

HIELC 2016
Bucerius Law School
Hamburg 15 April 2016

**Submarine Cables & Pipelines
under UNCLOS**

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Part 1

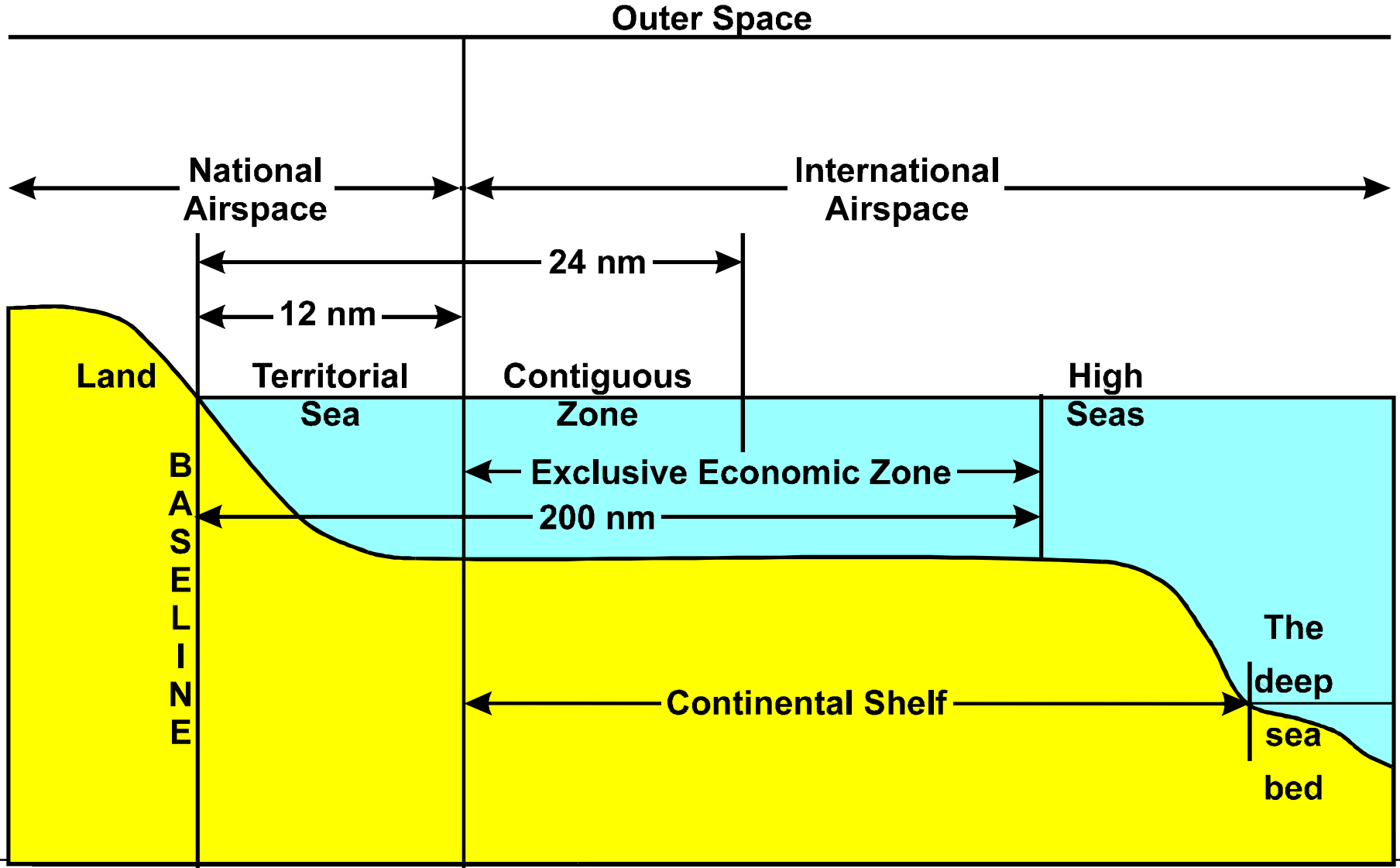
UNCLOS Provisions on Cables and Pipelines

