

Subsea cable claims: a matter of jurisdiction?

By Christian Benedictsen-Nislev, Rebecca Bay and Minik Christoffersen Bolø,
DLA Piper Denmark

1. Introduction

There is currently a growing interest in subsea cables, both due to the ever-expanding number of cables, but also due to a recent increase in incidents involving subsea cable damage. The resulting disruption can have severe economic and security implications, given that subsea cables are vital for global communication and energy distribution.

The increasing number of incidents can be attributed to a growth in the activities that may cause subsea cable damage, including bottom trawling by fishing vessels, commercial vessels dragging anchors, as well as incidents during offshore projects regarding installation and repair of subsea cables.

Recent years have also seen an increase in the focus on subsea cables from a security point of view, with several widely reported and extraordinary cases of purported sabotage of subsea cables in regions such as the Baltic Sea¹. As a consequence, on 21 February 2025 the European Commission released a “Cable Security Action Plan”, which aims to assist member states that are dealing with extensive attacks on subsea cables².

Regardless of the cause of the damage to a subsea cable, the ability to bring a civil claim for damages to recover the losses resulting from such damage is of general importance when it comes to protecting the interests of cable owners and operators. Given the location of subsea cables, important issues of jurisdiction arise with respect to such claims. These issues will be of relevance to parties with a legal interest in a damaged subsea cable, as well as for potential tortfeasors seeking to defend themselves against such claims, such as ship owners and their insurers.

1) Bulgarian shipowner denies deliberate sabotage of subsea cable

2) Joint Communication to strengthen the security and resilience of submarine cables | Shaping Europe’s digital future

The Danish courts have jurisdiction to consider subsea cable damage claims where the damage to the claimant's subsea cable arises in Danish territory, including within the territorial seas of Denmark. An interesting legal question arises, however, when it comes to damage that occurs outside of the territorial seas, but within the Danish Exclusive Economic Zone, as defined in the United Nations Convention on the Law of the Sea ("UNCLOS") – that is, whether the courts of the coastal state (i.e. Denmark) have jurisdiction to consider such claims.

To illustrate the practical relevance of this question, consider for instance the North Sea: whereas the territorial seas of the coastal states bordering the North Sea cover only a small fraction of the sea, the EEZs belonging to those coastal states cover the entire area of the sea beyond 12 nautical miles from the coastline. By far the main part of the combined length of subsea cables in the North Sea is therefore situated in the EEZs of the states bordering the sea, rather than in their territorial seas.

The claimants in a civil claim for subsea cable damage would likely welcome the legal certainty afforded them by being able to commence legal proceedings in the courts of the coastal state of the EEZ where the damage arose – as opposed to, say, the jurisdiction where the potential defendants are based, which might require claimants to commence proceedings halfway across the globe, where the claim could be subject to laws and procedural rules with unexpected and severe consequences for the claim that might even result in the claim being dismissed entirely.

However, a careful balance has been struck under UNCLOS between the rights and jurisdiction of the coastal states over their respective EEZs, and the rights of other states to lay subsea cables within the EEZs of coastal states. The ability of such other states to lay subsea cables in EEZs without undue interference from coastal states ensures the benefits that accrue from the transmission of information and energy between states, which is brought about by subsea cables. As a result of this balance, the wording of the relevant parts of UNCLOS are not entirely clear when it comes to the jurisdiction of coastal states to consider civil claims for subsea cable damage, compared to the corresponding provisions of UNCLOS governing the territorial seas and the high seas.

While this issue has been considered – directly and indirectly – by the courts

of several other countries with EEZs stretching into the North Sea, and also indirectly by the European Court of Justice, it has yet to be considered by the Danish courts. Through a review of relevant parts of UNCLOS as well as Danish statutory law, and in light of the aforementioned foreign case law, this article aims to provide an analysis of the legal position under Danish law with respect to whether the Danish courts have jurisdiction over civil claims for subsea cable damage arising in the Danish EEZ.

