

Twisted Lines

An examination of the usage of out-of-service submarine cables and the legal requirements applicable to them under international law

This article looks at the question of what happens to cables that are redundant or are out of service, and what are the legal requirements applicable to them under international law. Before examining the legal requirements, it is helpful to understand how out-of-service cables are reused.

We first need to understand what is meant by out-of-service submarine cables. Commercial considerations govern when a cable's status is changed from 'active' to 'out-of service'. These include the following factors: The cable system may have reached the end of its design life, which is typically 20-25 years; the increased cost of operating and maintaining the cable may have become such that the owners of the cable system agree to decommission it; and the need to remove the risk of liability for sacrificed gear and anchor claims and coastal State legal requirements in territorial seas.

Improved cable technology may cause a cable system to become non-competitive with newer systems. For example, overbuilding may have resulted in a glut of capacity on the cable route, making the operation of a cable commercially non-viable, notwithstanding the fact that it may only have been used for as little as 40 per cent of its design life. Frequently, it is a combination of these factors that results in the cable owner deciding to decommission the cable system and change its status to out-of-service.

The fact that a cable is out-of-service for one purpose, such as telecommunications, does not mean that its life is over or that it has no value to its owners. In some cases,

an out-of-service cable is reused for other commercial services, such as for seismology research, fibre-optic cable systems, artificial reefs, and other environmental monitoring purposes. Even when submarine cables are no longer in use, they continue to be the property of the cable owner and the proceeds of any recovery or reuse are retained by the owner.

Although the practice is not common, there are instances of cable owners entering into commercial salvage contracts in order to recover segments of out-of-service cables. Experience has shown that great care

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must be undertaken in the selection of the salvor. Because salvage is governed by maritime law, experienced admiralty counsel should be consulted by cable owners before entering into a cable salvage agreement. These norms are considered standard cable-industry recommendations.

Negligent salvage

Damages for negligent salvage include increased risk by cable owners by unauthorized or incompetent salvors who selectively retrieve easy-to-recover sections of cable while leaving other sections with masses of twisted armor wires, caned bird cages and cable displacements that expose cable owners to increased risk for indemnity claims for sacrificed fishing gear and damage to the seabed environment.

*This excerpt is from an article by **Douglas Burnett**, originally published in *Out of Service Submarine Cables: The Handbook on Law and Policy* (Brill and Nijhoff, 2014)*

It should be borne in mind that salvage operations in maritime zones under the sovereignty of coastal States (that is, internal waters, territorial seas and archipelagic waters) are subject to the laws and regulations of the coastal State. Therefore, the coastal State can require consent before salvage operations are carried out in these zones. Salvage operations which take place outside territorial waters (that is, the exclusive economic zone or EEZ, continental shelf and high seas) are not subject to coastal-State consent.

There are instances in which cables have been abandoned and their former owners no longer claim an interest in them. This is more common with regard to abandoned *telegraph* cables. Third parties may obtain title to such cables through admiralty proceedings in a court of competent jurisdiction. The third party must demonstrate to the admiralty court that despite reasonable efforts to locate the owners of the cable, they are no longer in existence, not traceable, or have explicitly renounced their interests in the cable. Due to the continuing international legal obligations discussed below, salvor arguments of implied ownership waivers by cable owners should be treated with caution and, in most cases, are rejected.

In maritime zones under the sovereignty of the coastal State—internal waters, territorial seas and archipelagic waters—the laying of cables is subject to the consent of the coastal State. Therefore, the coastal State can require that cables in these maritime zones be removed when they are no longer in service. The more interesting issues arise with regard to cables laid outside the outer limit of the territorial sea, that is, in the EEZ or on the continental shelf.

International telecommunication cables enjoy unique status under international law and treaties. The freedom to lay, maintain and repair international cables is well established (Convention for the Protection of Submarine Telegraph Cables, adopted 14 March 1884). The United Nations Convention on the Law of the Sea (UNCLOS) addresses

the decommissioning of structures and installations, but, essentially, such installations and structures are constructed to enable the coastal State to exploit the natural resources on the seabed. Even the provisions on the removal of installations and structures do not include pipelines, let alone cables. Therefore, the prevailing view is that there is no legal obligation under UNCLOS to remove cables that have been placed on the seabed in the EEZ or on the continental shelf when they are no longer in service. UNCLOS provisions include Article 21, Article 56 to 60, Articles 79 (1), (2), (3), (4), Articles 87 (1)(c) and 112-115, Article 145 (a), and Article 147 (2).