Regulation of Cables under UNCLOS

Rights of States to regulate cables and pipelines and obligation of States to protect cables depends upon where they are located:

1. Zones subject to sovereignty – territorial sea and archipelagic waters
2. Zones outside sovereignty – EEZ, continental shelf, high seas and deep seabed

LEGAL REGIMES OF THE OCEANS AND AIRSPACE



Cables & Pipelines in Territorial Sea

- **Laying and Repair**
 - Coastal States have wide discretion to adopt laws on the **laying and repair** of cables and pipelines in territorial sea
- **Protection**
 - Coastal States have the right to adopt laws to **protect** cables in territorial sea, including right to regulate ships exercising innocent passage
 - Coastal States have no obligation to adopt laws and regulations to **protect** cables in the territorial sea

Cables & Pipelines on bed of High Seas

- The right to lay submarine cables and pipelines is a **high seas freedom** that may be exercised by all States [Art 87]
- The right to lay cables and pipelines must be exercised with due regard to the rights of other States, such as the freedom of navigation [Art 87(2)]
- When laying submarine cables, States shall have due regard to cables or pipelines already in position. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced. [Art 112, 79(5)]

Specific legal regime of EEZ

- EEZ is not under the sovereignty of coastal States and it is not part of the high seas
- EEZ is a Specific Legal Regime in which sets out: [Art 55]
 - Rights, jurisdiction & duties of coastal States [Art 56]
 - The rights and duties of other States [Art 58]
- Coastal States have the sovereign right to explore and exploit the natural resources, including the resources of the sea-bed and subsoil [Art 56]
- Other States have the right to exercise high seas freedoms including freedom of navigation and **freedom to lay cables and pipelines** [Art 58]

Article 56. Rights, Jurisdiction and Duties of the Coastal State in EEZ

1. In the exclusive economic zone, the coastal State has:

•(a) **sovereign rights** for the purpose of **exploring and exploiting**, conserving and managing the **natural resources**, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to **other activities for the economic exploitation and exploration of the zone**, such as the production of energy from the water, currents and winds; . . .

2. In exercising its rights and performing its duties under this Convention in the EEZ, the coastal State shall have **due regard** to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The **rights** set out in this article with respect to the seabed and subsoil shall be exercised in accordance with **Part VI**.

Article 56. Rights, Jurisdiction and Duties of the Coastal State in EEZ

1. In the exclusive economic zone, the **coastal State** has:

- (b) **jurisdiction** as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
- (c) other rights and duties provided for in this Convention.

Article 58. *Rights and Duties of Other States in the EEZ*

1. In the EEZ, **all States**, whether coastal or land-locked, **enjoy**, subject to the relevant provisions of this Convention, **the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines**, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

Article 58. *Rights and Duties of Other States in the EEZ*

- 3. In exercising their rights and performing their duties under this Convention in the EEZ, States shall have **due regard** to the rights and duties of the coastal State and shall comply with the **laws and regulations adopted by the coastal State** in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

General Obligations to Protect & Preserve the Marine Environment

Article 194. Measures to Prevent, Reduce and Control Pollution of the Marine Environment

- 1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

General Obligations to Protect & Preserve the Marine Environment

Article 206. Assessment of Potential Effects of Activities

- When States have reasonable grounds for believing that **planned activities under their jurisdiction or control** may cause **substantial pollution of or significant and harmful changes to the marine environment**, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.