2. Typical causes of subsea cable damage

A subsea cable is laid on the seabed to transmit telecommunications or electricity. Today, subsea cables are mainly used to transfer large volumes of data, including telephone traffic and internet data. The cables are composed of several protective layers, e.g. including polyethylene, steel wires, aluminium and light fibres protected by oil gel. Despite these protective measures, subsea cables are still vulnerable to damage.

Subsea cable damage is generally caused by three main categories of activities:

a. Anchor dragging

Damage from anchor dragging occurs when ships are seeking to anchor near subsea cables, where the anchor comes into contact with the cable and causes damage to it. This might happen if the vessel is unaware of the cable location, or in emergency situations where anchoring becomes urgently necessary. In some cases, anchor dragging has also been linked to possibly deliberate sabotage.

b. Fishing activities

Fishing vessels may damage subsea cables during bottom trawling fishing when components such as trawl doors, beams or other gear – which are used to drag the fishing net on the seabed – are dragged along the seabed and collide with or catch the cable. Fishing activities are one of the most common causes of subsea cable damage since cables are often laid in areas frequented by fishing vessels. Additionally, fishing vessels can also cause damage by anchor dragging.

c. Offshore construction projects

Construction projects on the seabed, such as dredging or installation of cables or offshore installations for oil and gas exploitation or wind farms, may also result in damage to existing cables, and/or to cables that are being installed. For example, dredgers may inadvertently dredge over a cable while extracting sand from the seabed, which may cause damage to the cable.

3. Parties involved in subsea cable damage

When subsea cable damage occurs, several parties may be affected by the resulting loss:

a. Subsea cable operators and owners

The subsea cable operators own, maintain, use and ensure the functionality of the subsea cables. They typically suffer financial losses, both due to repair costs and disruptions to the cable service.

b. Defendants / tortfeasors

In cases where damage is not due to events such as ordinary wear and tear or force majeure event, there will usually be an identifiable party responsible for the damage, such as a fishing vessel or other ship.

Determining who caused the damage can potentially be difficult, including since many vessels may have crossed the path of the cable during the relevant time period. In the event of cable damage, the potential tortfeasors may be determined through the collection of Automatic Identification System (AIS) data, as well as Vessel Monitoring System (VMS) data collected by public authorities.

c. Insurance companies

Insurance companies play a significant role in subsea cable damage cases. Liability insurers (such as P&I Clubs) may cover the liability of the defendant / tortfeasor, while the interests of cable owners and operators in the cable may be covered by CAR (construction all risk) insurers or other insurers.

d. Cable users

Finally, there are the users of the sea cable damage, who will often suffer a loss as a result of damage. The users of the sea cable will often seek to recover this loss from the subsea cable operators.

4. Legal framework for jurisdiction under Danish law

Under Danish law, the issue of jurisdiction in case of civil claims regarding subsea cable damage is regulated by several statutory acts and conventions, including the Danish Administration of Justice Act, the Merchant Shipping Act, the Convention for the Protection of Submarine Telegraph Cables, the Convention on the High Seas, UNCLOS and the Brussels I Regulation. The relevant legal rules regarding jurisdiction are considered below, with a focus on rules which are potentially relevant for subsea cable damage claims.

In this article, the term “jurisdiction” is used by the authors to refer to the legal principles of national procedural law, which determine whether a court has competence (from a legal and/or geographical perspective) to consider a legal dispute and issue a judgment in this respect (in Danish: “*værneting*”).

The word “jurisdiction” may have a broader scope in other contexts and e.g. include the legal competence of legislatures to pass legislation that governs a certain legal and geographical area, as well as executive powers in this area. This broader scope of the word should arguably be applied when reading the provisions of UNCLOS.

a. The Administration of Justice Act

The Danish Administration of Justice Act applies to court cases before the Danish courts of law. The jurisdiction (in Danish: “*værneting*”) of the courts is regulated in Chapter 22 of the Administration of Justice Act. The main rule follows from Section 235, which states that legal proceedings should be brought before the court at the place where the defendant is domiciled.

