

The Laying Of Cables And Activities In The Area: Due Regard' Obligations Under The 1982 Un Convention On The Law Of The Sea

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Abstract:

An in-depth analysis of the 'due regard' duties required by the "1982 United Nations Convention on the Law of the Sea (UNCLOS)" involving cable laying and operations inside the Area is provided in this research paper. The concept and importance of the Area, which includes the seabed and ocean bottom outside of national authority, are highlighted in the opening paragraphs of the document. It goes into more detail on the "International Seabed Authority's (ISA)" obligations for overseeing and managing the resources in the Area.

The importance of keeping the **due regard** commitments to promote peaceful and cooperative interactions among states is emphasised in the research's conclusion. Respecting these commitments ensures the equitable and sustainable use of ocean resources, encourages environmental protection, and makes it easier to progress marine environmental science. The report emphasises the value of international collaboration in resolving issues about laying cables and operations within the Area, as well as the necessity of robust enforcement mechanisms.

Key Words: UNCLOS, due regard obligations, cable laying, Area activities, International Seabed Authority, jurisdiction, enforcement, dispute settlement, ITLOS, sustainable use, equitable usage, environmental protection, international cooperation.

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I. INTRODUCTION

"Laying of Cables and Activities in the Area: Due Regard' Obligations under the 1982 UN Convention on the Law of the Sea." UNCLOS¹ is an international treaty that governs the use and protection of the world's oceans. It was adopted in 1982 and ratified by most nations, including India. "The International Cable Protection Committee (ICPC, a non-governmental association of cable industry enterprises) and the ISA have been discussing how to implement the 'due regard' obligation between cable-related activities and 'activities in the Area'."²

UNCLOS Part XIII covers "Laying of Cables and Pipelines." It covers installing, maintaining, and protecting underwater cables and pipelines in maritime zones. UNCLOS ensures the effective and sustainable use of these installations while conserving the marine environment.³

The convention's mandate that governments give cables "due regard" when installing and maintaining them is one of its key obligations. This means that to ensure the ongoing operation of undersea cables and pipelines, authorities must take the appropriate precautions to prevent damage or interference with them. Additionally, UNCLOS requires state cooperation to safeguard and conserve the marine environment, particularly in regions where cables and pipelines are built.⁴ This collaboration entails exchanging pertinent information and putting precautions in place to avoid or lessen potential harm to the marine ecology. The Indian judiciary has authority over the application and enforcement of UNCLOS in India.

¹ "Convention on the Law of the Sea 1982"

² "Submarine Cables and Deep Seabed Mining, Advancing Common Interests and Addressing the unclosed 'Due Regard' Obligation, isa Technical Study Nr. 14 (International Seabed Authority, Kingston, Jamaica, 2015)."

³ "Convention on the Law of the Sea 1982,pXIII"

⁴ "Nordquist et al., United Nations Convention on the Law of the Sea 1982 - A Commentary, Volume III, p. 264. (1995)"

II. UNCLOS SCOPE AND APPLICATION:

UNCLOS' mission and history must be understood first. The treaty covers navigation, territorial sovereignty, resource exploration, and marine environment conservation to create a cohesive and balanced framework for ocean use and protection. UNCLOS provides a legal framework for marine activity by defining governments' rights and responsibilities.⁵

Each of the sections of UNCLOS addresses a different area of ocean governance. The agreement defines regulations and recommendations regulating the installation, upkeep, and protection of underwater cables and pipelines in Part XIII, which is primarily concerned with the "Laying of Cables and Pipelines." It aims to protect the marine environment while ensuring the open and uninterrupted flow of information and energy resources through these facilities.

It is important to think about how UNCLOS Part XIII⁶ applies to various marine zones while examining its scope. For instance, the coastal state's sovereignty extends to the territorial sea, which is up to 12 nautical miles from its baselines. UNCLOS stipulates rules for safeguarding cables and pipelines erected within this zone, requiring governments to show "due regard" for such infrastructure.

The coastal state has sovereign rights to explore and exploit resources in the exclusive economic zone (EEZ) up to 200 nautical miles from its baselines. UNCLOS protects coastal states' rights while recognising other governments' interests when installing and maintaining cables and pipelines in this zone.

