

# **THE REGIME OF UNCLOS ON THE PROTECTION OF PIPELINES IN THE AREA**

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# THE LEGAL DISTINCTION BETWEEN «HIGH SEAS» AND «THE AREA»

## THE PRINCIPLE OF FREEDOM ARTICLE 87(1)

- Freedom of navigation;
- Freedom of overflight;
- Freedom to lay submarine cables and pipelines;
- Freedom to construct artificial islands and other installations;
- Freedom of fishing;
- Freedom of scientific research.

## THE PRINCIPLE OF COMMON HERITAGE OF MANKIND

### ARTICLE 1(1) (3)

«Activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area.....»

### ARTICLE 145(a)

- Drilling,
- Dredging,
- Excavation,
- Disposal of waste,
- Construction and operation or maintenance of installations, pipelines and other devices related to such activities.

# DEFINITION

Submarine pipeline: A line of pipes for conveying water, gas, oil, etc. under water.

**(Walker, 2012, 314)**

# FUNCTIONS OF PIPELINES IN THE AREA

1. Pipelines that transit through the Area from and destined to a maritime space within national jurisdiction;
2. Pipelines unconnected with an Area resource that connect an installation or vessel on the high seas above the Area and destined to a maritime space within national jurisdiction;
3. Pipelines for extraction and lifting of Area resources, such as polymetallic nodules;
4. Pipelines for evacuation of water, preliminary separation and disposal of material of no commercial interest to be discarded in the process of Area resources exploitation;
5. Pipelines carrying Area resources (e.g., polymetallic nodules) to a maritime space within national jurisdiction, including on land. (ILA Report, para. 120.)

# THE POSSIBLE ENTITIES THAT COULD POTENTIALLY CAUSE OR SUFFER DAMAGE TO PIPELINES IN THE AREA

- States parties;
- Non-party states;
- Contractors;
- Ship owners;
- Marine scientific researchers;
- Fishing companies;
- Genetic resource exploiters;
- Cable and pipeline owners;
- Vessel crews;
- Owners or operators of installations and artificial islands. (Davenport, 2019, p. 17.)

# INTENTIONAL OR UNINTENTIONAL DAMAGE TO PIPELINES

- Damages because of competing activities such as fishing, shipping, oil and gas activities, seabed mining, marine scientific research and other uses of the oceans relating to submarine pipelines.
- Damages relating to armed attacks.
- Damages arising from military exercises.

# RELATED ARTICLES OF UNCLOS ON THE PROTECTION OF PIPELINES LAID UNDER HIGH SEAS FREEDOMS

**ARTICLE 113:** «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 wilfully or through culpable negligence.»

**ARTICLE 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.»

**ARTICLE 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 or pipeline, 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.»

# ARTICLES OF UNCLOS ON THE PROTECTION OF PIPELINES LAID RELATING TO THE «ACTIVITIES IN THE AREA»

**Article 145:** «Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities.

To this end the Authority shall adopt appropriate rules, regulations and procedures for inter alia:

(a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of 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.»



# DUE REGARD/REASONABLE REGARD OBLIGATIONS ON THE PROTECTION OF SUBMARINE PIPELINES IN THE AREA

## PART VII OF UNCLOS

**Article 87(2):** «interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.»

**Article 112 accordingly Article 79(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.»

## PART XI OF UNCLOS

**Article 147 (1):** «Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment.»

**Article 147(3):** «Other activities in the marine environment shall be conducted with reasonable regard for activities in the Area.»

**Article 13 and 31** of the Draft Mining Regulation elaborates Article 147(1).

# DISPUTE SETTLEMENT MECHANISMS

- Pipeline disputes arising from high seas freedoms-Articles 112-115- can be brought to Article 287 fora.
- The disputant parties shall only be states parties.

## Article 287

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:
  - (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;
  - (b) the International Court of Justice;
  - (c) an arbitral tribunal constituted in accordance with Annex VII;
  - (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

# DISPUTE SETTLEMENT MECHANISMS

- Pipeline disputes arising from the activities in the Area-Part XI

## Article 187

«The Seabed Disputes Chamber shall have jurisdiction under this Part and the Annexes relating thereto in disputes with respect to activities in the Area....»

- Against ISA: Contractors, States parties, Sponsoring states,
- Against sponsoring states: ISA, States Parties, Sponsoring States, Contractors.

# UNRESOLVED ISSUES

- Since there is no rule on jurisdiction concerning pipelines in the Area, UNCLOS does not have adequate responses on the punishment and compensation relating to pipeline damage.
- Possible damages arising from more actual threats such as armed attacks are not considered.
- Damages relating to military exercises conducted by states or international organizations are not considered.
- Obligations to adopt rules relating to compensation and punishment imposed only on flag states or nationality of the pipeline owners.
- The role of the ISA implementing due regard obligations is limited on the users of the Area with respect to the «Activities in the Area».
- Personal jurisdiction of the possible dispute settlement bodies is limited. Only states, ISA and in some cases, contractors can apply to the tribunals envisaged under the Convention.

# POSSIBLE SOLUTIONS

1. There should be a registration mechanism for pipelines.
2. Depending on the registration the jurisdiction issue will be clarified, and the protection zones can be established.
3. UNCLOS may be revised and amended due to the new requirements.
4. States may be obliged by the UN to adopt domestic rules and regulations on the protection of pipelines laid in the Area.
5. The most effective solution would be the adoption of a new treaty dealing solely on submarine pipelines.
6. An inter-governmental organization may be established to organize the laying of pipelines, implement the due regard obligations of stakeholders and establish an effective dispute settlement mechanism.

# THANK YOU.

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