One of many exceptions to this main rule is found in Section 243, which states that proceedings regarding damages or redress for an infringement of rights may be brought before the court in the place where the infringement took place (in Danish: “*deliktsværneting*”). In subsea cable damage claims, this

rule will give jurisdiction to the Danish courts to consider claims regarding sub-sea cable damage, provided that the place where the infringement took place is within the geographical and legal scope of the courts' competence.

b. The Merchant Shipping Act

The Merchant Shipping Act contains various provisions regarding jurisdiction; however none of the rules are directly relevant for subsea cable damage cases.

The Merchant Shipping Act also grants Danish courts the authority to arrest a ship in Denmark as security for a maritime claim. This follows from Section 92, Subsection 1. The Danish courts have even arrested vessels located outside of Denmark. This is established in the Danish High Court case reported as U.1994.326Ø (Danish Weekly Law Reports 1994 page 326, Eastern High Court). In this case, the Lønmodtagernes Garantifond (a Danish solidarity-based insurance fund responsible for compensation of workers wages, "L") paid wages and holiday pay to eight seamen for work carried out onboard a vessel. L had the vessel arrested for the claim for wages and holiday pay in order to interrupt the limitation period of the maritime lien for the claim, see Section 248(2) of the Merchant Shipping Act. The ship was not present in Denmark at the time. The question was whether the Bailiffs court (In Danish: Fogedretten) was competent to make the arrest, while the ship was located outside of Denmark. The court found that the Bailiffs court was competent to make the arrest.

Furthermore, the Merchant Shipping Act contains various substantive provisions regarding collisions and limitation periods. However, if a ship comes into contact with a subsea cable, this would not be considered as a "collision" under Danish law. This was established in the Danish Supreme Court case reported as case U.2000.1156H (Danish Weekly Law Reports 2000, page 1156, Supreme Court): a fishing vessel came into contact with a seismic cable and caused damage to it, while it was being towed by a seismic vessel in the Danish part of the North Sea. A question was whether the contact between the ship and the cable could be considered a collision under the Merchant Shipping Act. If that were the case, a shorter limitation period than normal would apply. The court held that a subsea cable does not qualify as a ship or part of a ship, as a ship collision requires direct contact between two ships. Therefore, the abovementioned sub-

stantive provisions in the Merchant Shipping Act regarding collisions are not relevant for subsea cable damage claims.

c. The Brussels I Regulation

Regulation (EU) No 1215/2012 (the “Brussels I Regulation”) applies in disputes between EU member states.³ The main rule in the Brussels I Regulation provides that legal proceedings in civil claims for damage should be commenced in the jurisdiction where the defendant is domiciled, see Section 4. This rule corresponds to Section 235 of the Danish Administration of Justice Act.

An exception to the main rule is found in Section 7(2) of the Brussels I Regulation, according to which the defendant may be sued where the harmful act occurred or may occur in matters relating to tort, delict or quasi-delict. In the same way as the Danish Administration of Justice Act, the Brussels I Regulation does not in itself provide further insight into the issue of jurisdiction for subsea cable damage claims.

d. The Convention for the Protection of Submarine Telegraph Cables (the “Paris Convention”)

The Paris Convention provides the first regulatory framework for the protection of submarine cables in international waters. The convention is from 1884 and remains in force in Denmark and 35 other countries as of today. Almost all of the operative provisions from the Paris Convention were later implemented into the Convention on the High Seas and UNCLOS.

The focus of the Paris Convention is on regulating the activity concerning the laying of subsea cables, with a specific focus on the risk of damage to the cables during the cable laying process. As such, Article V states that vessels and fishing gear shall be kept at a distance of one nautical mile from a ship engaged in laying or repairing a submarine cable.

The convention governs public offence, and the wording of Articles VIII, IX and X make it clear that the Paris Convention deals only with procedural rules of criminal jurisdiction and that states only have an obligation to adopt laws with respect to persons that are already subject to its jurisdiction. The gener-

3) It applies in Denmark via a ‘parallel agreement’ between Denmark and the EU.

al view is therefore that the convention does not govern jurisdiction for civil claims regarding subsea cable damage.