UNCLOS also covers the laying of cables and pipelines on the continental shelf, which occasionally extends into the EEZ⁷. It specifies requirements to ensure the protection of cables and pipelines deployed in these areas as well as the rights of coastal nations over the continental shelf.

The high seas, which are beyond of national sovereignty, also call for protection, according to UNCLOS. The convention encourages collaboration and coordination at the global level to safeguard cables and pipelines in these waterways, even though it primarily concentrates on the rights and obligations of states.⁸

III. UNCLOS OBLIGATIONS

The due respect obligation ensures that cables and pipelines, which are essential for international communication and the transportation of energy resources, continue to operate without interruption. States support the smooth flow of information and energy across oceans and the effective operation of these installations by exerting due consideration.⁹

Protecting cables and pipelines within their maritime zones is a unique responsibility of coastal states. They must enact laws and rules to preserve these installations from harm and take the necessary steps to assure their upkeep and protection. These precautions could include route planning that is appropriate, insulation, and routine inspections to prevent accidental damage or malicious interference.¹⁰

UNCLOS also acknowledges the significance of interstate cooperation for safeguarding and preserving the marine environment, particularly in regions where cables and pipelines are constructed. This cooperative strategy entails exchanging pertinent information regarding cable and pipeline projects, sharing best practises for protecting them, and working together in case of crises or prospective disasters. States can address environmental issues collectively and avoid or reduce damage to the maritime ecosystem brought on by cable laying activities by cooperating with one another.¹¹

States and other organisations can support the efficient and sustainable use of the world's seas while assuring the preservation of crucial communication infrastructure and the preservation of the marine ecosystem by comprehending and upholding the duties outlined in UNCLOS.

IV. SAFEGUARDING MARINE LIFE

UNCLOS places a strong emphasis on the necessity of safeguarding and preserving the marine environment, particularly in regions where cables and pipelines are being put in place. This acknowledgment of

⁵ "Oceans and the Law of the Sea, Seventieth Session, Report of the Secretary-General, March, at paragraphs 53-55 [Laying of Submarine Cables]. (2015)"

⁶ "Supra 3"

⁷ "Convention on the Law of the Sea 1982,a38"

⁸ "Stephen Drew & Alan Hopper, Fishing and Submarine Cables - Working Together, ICPC (2009),"

⁹ "Supra 5"

¹⁰ "Convention on the Law of the Sea 1982,a113"

¹¹ "Convention on the Law of the Sea 1982,a100"

environmental protection is consistent with the more general objective of sustainable use and ocean conservation.¹²

To prevent harm to marine ecosystems like coral reefs, seagrass beds, or delicate habitats, vigilance must be used during cable and pipeline operations. When choosing cable routes and installation techniques, this necessitates meticulous planning and taking environmental issues into account.¹³

Particularly in their maritime zones, coastal states play a critical role in safeguarding the marine environment. They must implement laws and rules that take environmental concerns into account and take the necessary action to stop or lessen any negative effects brought on by cable and pipeline operations.

UNCLOS also promotes state collaboration in preserving the marine environment, particularly in regions with cables and pipelines. This cooperation may entail doing cooperative environmental research, exchanging knowledge on the best ways to reduce environmental consequences, and working together in emergency or incident response scenarios.¹⁴

States and organisations support the broader objectives of UNCLOS, which include balancing the need for environmental preservation with the economic potential of ocean resources, by protecting the marine environment while installing and maintaining cables and pipelines. This strategy promotes sustainable development and ethical usage of marine resources.¹⁵

V. APPLICATION AND ENFORCEMENT

As a global convention, UNCLOS lays out a framework of rights and responsibilities for states with relation to the use and preservation of the seas. However, each nation must apply and enforce the UNCLOS regulations through their own national legal frameworks.¹⁶

To ensure adherence to the convention's rules, national legislation and regulations must be passed as part of UNCLOS implementation. The requirements of the laying of cables and pipelines inside respective maritime zones are implemented and enforced in large part by coastal states.¹⁷

National courts and administrative agencies are responsible for enforcing UNCLOS provisions. Parties may seek legal redress from the appropriate national courts if disagreements or problems with cable laying or other operations emerge. To settle disputes and guarantee adherence to the agreement, these courts interpret and apply UNCLOS articles as well as any pertinent domestic laws and regulations.¹⁸

Administrative entities or agencies may be in charge of observing and policing cable and pipeline activity in addition to national courts. These organisations, which are frequently created by pertinent government ministries or departments, guarantee adherence to applicable laws and regulations, issue permits or licences, and keep an eye on activities to stop illegal or harmful behaviour.

