Ocean and Coastal Management xxx (xxxx) xxx–xxx

Contents lists available at ScienceDirect

Ocean and Coastal Management

journal homepage: www.elsevier.com/locate/ocecoaman

Legal problems of submarine pipelines in the continental shelf and the exclusive economic zone

Saeed Hashemi Lalehabadi

University of Montreal, Canada

1. Introduction

Pipelines, as one of the means of transportations, are so popular nowadays that thousands of kilometers of them are employed in transferring oil products from one state to another. The most significant reasons for exploiting this means of transportation are the continuity and the security in transporting hydrocarbons as well as its lower cost compared to giant oil tanks. In addition to these advantages, the environmental hazards pipelines induce are considerably less compared to the tankers. It is, therefore, plausible to establish an internationally well-organized legal system in order to take full advantage out of pipelines; a system which can deal with the issues that might occur during the process of the exploitation of pipelines.

By the introduction of the 1958 Conventions of the Law of the Sea, the pipelines officially entered into the codified international law of the sea. However, since at the time pipelines were neither considered very important nor were they vastly used, International Law Commission added the word “pipeline” simply as a patch to the articles on the submarine cables which had a well-established regime since the nineteenth century. The reason why this hasty exercise of generalization occurred lies in the similarities that, the International Law Commission believed existed between submarine cables and submarine pipelines. An instance of this similarity is, inter alia, the same area of usage being considered as a means of energy transportation and bridging one coast to the other. As a result, pipelines are bumped together with submarine cables and do not benefit from specific, tailor-made rules and prescriptions.

This negligence toward environmental, technical and maintenance issues between submarine cables and submarine pipelines is the root of the present gaps and ambiguities in the conventional international law of the exploitation of the pipelines. Unfortunately, the policy of generalizing the rules of the submarine cables to the pipelines continued into the 1982 Convention of the United Nations for the Law of the Sea (UNCLOS) in which there does not exist an entirely distinct article about submarine pipelines.

Therefore, issues of submarine pipelines raised by the unique nature and characteristics of hydrocarbons need to be examined and studied independently from the submarine cables. Below, I list some of the most considerable issues which, in my opinion, require a quick revision of the existing conventions:

1 An exact definition of the pipelines
2 A thorough regulation of the different procedures of exploitation of submarine pipelines, such as delineation of pipeline routes, the installation requirements and their decommissioning in maritime zones.
3 Establishing a right of innocent passage for the pipelines and their conditions in the territorial sea.
4 The possibility of suspension of the right of the innocent passage of ships in the case that they cause damage to the pipelines of the coastal state.
5 A well-clarified regulation of reconciliation of different rights and duties of the coastal states and the freedom of other states in the zones beyond the sovereignty of the coastal state, such as the continental shelf and the Exclusive Economic Zone in which many rights overlap the right of laying pipelines.
6 Regulating the extent of the competence of the coastal states or the host states of a pipeline and the scope of the duty of its owner in environmentally hazardous accidents or decommissioning of pipelines after its exploitations.

However, the present article deals exclusively with one of the above-mentioned issues, which, in my view, creates the most prominent theoretical debate. Differently put, this paper, based on the dominant paradigm of the positivist study of the existing international law, is an attempt to answer how to reconcile the overlapping rights in two of the

https://doi.org/10.1016/j.ocecoaman.2017.12.023
Received 14 August 2017; Received in revised form 8 December 2017; Accepted 25 December 2017

most economically important marine zones: The Continental Shelf and The Exclusive Economic Zone. To address this question, I shall deal with other sub-questions for which I rely on the sources of the positivist international law of the sea mentioned in the article 38 of the Statute of the International Court of Justice.[1] In addition, and based on the article 32 of the Vienna Convention on the Law of Treaties[2] about the interpretation of rules, I lay reference to the *travaux preparatoires* (preparatory work) of the ILC for the conventions on the law of the sea.[3] Using these references, the present paper will shed light on what has been done so far on this matter and what better can be done in future. In order to reach my aim, this paper is divided into two parts: I will first offer a quick review of the rules concerning the Continental Shelf and the Exclusive Economic Zone in the conventions of 1958[4], the integrated convention of 1982 and also a brief historical study of these conventions as long as it is helpful for my arguments. The subsequent part then deals with the existing legal regime of the pipelines in the Continental Shelf and the Exclusive Economic Zone, its disadvantages and remedies.