The Paris Convention does contain provisions on compensation for anchors and fishing sacrificed to avoid damage to a subsea cable (Article VII), and provisions that the owner of a cable who, while laying or repairing the cable, damages another subsea cable, must bear the cost of the breakage (Article IV). However, with respect to Article IV, it is clear from its wording that claims for compensation is in the end a matter for the courts of the jurisdiction where the tortfeasor is based to consider – regardless of the fact that Article IV provides certain procedural steps involving port authorities and consular authorities to transmit notice of the claim to the tortfeasor. Further, as for Article VII it appears that the claim for compensation should be notified in connection with any public prosecution of the offence committed by way of the subsea cable damage, and be considered by the courts of the jurisdiction where the tortfeasor is based together with the criminal proceedings in this respect.

e. The Convention on the High Seas (the “Geneva Convention”)

The declared purpose of the Geneva Convention was to “*codify the rules of international law relating to the high seas*”. In a similar manner to the Paris Convention, most of the operative provisions of the Geneva Convention were later implemented into UNCLOS.

The Geneva Convention incorporates the provisions on compensation as mentioned above in Articles 28 and 29, the wording of which is reflected in UNCLOS Articles 113, 114 and 115.

Further, as the concept of the EEZ of a coastal state was only introduced by UNCLOS, the provisions of both the Paris Convention and the Geneva Convention are only indirectly relevant to the issue of jurisdiction for civil claims regarding subsea cable damage arising in the EEZ.

f. UNCLOS and the provisions on subsea cables in the EEZ / on the continental shelf

UNCLOS provides extensive regulation regarding maritime matters and is therefore essential when considering the issue of jurisdiction in maritime dis-

putes. Under UNCLOS, the marine territory is divided into three different areas: The territorial sea, the EEZ, and international waters (the high seas).

Articles 2 and 3 of UNCLOS provides that the territorial sea is the territory extending up to 12 nautical miles from a state's coastline. Within this zone, the coastal state exercises full sovereignty, subject to certain rights of innocent passage for foreign vessels. Full sovereignty comprises legislative powers over the territorial sea, as well as the powers of the executive branches of government and of the judiciary, thereby providing jurisdiction for the courts of the country to consider and rule on issues arising within the territorial sea.

Article 57 of UNCLOS provides that the EEZ extends up to 200 nautical miles from the coastal baseline. While the EEZ is not part of the state's sovereign territory, the coastal state has certain exclusive rights and jurisdiction over specific activities within this area, with a focus on natural resources and resource-related activities in the EEZ.

International waters refer to the area beyond the territorial waters, internal waters, and EEZ of any state, as per Article 86 of UNCLOS. These waters are open to all states, subject to certain international regulations.

UNCLOS establishes a distinct legal regime for the EEZ under Part V of the convention. According to Article 55, the EEZ is subject to a balance of rights and jurisdiction for both the coastal state and other states, governed by the relevant provisions of UNCLOS.

Within the EEZ, the coastal state has specific rights and responsibilities, cfr. Article 56.

“1. In the exclusive economic zone, the coastal State has:

- i. sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;*
- ii. jurisdiction as provided for in the relevant provisions of this Convention with regard to:*
 - 1. the establishment and use of artificial islands, installations and structures;*

2. *Marine Scientific research*
 3. *the protection and preservation of the marine environment;*
 - iii. other rights and duties provided for in this Convention.*
2. *In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.*
 3. *The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI”*

At the same time, all states, whether coastal or landlocked, are entitled to certain freedoms within the EEZ as stated in Article 58:

- “1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.*
- 2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.*
- 3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.”*

As per Article 58(2), the provisions of Articles 88 to 115 of UNCLOS regarding the high seas also apply to the EEZ. With respect to subsea cables, Articles 113, 114 and 115 provide as follows:

“Article 113

Breaking or injury of a submarine cable or pipeline

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, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 114

Breaking or injury by owners of a submarine cable or pipeline of another submarine cable or pipeline

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

Indemnity for loss incurred in avoiding injury to a submarine cable or pipeline
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.”