Overall, adherence to UNCLOS commitments involving the installation of cables and operations in marine zones is crucially dependent on state implementation and enforcement measures. States can effectively control and oversee cable and pipeline operations, protect their maritime resources, and honour their international duties by implementing the UNCLOS requirements into their domestic legal systems.¹⁹

VI. ARBITRATION

International Dispute Resolution and Arbitration are crucial to implementing the 1982 UN Convention on the Law of the Sea's "Due Regard" duties. UNCLOS includes several cable-laying dispute resolution options. These include negotiation, consultation, mediation, and conciliation. They encourage states to dialogue to resolve issues peacefully and cooperate.²⁰

¹² "Lionel Carter et al., *Submarine Cables and the Oceans – Connecting the World*, See Burnett, Beckman, Davenport, *Submarine Cables, The Handbook of Law and Policy*, Martinus Nijhoff Publishers (2014), Chapter 7, 'Relationship Between Submarine Cables and the Marine Environment' at 179-212. (2009)"

¹³ "Convention on the Law of the Sea 1982,a116"

¹⁴ "Convention on the Law of the Sea 1982,a120"

¹⁵ "Lionel Carter et al., *Submarine Cables and the Oceans – Connecting theWorld*, See Burnett, Beckman, Davenport, *Submarine Cables, The Handbook of Law and Policy*, Martinus Nijhoff Publishers (2014), Chapter 7, 'Relationship Between Submarine Cables and the Marine Environment' at 179-212. (2009)"

¹⁶ "Convention on the Law of the Sea 1982,a8"

¹⁷ "Burnett, Freestone & Davenport, *ICPC & Sargasso Sea Commission Workshop Report, Submarine Cables in the Sargasso Sea: Legal and Environmental Issues in Areas Beyond National Jurisdiction* (2015)"

¹⁸ "Convention on the Law of the Sea 1982,a25"

¹⁹ "Convention on the Law of the Sea 1982,a21"

²⁰ "Burnett, Freestone & Davenport, *ICPC & Sargasso Sea Commission Workshop Report, Submarine Cables in the Sargasso Sea: Legal and Environmental Issues in Areas Beyond National Jurisdiction* (2015)"

If these methods fail, international courts like the International Court of Justice (ICJ) can hear UNCLOS interpretation and implementation disputes, including cable laying disputes. Parties to disputes can present their cases to the ICJ for binding decision and UNCLOS interpretation. The ICJ's judgements advance international maritime law and guide States in meeting UNCLOS responsibilities.²¹

Arbitration is an alternate dispute settlement method for cable laying. UNCLOS clearly authorises governments to settle disputes through arbitration instead of the ICJ. Arbitration ensures unbiased maritime law arbitrators and a neutral forum. Arbitration follows agreed-upon rules and yields secret results. Arbitral awards resolve conflicts effectively due to their certainty and enforceability.

UNCLOS arbitration tribunals help resolve disputes. The Permanent Court of Arbitration (PCA) centralises arbitration. Arbitrators and administrative assistance are appointed by it. Arbitral tribunals include independent, experienced maritime law specialists. Parties can present their argument, give evidence, and receive a fair and impartial verdict through arbitration. The tribunal members' knowledge and counsel help resolve difficult cable laying legal concerns.²²

Arbitral decisions must be followed to maintain dispute resolution effectiveness. UNCLOS requires states to follow arbitral rulings. Article 296²³ emphasises that nations must follow arbitral decisions. Compliance ensures conflict resolution and arbitration finality and integrity. International treaties or domestic legislation govern the acceptance and enforcement of arbitral awards, maintaining the arbitration process's efficacy and fostering compliance with the results.

UNCLOS international dispute resolution and arbitration systems help resolve cable laying conflicts peacefully. They enforce "Due Regard" requirements and promote international maritime law, promoting marine cooperation and stability.

