on Cables and Pipelines

Cables	Pipelines
Communication and power	Crude oil, petroleum and natural gas
<p style="text-align: center;">Landing station</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Armoured or lightweight cable</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Repeater</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Armoured or lightweight cable</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Landing station</p>	<ul style="list-style-type: none"> • Field-to-field, field-to-coast (Field pipelines) • Coast-to-coast (Transiting pipelines)

Development of Legal Regime on Cables and Pipelines

Physical Differences

- Routing
- Pumping stations
- Content
- Potentiality to pollute



Development of Legal Regime on Cables and Pipelines

1884 Convention for the Protection of Submarine Telegraph Cables

- Due to growing demand for protection after the first submarine telegraphic cable in 1850
- It only dealt with protection of **cables**
- It did not address high seas freedom

Development of Legal Regime on Cables and Pipelines

1956 ILC Draft Articles

- Decided that the freedom of high seas must be extended to:
 - **pipelines**, after the first offshore pipeline was laid in 1942
 - **power cables**, after Sweden laid the first commercial high voltage direct current cable in 1954
- Affirmed that **communication cables**, **power cables** and **pipelines** are freedom of the high seas
- Adopted the 1884 Convention provisions on the protection of cables

Development of legal regime on cables and pipelines

- 1958 Geneva Conventions –
 - 1958 High Seas Convention
 - 1958 Continental Shelf Convention
- 1982 United Nations Convention on the Law of the Sea

Part II

UNCLOS Provisions on Cables and Pipelines: Similarities and Differences

Areas Beyond
National
Jurisdiction

Areas Under
Sovereignty

Areas Outside
Sovereignty But
Within National
Jurisdiction

Areas Beyond National Jurisdiction – High Seas and the Area

Art 87 provides that –

- The freedom of the high seas includes the freedom to lay **cables** and **pipelines**
- With due regard to
 - the interests of other States in their exercise of the freedom of the high seas
 - activities in the Area

Areas Beyond National Jurisdiction – High Seas and the Area

- In the Area, all States are entitled to lay submarine **cables** and **pipelines** on the bed of the high seas beyond the continental shelf – Art 112(1)
- Due regard to **cables** or **pipelines** already in position – Art 112(2)

Areas Beyond National Jurisdiction – High Seas and the Area

- States must adopt laws necessary to punish the breaking or injury of **cables** or **pipelines** – Art 113
- The owner of **cables** or **pipelines** causing the damage to another cable or pipeline shall bear the cost of repairs – Art 114
- The owner of ships who has sacrificed an anchor, net or fishing gear to avoid injuring a **cable** or **pipeline** shall be indemnified by its owner – Art 115

Areas Beyond National Jurisdiction – High Seas and the Area

- The International Seabed Authority shall adopt appropriate rules, regulations and procedures to ensure effective protection for the marine environment from harmful effects of construction and operation or maintenance of **pipelines**, related to activities in the Area – Art 145

Areas Under Sovereignty

In their territorial sea and archipelagic waters, the coastal State have the right to regulate the laying and repair of submarine **cables** and **pipelines**.

- In the territorial sea, coastal States can adopt laws and regulations on ships exercising innocent passage in order to protect **cables** and **pipelines** – Art 21(1)(c)
- In archipelagic waters, the archipelagic States must respect existing **cables** laid by other States and passing through its archipelagic waters without a landfall, and must permit the maintenance and replacement of such **cables** – Art 51(2)

Areas Outside Sovereignty But Within National Jurisdiction

- Laying of **cables** or **pipelines** in the EEZ and on Continental Shelf is a freedom of the high seas recognised in these zones – Art 58(1) and 79(1)
- Freedom to maintain and repair them is an *'internationally lawful use of the sea'* related to the freedom to lay cables and pipelines – Art 58(1)
- In exercising their freedom to lay submarine **cables** or **pipelines**, States must have due regard for the rights and duties of the coastal State – Art 58(3)
- States shall have due regard to **cables** or **pipelines** already in position – Art 79(5)

Areas Outside Sovereignty But Within National Jurisdiction

Rights of coastal State	Cables	Pipelines
<p>Reasonable measures - Art 79(2)</p>	<ul style="list-style-type: none"> • Exploration of the continental shelf • Exploitation of its natural resources 	<ul style="list-style-type: none"> • Exploration of the continental shelf • Exploitation of its natural resources • Prevention, reduction and control of pollution
<p>Delineation – Art 79(3)</p>	<p>Coastal State’s consent is not required</p>	<p>Coastal State’s consent is required for course of the pipeline</p>

Areas Outside Sovereignty But Within National Jurisdiction

- Art 79(4) provides that the coastal State may establish conditions if the **cable** or **pipeline** :-
 - enters its territory or territorial sea
 - used in connection with their right to explore the continental shelf or exploit its natural resources or operation of artificial islands, installations, or structures.

Compulsory and Binding Dispute Settlement

Art 297(1) provides that disputes concerning the interpretation or application of this Convention on questions relating to –

- laying of submarine **cables** and **pipelines** or
- other internationally lawful uses of the sea (including repairs)

shall be subject to the compulsory procedure for dispute settlement under UNCLOS entailing binding decisions

Conclusions

- The same distinction between cables and pipelines which apply in the continental shelf where there is more restriction on pipelines than cables, applies in the Area
- It could be debated whether the ISA can regulate pipelines in the Area in order to
 - protect the marine environment generally
 - interference with the mineral resources in the Area

Conclusions

- Art 145 entitles the ISA to adopt appropriate rules to regulate activities in the Area, including the *‘construction and operation or maintenance of installations, pipelines and other devices related to such activities’*
- This Article is not clear on whether the ISA has the power to regulate the pipelines which are not involved in the exploration or exploitation of mineral resources but are merely transiting the Area

Thank you
for your kind attention



Any Queries?

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