Read in conjunction with Article 58, Article 113 thus imposes an obligation on all states to adopt laws that make it a punishable offence for vessels flying the state's flag, and for persons subject to the state's jurisdiction, to damage a subsea cable situated in the EEZ of that state. Further, Article 114 and 115 imposes an obligation on a state to adopt laws providing for civil liability for its subjects with respect to damage to subsea cables in certain limited circumstances, as well as anchors and fishing gear sacrificed to avoid causing damage to subsea cables.

These three Articles were brought into UNCLOS from the Paris Convention and the Geneva Convention. As such, the comments above regarding the jurisdictional issues regarding those conventions also apply. On that basis, Articles 113, 114 and 115 should arguably be considered to be relevant only with respect to criminal proceedings, while they do not have a direct impact on the issue of jurisdiction with respect to civil claims for subsea cable damage.

The coastal state has exclusive rights with respect to artificial islands, installations and structures in the EEZ, as laid down in UNCLOS Article 60, which has the following wording:

“1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

(a) artificial islands;

(b) installations and structures for the purposes provided for in article 56 and other economic purposes;

(c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.”

UNCLOS also contains provisions regarding subsea cables on the continental shelf of a coastal state, which area comprises the seabed of the submarine areas that extend beyond its territorial sea to the outer edge of the continental margin up to a distance of 200 nautical miles from the coast. Article 79 provides as follows regarding subsea cables 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.*

4. *Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.*

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 XV of UNCLOS sets out various rules for settlement of disputes under the convention. Article 297 of UNCLOS explicitly regulates the issue of jurisdiction with respect to disputes regarding the exercising by a coastal state of its rights under UNCLOS, including with respect to the EEZ and subsea cables. Article 297(1)(a) provides as follows:

“1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:

(a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;”

Each state who is a party to UNCLOS may declare that one or more of the following four institutions shall have jurisdiction to settle such disputes cf. article 287 (in the absence of such declaration, or in cases where the parties to the disputes have made different declarations, part (c) shall apply):

(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

However, Article 297 does not regulate the issue of jurisdiction with respect to civil claims for damage to subsea cables in the EEZ. The legal issues in such a dispute are the same as for other claims in tort, including liability (e.g. the standard of negligence applied) as well as causation, remoteness, calculation of loss and e.g. the rights to limit liability. None of these issues are governed by UNCLOS. On the contrary, it can be inferred from the absence of any mention of subsea cable claims in Article 297 and Part XV of UNCLOS that the four institutions referred to in Article 297(1)(a) do not have jurisdiction to consider such claims.

All in all, the legal framework established under UNCLOS for the EEZ highlights the complex balance between the rights of coastal states and the rights of other states with respect to subsea cables, while providing only limited clarity regarding the issue of jurisdiction with respect to civil claims for subsea cable damage.

5. Jurisdiction regarding civil claims for subsea cable damage

The Danish statutory acts and the UNCLOS framework referred to above provides the basis for determining whether the Danish courts have jurisdiction to

consider a claim for damage to a subsea cable. Unless the claim arises under a contract (where the issue of jurisdiction will often be determined by a jurisdiction clause), then the claimant will have to rely on the procedural rules on jurisdiction for claims in tort, which is the focus of this article.

First, a claim in tort for subsea cable damage may be brought before the Danish court if the potential tortfeasor is based in Denmark, as per Section 235 of the Danish Administration of Justice Act. If the damage was caused by a ship in the Danish EEZ, however, then there is a significant likelihood that the ship owner will not be based in Denmark. Under these circumstances, the default rule regarding jurisdiction under Section 235 will not apply.