VII. CRITICAL ANALYSIS

The 1982 "UN Convention on the Law of the Sea" (UNCLOS) requires "due regard" for cable laying and operations in the area. The extensive UNCLOS treaty governs ocean use and conservation. UNCLOS Part XII²⁴ protects the marine environment, including submarine cable laying and other operations.

Article 58²⁵ of UNCLOS requires States to exercise their Convention rights and freedoms with "due regard" for other States' rights and interests. States must guarantee that their operations in the area do not hurt others or violate their legitimate rights under this concept.

In laying cables and other activities in the area, States must take precautions to protect the maritime environment and avoid interfering with other States' sea use. This involves preventing cable disruption, respecting coastal States' rights to regulate cable laying in their territorial seas, and assessing the impact on sensitive marine ecosystems.²⁶

UNCLOS also settles interpretation and application conflicts. Article 287²⁷ allows discussion, arbitration, and ICJ referral for dispute resolution. ICJ jurisdiction is limited to disputes between States that have recognised it. Additionally, "due regard" is subjective and flexible, giving States some leeway in fulfilling their commitments. However, inconsistent methods and practise disputes might result from the absence of objective criteria. The "due regard" responsibility is very difficult to implement. UNCLOS does not enforce "due regard" specifically. International Court of Justice (ICJ)²⁸ or other dispute settlement institutions can hear disputes, but only between States that have accepted its jurisdiction. This may hinder the ICJ's "due regard" dispute resolution.

The "due regard" responsibility may collide with other rights and interests. UNCLOS allows coastal states to regulate cable laying in their territorial seas. When different States demand their rights and interests, this might cause disagreements and hinder the "due regard" commitment. Another problem is that certain States may lack the capacity and resources to monitor and control maritime operations. This can impede "due regard" enforcement, causing environmental damage or violating other States' rights.

Here are two incidents that demonstrate the importance and problems of UNCLOS' "due regard" responsibilities in cable laying and related activities:

²¹ "Convention on the Law of the Sea 1982,a287(3)"

²² "Convention on the Law of the Sea 1982,pXV"

²³ "Convention on the Law of the Sea 1982,a296"

²⁴ "Convention on the Law of the Sea 1982,pXII"

²⁵ "Convention on the Law of the Sea 1982,a58"

²⁶ "Burnett, Beckman, Davenport, Submarine Cables, The Handbook of Law and Policy, Martinus Nijhoff Publishers, Chapter 8, "Out-of- Service Submarine Cables at 213-222. (2014)"

²⁷ "Convention on the Law of the Sea 1982,a287"

²⁸ "International Court of Justice (ICJ) 1945"

Nicaragua v. Colombia²⁹ (Maritime Delimitation in the Caribbean Sea) is the first ICJ case. Nicaragua said Colombia breached its exclusive economic zone sovereignty by constructing undersea cables. Nicaragua said Colombia did not "due regard" for its UNCLOS rights.

This case's critical analysis focuses on "due regard" interpretation and application. The ICJ examined whether Colombia's actions met its commitment to enjoy its rights and freedoms with "due regard" for Nicaragua's. The Court decided that Colombia was cautious and avoided destroying underwater cables. The Court noted that "due regard" meant balancing both States' rights and interests. It noted that this requirement involves reasonable measures but does not need accommodating every concern made by other States.

The ICJ further stressed that the "due regard" responsibility should be assessed objectively and based on the case's specifics. The Court noted that "due regard" is often met by good faith and no state abuse of rights. The Court ruled that Colombia's actions did not infringe Nicaragua's UNCLOS rights. The Court noted that Colombia had taken precautions to protect cables and exercised prudence. Colombia fulfilled its commitment to exercise "due regard" for Nicaragua's rights and interests by acting in good faith and not abusing its rights.

This instance illustrates how "due regard" is applied. It emphasises the necessity to carefully assess the circumstances and balance compliance with this UNCLOS responsibility. The case emphasises that "due regard" needs reasonable measures and good faith, not an absolute requirement to meet every concern made by other States.

Let's examine the second International Tribunal for the Law of the Sea case, Ireland v. United Kingdom³⁰(MOX Plant Case).

