CHALLENGES OF THE “NORD STREAM”

STREAMLINING THE INTERNATIONAL LEGAL FRAMEWORK FOR SUBMARINE PIPELINES

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“Nord Stream” – truly international project
Crosses maritime areas of
- Russia - internal waters, TS & EEZ (Cont. Shelf)
- Finland - EEZ
- Sweden - EEZ
- Denmark - EEZ & TS
- Germany - EEZ, TS & internal waters
Legal Issues

- What is the status of cross-border submarine pipelines in international law?

- Two sets of problems
  - What rules apply? (Applicable legal frameworks - international legal instruments and key principles)
  - Who has jurisdiction, where and what kind? (How to resolve potential conflict of jurisdiction?)

- The “Nord Stream” case: legal problems & loopholes
Legal status of submarine pipelines: overlapping legal instruments

- Global legal framework –
  - 1958 Geneva Conventions
  - 1982 UNCLOS

- Regional frameworks:
  - Regional seas regime – 1992 Baltic Sea Convention
  - Regional environmental regimes – UNECE 1991 Espoo Convention on EIA & other environmental conventions
  - Regional economic regimes – EU law, 1994 ECT

- Special pipeline project agreements

- National legislation
Legal status: Technical & territorial aspects

**Types of pipelines:**
- Intra-field
- Inter-field
- Offshore field - coast (including cross-border)
- Coast-to-coast (mostly cross-border, including transit)

**Maritime zones (UNCLOS 1982) pipelines cross:**
- Territorial sea (up to 12 nm) – consent of the coastal state (sovereignty)
- High seas – freedom to lay pipelines (Art. 112) – customary international law
- EEZ/Continental shelf – limited freedom to lay submarine pipelines
Article 79

Submarine cables and 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.

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.

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.
Balance of rights & obligations

**All States**
- A general right to lay submarine pipelines on the continental shelf (& lawful uses of the sea associated)
- An obligation to obtain the consent of the coastal State regarding the **delineation** of the course
- **Due regard** to the rights of the Coastal State (Art. 56)
- **Due regard** to already existing pipelines

**Coastal States – EEZ (Part V - Art. 56) & Cont Shelf (Part VI)**
- An **obligation not to impede** the laying of pipelines
- A right to take reasonable measures for
  - the exploration of the continental shelf
  - the exploitation of its natural resources
  - the prevention, reduction and control of pollution from pipelines
Questions

- What is a “reasonable measure” under Art. 79?
- Can coastal states apply conditions re. pipeline construction & operation? And what kind?
- Refusal (to conduct survey) or unnecessary delay of the project - Abuse of right by a coastal State?
  
  - Article 300 “States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right”.

- What remedies available if there is a dispute?
  
  - UNCLOS – compulsory procedures entailing binding decisions (ICJ, ITLOS, arbitration, special arbitration)
1992 Baltic Sea Convention (HELCOM)

- Objective: protection of the marine environment
- Covers all sources of pollution
- What about submarine pipelines?
  - Exploration and exploitation of the seabed and its subsoil (Art.12 and Annex VI)) – “Associated activity”?
- Use of BEP & BAT
- Environmental impact assessment (Art. 7)
  - Required for a “proposed activity that is likely to cause a significant adverse impact on the marine environment”
  - But only when it is “required by international law or supra-national regulations applicable to the CP of origin”
  - Obligation to notify and enter into consultations with a potentially affected CP (“whenever consultations are required by int’l law or supra-national regulations applicable to the CP of origin”)
  - What is a “Contracting Party of origin”? 
1991 Espoo Convention on EIA in a Transboundary Context

- Framework for EIA, notification & consultations
- Definition of the “Party of origin”
- What about submarine pipelines?
  - Covered by the term “proposed activity” – large diameter oil and gas pipelines (Appendix 8)
- Notification procedure:
  - Disagreement over potential impact? – Inquiry commission
- Consultations: outcome?
- Russia – not a Party – voluntary compliance!
Conflict of Jurisdiction: Who? Where? What?

- Jurisdiction: prescriptive, judicial, enforcement
- Principles of: territoriality, nationality, protective
- What jurisdiction?
  - Transportation (route, construction & operation)
  - Safety / Environmental protection
  - Fiscal
- Who can claim jurisdiction?
  - Sending State (State of origin)?
  - Receiving state?
  - Transit state?
  - State of the incorporation/registration?
- Concurrent jurisdiction – “balance of interests”
Problems

- **Multitude of overlapping & potentially conflicting legal frameworks:**
  - Law of the sea: UNCLOS, 1992 Baltic Sea Convention
  - Environmental law: 1991 EIA Convention
  - European Law: EC Directives

- **Specific problems:**
  - UNCLOS provisions – too general to provide clear guidance
  - Relevance of provisions on marine scientific research in EEZ?
  - Pipelines in disputed maritime areas?
  - Lack of harmonized standards (similar to IMO navigation standards)
  - 1992 Baltic Sea Convention – applicability?
  - Disputes – potential for forum shopping

- **Jurisdictional problems: conflict of jurisdictions**
Thank you