In light of the above, and the fact that the right to lay, repair and maintain cables is a recognized freedom in the EEZ and continental shelf, it appears clear that if any State was to unilaterally require the removal of cables outside its territorial sea, it would be exceeding its jurisdiction under UNCLOS. No State has been given the power to instruct other States to remove their cables outside of territorial seas. Accordingly, under international law, there is no requirement to remove out-of-service cables in maritime zones beyond the territorial sovereignty of any State.

Dumping

An issue does arise as to whether the abandonment of cables on the seabed would be pollution of the marine environment by ‘dumping’. The definition of dumping in Article I of UNCLOS is the same as that contained in the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention). The definition of dumping includes any deliberate disposal into the sea of vessels, aircraft, platforms or “other man-made structures at sea”. The definition of dumping states that it does not include “placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention”. However, there was some question as to whether

the deliberate abandonment of cables or pipelines could constitute dumping because cables and pipelines are structures, and the decision to abandon a cable no longer in use constitutes the disposal of a man-made structure at sea.

The 1996 Protocol to the 1972 London Convention clarified this issue. It provides that dumping includes any abandonment of man-made structures at sea for the sole purpose of deliberate disposal. However, it also states that dumping does not include the abandonment in the sea of matter such as cables which were placed in the sea for a purpose other than the mere disposal.

On this issue, the definition of dumping in UNCLOS should be interpreted as clarified in the 1996 Protocol to the 1972 London Convention. This makes it absolutely clear that the abandonment of communications cables on the seabed does not constitute dumping.

The Convention of the Protection of Underwater Cultural Heritage explicitly excludes submarine cables from the definition of underwater cultural heritage and classifies cable laying and repair as activities only “incidentally” affecting underwater cultural heritage.

UNCLOS sets out the rights and obligations of States with respect to cables. However, as discussed above, removal of out-of-service cables is primarily a decision made by the cable owners. The cable industry has published a recommendation on the various factors to be evaluated in deciding whether or not to remove all or part of an international cable system. The best industry practice with respect to out-of-service cables is to consider the following factors:

- i. Any potential effect on the safety of surface navigation or other uses of the sea, including a comparison of whether removal is reasonable or realistic, given the presence of other man-made objects on the seabed such as shipwrecks, debris, and oil and gas structures and installations.
- ii. Present and possible future effects on the marine environment. If the

cable is composed of material that is inert or environmentally benign, consideration should be given to leaving the cable in place.

- iii. The risk that the cable will significantly shift position at some future time.
- iv. The costs and technical feasibility associated with removal of cables.
- v. The determination of a new use or other reasonable justification for allowing the cable or parts thereof to remain on the seabed.
- vi. The environmental impact of leaving the cable in place, compared to the disruption caused by attempting to remove the cable.
- vii. The management of out-of-service cables as part of the cable protection programme.


The potential socioeconomic and economic benefits of recovering the cable.

If a decision is made to retain the out-of-service cable for future use or leave it in place, cable owners should then carry out the following actions:

- i. Notify international and national charting authorities that the cable is out-of-service.
- ii. Notify local fishermen and other seabed users of the change in status and confirm that future claims for sacrificed gear shall be considered on their merits.
- iii. Confirm that the cable owner remains responsible to any party by insurance cover or otherwise.
- iv. Consider alternative uses for the cable such as transfer to a scientific research body.

Fair evaluation of the above factors and undertaking the recommended actions is consistent with UNCLOS requirements for international cables that are out-of-service.

Cables in maritime zones subject to the territorial sovereignty of the coastal State are subject to the laws and regulations of that State.

The salvage of cables in maritime zones under the sovereignty of coastal States is governed by the law of the coastal State, but the salvage of cables outside of the territorial sea/archipelagic waters of any State is governed by the law of salvage. 

For more

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International Cable Protection Committee

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