2. The conventional rules

2.1. The emergence of the pipeline rules

To discuss why there do not exist sufficient conventional rules[5] concerning pipelines in the international law of the sea, one should explore the history of pipeline exploitation back to the date when the customary international rules of the sea were codified during the 1950's. At the time, the world was not actually aware of the importance of seas and oceans in providing oil and other sorts of hydrocarbons. At that time, up to the 1930s, merely 30% of hydrocarbons was extracted from the sea. However, gradually and by technological advancement, seas have turned into one of the primary sources of hydrocarbon energy. States, as a result, asserted new claims in water zone in the second half of the twentieth century. It is worth mentioning that the very first project of pipeline exploitation (either onshore or offshore) in the history, dates back to 1865, laid from the Pithole City to the Miller farm railway in the United-States. This pipeline was 9.7 km long and 2 inches thick buried at 60 cm deep under the ground. Years later, at the beginning of the twentieth century, the discovery of the Baku field rendered Russia the first oil producer at the time and just ten years later, Russia installed a pipeline with the length of 880 km.[6] During the twentieth century, in the Middle East and Iran specifically, a myriad of pipelines was exploited. In Iran, in 1908, the Masjid Suleiman field was discovered and connected to the Abadan refinery by a 250-km piping.[7]

This succinct history reveals the rare usage of the pipelines before the 1950s and divulges why there was not enough attention to this topic when the conventions of the law of the sea were under discussion in the ILC. It is now comprehensible why pipeline regulations were not discussed independently from submarine cables.

Submarine cables had a series of well-established rules since the nineteenth century.[8] The similarity existing between the submarine cables and pipelines, in the eyes of the International Law Commission members, was so evident that this commission simply applied the articles of the Paris Convention of 1984 on the Offshore Cables[9] to the offshore pipelines.

Mr. Amado, for the first time, in the second session of the ILC in 1950, discussed the application of the offshore cable rules to the offshore pipelines.[10] As a consequence to his discussion, the ILC accepted to add the word “pipelines” to article 192 of the draft convention. This rule-setting approach continued in the ILC over the succeeding sessions between 1951 and 1956. The attitude obviously originates from the fact that the Commission, in that decade, did not believe in the significance of pipeline. However, it bears noting that although the very foundation of the international law of submarine pipelines was the existing rules of the offshore cables, it facilitated the incorporation of the pipelines into the literature of the law of the sea. Despite all the deficiencies existing in this policy, in my opinion, had not there been the generalization of the existing cable rules to the new concept of submarine pipelines, pipeline regulation in the international law of the sea would indeed have taken a longer time. Creating rules, though, entails explanations and clarifications to avoid the missing gaps found in the current conventions. Some of these gaps such as an accurate definition of a pipeline, its different types and its operational platform and devices are mentioned on the first page of this article.

2.2. What does a “pipeline” mean in the international conventions of the law of the sea?

To build arguments about the legal regime of the pipeline, one needs to know what exactly a pipeline is and what it includes. These

[1]

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply.

[2] Article 32.

Supplementary means of interpretation
Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article
31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result, which is manifestly absurd or unreasonable.

[3] Four conventions on the law of the sea 1958: the Convention on the Territorial Sea and the Contiguous Zone (CTS); the Convention on the High Seas (CHS); the Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR); the Convention on the Continental Shelf (CCS).

[4] Supra 3.

[5] There are totally 19 articles dealing with the pipelines in all the four conventions of the 1958 and the convention of the united nations of 1982.

Articles 21, 58, 76,87, 112, 113,114,115, 124, 145,207,297 of the UNCLOS (United Nation Convention on the Law of the Sea)
Article 4, of the convention on the CS of the 1958 (continental shelf convention 1958)
Articles 2,24, 26, 27,28,29, (High sea convention)

[6] Yates. G & Hardin young. J, *Limits to National Jurisdiction over the Sea*, University press of Virginia, 1974, P.9.

[7] The first offshore pipeline in Iran was exploited in 1942. This line was made by the Anglo-Iranian oil company and the Iraqi oil company in the Persian Gulf.

[8] There were actually no discussions among the states about the installation of the offshore cables since 1850 that the use of them had been popular, and the only topic that was discussed was the problem of the interference and the accidents of the vessels by the installations and the offshore terminals of the cables. This topic neither was not really serious under the shadow of the great strategic significance of the cables. (National Academy of Science, *Pipeline in the Marine Environment*, National research council, 1987, p12) and as the ILC reporter in the 1950 mentioned the only challenging topic over the cables was the (protection) and not the right to install and use them. (Un, Doc, No, A/CN, 4117 (1950)).

[9] For example, article 2 of this convention about the interruption and the harm to the cables intentionally or unintentionally.

Article II: It is a punishable offense to break or injure a submarine cable, willfully or by culpable negligence, in such manner as might interrupt or obstruct telegraphic communication, either wholly or partially, such punishment being without prejudice to any civil action for damages
Or article 4 of the same convention on the liability of the cable owner in case of any kind of damage to the other cables during its use:
Article IV
The owner of a cable who, on laying or repairing his own cable, breaks or injures another cable, must bear the cost of repairing the breakage or injury, without prejudice to the application, if need be, of Article II of the present Convention. See→ Queneudec. J. P, *Droit Maritime International, Edition* A. Pedone, Paris, P. 25

[10] (Un, Doc, No, A/CN, 4117).

(38. Mr. AMADO reminded the Commission that its task was to codify principles recognized in the practice of States. The principle of the right to lay cables freely was admitted by all writers. It could not be omitted. The laying of pipelines and the excavation of tunnels did not as yet form part of the peaceful practice of States. The Commission's present work was confined to recording the principles of international law in time of peace.) (http://legal.un.org/ilc/publications/yearbooks/english/ilc_1950_v1.pdf)