Secondly and alternatively, the Danish courts will also have jurisdiction to consider the claim on the basis of the rules on jurisdiction for claims in tort under Section 243 of the Administration of Justice Act and/or Art. 7(2) of the Brussels I Regulation, based on the location where the harmful act occurred. While the position with respect to jurisdiction is clear when it comes to subsea cable damage arising within Danish territorial waters and in the high seas, the position is less clear when it comes to damage arising in the Danish EEZ.

a. Territorial waters

If damage occurs within a state's territorial waters, the harmful act will have been committed within the state's territory. Consequently, the state may assume jurisdiction under Article 7(2) of the Brussels I Regulation. If the defendant is not domiciled in an EU state, the same position will apply under Section 243 of the Administration of Justice Act.

b. International waters

International waters do not belong to the territory of any state. When cable damage occurs in international waters, a state cannot assume jurisdiction with reference to the place where the harmful act was committed with respect to a claim for the loss resulting from the cable damage. There are two relevant legal issues to consider with respect to jurisdiction in these circumstances:

1. The flag state principle: For cable damage caused by a ship, the general principle is that the law of the flag state of the ship determines which

country has jurisdiction to consider the claim. This principle is also established in Danish case law in the High Court judgement reported as U 2012.3473Ø (Danish Weekly Law Reports 2012 page 3473, Eastern High Court), where the court ruled that “*A foreign registered ship is considered to be subject to the jurisdiction of the flag state during physical location in international waters*”.

2. In-rem jurisdiction: Where cable damage has been caused by a ship, under the law of some countries a claim may be brought against the ship on an in-rem basis. Such a claim would be directed against the ship itself on the basis that the ship was the instrument of liability, and that it possesses a legal personality of its own. For such claims, jurisdiction may be established through the presence of the ship in the jurisdiction of the court in question, e.g. via the arrest of the ship in that jurisdiction.

These two legal issues will not be considered further in this article.

c. Exclusive Economic Zone (EEZ):

There are several potential approaches to the question of jurisdiction of a coastal state in its EEZ with respect to subsea cable damage claims:

1. Jurisdiction can be established on the basis of general principles of sovereignty of a coastal state under UNCLOS regarding the coastal state's EEZ;
2. Jurisdiction can be established by considering UNCLOS Article 56, 58 and/or 60 as granting jurisdiction to the coastal state over civil matters regarding subsea cables in its EEZ.
3. Jurisdiction can be established by applying a general interpretation of UNCLOS and relevant principles of the law of the sea.

Sovereign rights regarding the EEZ

UNCLOS Article 56(1) grants the coastal state sovereign rights over certain matters within its EEZ. However, as opposed to the general sovereign rights of a coastal state under UNCLOS with respect to its territorial sea, which could be said to extend the sovereignty of the state with respect to its land territory

to also cover its territorial sea, the sovereign rights under UNCLOS regarding the EEZ are limited in scope. This is clear from Article 56(2) cfr. Article 58(1) of UNCLOS, which provide that coastal states must respect the rights of other states in the EEZ, including the right of other states to lay and operate submarine cables in the EEZ.

The argument that a coastal state has jurisdiction under UNCLOS to consider civil claims for subsea cable damage within its EEZ, solely on the basis of general principles of sovereignty of a coastal state in its EEZ, therefore does not appear valid.

Jurisdiction under Article 56, 58 and 60 of UNCLOS

The provisions in UNCLOS on EEZs are considered to establish a legal regime sui generis, meaning that the provisions of UNCLOS can in themselves form the legal basis for a state's jurisdiction with respect to certain matters⁴.

In this regard, it is important to emphasise that the courts of a coastal state may have jurisdiction to consider certain issues occurring in its EEZ, regardless of the fact that the EEZ is not a part of the territory of the state. Such jurisdiction is not unusual in the context of offshore and shipping matters: the courts of the country under whose flag a ship is registered will have jurisdiction to consider a range of issues with respect to the ship, regardless of the fact that the ship is not part of the territory of the state in question. Indeed, Article 56 and 60 of UNCLOS grants exactly such jurisdiction to coastal states over their EEZs, as set out in the following.

When reading Articles 56, 58 and 60 of UNCLOS together, it must be assumed that the Articles should be construed in such a manner so as not to contradict or conflict with each other (or, as set out in Article 58(2), “*in a manner compatible with the provisions of this Convention*”). On this basis, the position with respect to jurisdiction appears to be as follows, based on the wording of the articles:

First, Article 56 provides that the coastal state has jurisdiction with respect to the establishment and use of “installations and structures” in the EEZ. There

4) THE EXCLUSIVE ECONOMIC ZONE: A HISTORICAL PERSPECTIVE, by S.N. Nandan, Under Secretary-General, Special Representative of the Secretary-General for the Law of the Sea.

is no guidance in UNCLOS as to the meaning or scope of these two key terms, other than the context in which they appear in UNCLOS.