Continental Shelf Regime

- The continental shelf comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm [Art 76]
- Coastal States have sovereign rights for the purpose of exploring it and exploiting its natural resources [Art 77]
- The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention [Art 78]

Article 79. Cables & Pipelines on the Continental Shelf

1. All States are entitled to lay submarine **cables and pipelines** on the continental shelf, in accordance with the provisions of this article.
3. The **delineation of the course** for the laying of such **pipelines** on the continental shelf is subject to the consent of the coastal State.
5. When laying submarine cables or pipelines, States shall have **due regard to cables or pipelines already in position**. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 79. Cables & Pipelines on the Continental Shelf

- 2. Subject to its **right to take reasonable measures** for
 - the exploration of the continental shelf,
 - the exploitation of its natural resources and
 - the prevention, reduction and control of **pollution from pipelines,**
- the **coastal State may not impede** the laying or maintenance of such **cables or pipelines.**

Article 79. Cables & Pipelines on the Continental Shelf

- 4. Nothing in this Part affects the right of the coastal State to establish conditions for **cables or pipelines entering its territory or territorial sea**, or its jurisdiction over cables and pipelines 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.

Limits on freedom to lay cables & pipelines in EEZ

- The obligation in Part V to give ‘due regard’ to the rights and duties of coastal States in the EEZ, including
 - right to manage & conserve fisheries
 - right to exploit hydrocarbon resources
 - right to use energy from winds & waves
 - right to consent to marine scientific research

Cables & Pipelines in ABNJ

Article 112. Right to Lay Submarine Cables and Pipelines

- 1. All States are entitled to lay submarine cables and pipelines **on the bed of the high seas beyond the continental shelf.**
- 2. Article 79, paragraph 5, applies to such cables and pipelines.

Pipelines in "The Area"

- Article 145 provides that the International Seabed Authority shall adopt appropriate rules, regulations and procedures to prevent for the prevention, reduction and control of pollution and other hazards to the marine environment, . . . , particular attention being paid to the need for protection from harmful effects of **such activities** as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, **pipelines** and other devices **related to such activities**.

Part 2

Problems with the UNCLOS provisions on cables and pipelines

States have rights under UNCLOS, not Companies

- STATES have right to lay cables and pipelines, but they are in fact laid by private companies or consortiums of private companies
- Is no “flag State” responsible for laying of cables and pipelines outside of territorial sovereignty of coastal States
- No State to exercise diplomatic protection if coastal States exceed their powers to regulate

Dispute Settlement Regime

- **General rule is that any dispute between two States Parties on the interpretation or application of the provisions of the Convention that cannot be resolved by negotiation, may at the request of either party to the dispute, be submitted to the compulsory procedures entailing a binding decision by an international court of arbitral tribunal**
- **This includes the provisions on the freedom to lay cables and pipelines and the jurisdiction of coastal states to regulate pipelines**

Article 297 on Dispute Settlement

- 1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:
- (a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;

Part 3

Gaps in International Legal Regime

No Global Conventions

- There are no global conventions to supplement UNCLOS on the regulation of pipelines
- Article 208 of UNCLOS calls for the international community to develop an international convention to govern seabed activities subject to national jurisdiction but no steps have been taken to draft such a convention
- Even the IMO Guidelines on the removal of disused platforms and installations is silent on the removal of pipelines associated with the the platforms and installations

Article 208. Pollution from Seabed Activities Subject to National Jurisdiction

- 1 Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with **seabed activities subject to their jurisdiction** and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.
- 2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- 4. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.

Article 208. Pollution from Seabed Activities Subject to National Jurisdiction

- 3. Such laws, regulations and measures shall be **no less effective** than international rules, standards and recommended practices and procedures.
- 5. States, acting especially through competent international organizations or diplomatic conference, shall establish **global and regional rules, standards and recommended practices and procedures** to prevent, reduce and control pollution of the marine environment referred to in paragraph I. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

Regional Treaties

- Helsinki Convention applies to the whole of the Baltic area
- Includes internal waters, territorial sea and EEZ
- The Nord Stream gas pipeline passes transits 5 Baltic States, from Russia to Germany via the continental shelves of Finland, Sweden and Denmark
- But scholars have commented that the Convention does not provide for the holistic regulation of the construction operation and decommissioning of pipelines traversing the shelves of the Baltic States – covers pipelines directly connected or associated with exploration and exploitation of the offshore energy resources

Thanks for Your Attention

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