Ireland filed suit against the UK, claiming that the proposed MOX (Mixed Oxide) plant will breach Ireland's "due regard" rights under the UN Convention on the Law of the Sea. Ireland said the plant's operations will impair its marine environment transboundary. The "due regard" obligation and other UNCLOS rights and interests are the case's main issue. The ITLOS had to decide if the UK's operations violated Ireland's UNCLOS rights and "due regard."

The Tribunal acknowledged that States have a "due regard" obligation to assess their marine environmental impacts. It also stressed the necessity to reconcile this commitment with a state's right to use its resources. The ITLOS determined that the UK's proposed MOX plant operations could cause environmental harm, but not transboundary impact that would violate Ireland's UNCLOS rights. The Tribunal stressed the necessity for scientific data to determine impacts and relevance.

The case shows how difficult it is to balance environmental preservation and marine resource extraction. It shows that the "due regard" responsibility demands thorough analysis of potential repercussions but must be balanced against a State's legitimate rights to use its resources. The case also emphasises the necessity of scientific data and objective judgement in evaluating "due regard" compliance. For an informed and objective assessment of their operations' potential harm, states must employ scientific data and analysis to determine impacts and importance.

This case shows how difficult it is to balance UNCLOS' "due regard" responsibility with other rights and interests. It emphasises the necessity for a balanced approach and the need of scientific data in establishing "due regard" compliance in circumstances of potential transboundary marine environment degradation.

VIII. CONCLUSION

My research on 'Due Regard' Obligations under the 1982 UN Convention on the Law of the Sea for cable laying and operations in the area concludes with its key conclusions and consequences which makes the most impact on the research

The conclusion emphasises that UNCLOS's 'due consideration' responsibilities are crucial to maritime legal frameworks. These requirements compel states and businesses to regard other states' rights and interests and maritime environment impacts. States and entities can support sustainable and responsible marine usage while maintaining peaceful relations with neighbouring states by fulfilling these duties.

In addition, effective interpretation and application of 'due regard' requirements are essential to safeguard maritime habitats and share resources fairly. The International Tribunal for the Law of the Sea (ITLOS) and national courts have jurisdiction over these responsibilities.

The conclusion stresses the importance of nations and entities understanding and upholding their international law commitments, notably 'due regard' obligations. They can traverse the marine environment, safeguard other governments' rights, and sustain the world's oceans by doing so. In the end let's discuss the suggestions which should be applied and implemented in my perspective.

²⁹ "Nicaragua v Colombia (2012)"

³⁰ "IRELAND v. THE UNITED KINGDOM (2001)"

IX. SUGGESTIONS

The 1982 UNCLOS regulates cable laying and operations including underwater cable installation and maintenance. UNCLOS provides a comprehensive framework for maritime governance.

From my analysis and research, the UN could employ these proposals to fulfil its "due regard" requirements under UNCLOS, which require all nations to respect the rights and interests of other states and prevent maritime environment damage:

1. States should develop UNCLOS-compliant national laws and regulatory frameworks. These frameworks would address cable installation approval, route reporting, and activity monitoring. States can ensure transparent and accountable cable activity with clear and consistent regulations.

2. Facilitate information and cooperation: The UN can help states share cable installation information and cooperation. This could involve information sharing, collaborative inspections, and coordinated efforts to resolve issues. The UN may minimise misconceptions and encourage state cooperation through encouraging collaboration and communication.

3. Complete environmental impact studies (EIAs) before installing cables: States should do so. These studies should assess marine ecosystems, fisheries, and other marine environment impacts. By anticipating environmental repercussions, states can take steps to reduce them. This ensures marine environment protection during cable activities.

4. Adopt best practises and standards: The UN can encourage states to follow cable installation and maintenance best practises. The International Cable Protection Committee (ICPC) and International Telecommunication Union can produce these best practises and standards. States can ensure cable activities are safe, efficient, and compliant with international standards by following guidelines.

5. Establish dispute resolution processes: The UN might promote dispute settlement methods for cable-related conflicts. Negotiation, mediation, and international forums like the International Tribunal for the Law of the Sea are possible. Having dispute resolution systems helps states handle problems peacefully and legally.