In the absence of such guidance, the word “structures” would appear to cover e.g. platforms and windmill towers which are similar in nature to buildings (as per the dictionary definition of the word “structure”), as opposed to, say, subsea cables.

However, the word “installations” is generally considered to cover a piece of equipment put in a place or position so that it can be used⁵. It is very difficult to argue that the word “installation” does not cover subsea cables – on the contrary, unless the context of UNCLOS supports such a reading, it can be safely concluded that the word “installations” must also cover subsea cables.

Secondly, in their EEZs coastal states have the exclusive right to construct, as well as to authorise and regulate the construction, operation and use of “installations” including for “economic purposes” other than those mentioned in Article 56, see Article 60(1). This right thus covers both the rights of exploitation and exploration referred to in Article 56, but also an arguably much broader scope of activities that have other economic purposes. While a rather narrow interpretation of the word “exploitation” of the EEZ might exclude the passing of information and electricity through a subsea cable from falling under the scope Article 56, there can be no doubt that such activity must fall under the general scope of “economic activity”, including since information and electricity pass through the subsea cable as part of international commercial activity. As such, it is difficult to see how subsea cables could be excluded from the scope of Article 60.

Further, coastal states have exclusive jurisdiction over “such installations”, see Article 60(2) – that is, the installations referred to in Article 60(1), which includes subsea cables as discussed above.

Thirdly and importantly, coastal states must however have due regard to the rights of other states, including when exercising jurisdiction over installations in the EEZ under Article 56, and when exercising their exclusive rights under Article 60 with respect to installations. Such rights of other states include the right to lay and operate subsea cables under Article 58(1).

Therefore, a coastal state must not exercise its jurisdiction under Article 56,

5) See Oxford Learner’s Dictionary and Cambridge Dictionary.

or its exclusive rights and jurisdiction under Article 60 regarding installations in the EEZ, in such a manner that it infringes or restricts the rights of other states to lay and operate subsea cables in the EEZ. Conversely, provided that a coastal state exercises its jurisdiction in a manner that respects the rights of other states, those other states must comply with the laws of the coastal states, cfr. Article 58(3), which arguably includes any national procedural laws granting jurisdiction to the coastal state to enforce the regulation.

The provisions of Articles 56 and 60 regarding a coastal state's jurisdiction and exclusive rights with respect to structures and installations in general are therefore modified and limited by Article 58 specifically with respect to subsea cables. In other words (applying an established principle of interpretation of law and international conventions), the *lex specialis* provisions in UNCLOS Article 58 on subsea cables override the *lex generalis* provisions on coastal states' exclusive rights and jurisdiction regarding all types of structures and installations in Articles 56 and 60. This position is in line with the provisions of Article 58(3): "...States ... shall comply with the laws and regulations adopted by the coastal State ... in so far as they are not incompatible with this Part".

The above analysis also provides an explanation why Article 56, 58 and 60 are worded as they are – i.e. why there is specific wording addressing subsea cables, as opposed to other types of installations and structures – namely, the need to carefully balance the rights between coastal states and other states with respect to subsea cables. That is because subsea cables are a type of installation which other states are entitled to lay in the EEZ of a coastal state according to UNCLOS; as opposed to ships and aircraft, who may also pass through the EEZ under UNCLOS but which are not installations; and as opposed to other types installations, which other states do not have the freedom to lay or install in the EEZ of the coastal state. Accordingly, the reason for the specific wording is the very specific regulatory balance struck between conflicting interests in UNCLOS, which only applies to subsea cables.

Fourthly, the provisions of Article 79 add an important perspective to the analysis of Articles 56, 58 and 60. Article 79(4) of UNCLOS confirms that a coastal state has "*jurisdiction over cables ... constructed or used in connection with ... the operations of ... installations and structures under its jurisdiction*", even if those cables lie outside of its EEZ. Since a coastal state has jurisdiction with

respect to claims regarding offshore platforms and windfarms within its EEZ, cfr. Article 56 and 60 of UNCLOS, this means that subsea cables on the coastal state's continental shelf that run from a platform or windfarm in the coastal state's EEZ is subject to the state's jurisdiction – even if the subsea cable itself lies outside of the state's territorial sea.

Further, Article 79 arguably also confirms that the coastal state has jurisdiction over subsea cables running to substations in the territorial sea or on the land territory of the coastal state, as such substations would qualify as “installations and structures”. Such an interpretation would cover most subsea cables running to or from the coastal state. This provides a strong argument that the coastal state will have jurisdiction over such subsea cables – even for claims relating to damage arising outside of the coastal state's territorial waters, but on its continental shelf.

An argument that subsea cables fall outside the scope of Articles 56 and 60 would have to contend with the fact that the courts of coastal states would nevertheless have jurisdiction to consider claims regarding subsea cable damage for all those cables that fall under Article 79(4). It is difficult to see the logical basis for an argument that subsea cables should be treated differently with respect to jurisdiction, purely on the (relatively arbitrary) basis of whether they run from an installation under the coastal state's jurisdiction or not.

A more coherent interpretation of Article 79 (4) would appear to be that it simply confirms the position as per the analysis set out above with respect to the treatment of subsea cables under Articles 56, 58 and 60 of UNCLOS. As Article 79 governs activity on the continental shelf, Article 79(4) only mentions subsea cables running from or to installations in this regard – but this does not in itself go against the aforementioned analysis of Article 56, 58 and 60.

Fifthly, UNCLOS Article 297 provides that any dispute regarding the exercising by a coastal state of its rights under UNCLOS (such as a coastal state's jurisdiction over installations in its EEZ) in contravention of another state's right to lay and operate subsea cables in the EEZ, is subject to the jurisdiction of one of the four institutions referred to in Article 287 (e.g. the International Tribunal for the Law of the Sea or the International Court of Justice).

However, a claim for subsea cable damage between, say, a cable owner and a ship owner need not involve any dispute regarding the exercising by a coastal

state of its rights under UNCLOS vis-à-vis the rights of the state where the cable interest is based on the right to lay and operate the subsea cable. In fact, it may often be in the common interest of both these states that the courts of the coastal state has jurisdiction to consider such a claim, as this would provide legal certainty with respect to the resolution of such claims.

In other words, there is no inherent conflict between the rights of other states under UNCLOS Article 58 to lay and operate subsea cables, and the exclusive jurisdiction of a coastal state and its courts with respect to considering civil claims for subsea cable damage arising in its EEZ.

In the authors' view, the above reading of Articles 56, 58 and 60 seen in conjunction with each other provides a coherent interpretation of UNCLOS with respect to coastal states' jurisdiction regarding subsea cables.

Alternative interpretations of these articles have been put forward, including by the Admiralty Court of England and Wales (see below). However, in the authors' view those interpretations are based on isolated readings of some but not all relevant provisions of UNCLOS. This leads to incoherencies and internal contradictions in the interpretation of UNCLOS, including between Articles 56, 58 and 60 of UNCLOS.

General interpretation of UNCLOS and relevant principles of the law of the sea.

Another approach with respect to jurisdiction regarding subsea cable damages in the EEZ would be to apply a teleological interpretation of UNCLOS and the general rules and principles of the law of the sea.

First, UNCLOS Article 113 provides that states, including coastal states, must adopt laws providing that it is an offence for persons subject to its jurisdictions and ships flying its flags to cause damage to a subsea cable beneath the high seas, and in the EEZ cfr. Article 58(2). For damage caused by such persons or ships, the state in question would have jurisdiction (e.g. through passing national legislation to this effect, which would be consistent with UNCLOS) to consider whether the laws have been followed. Further, Article 114 and 115 imposes an obligation on a state to adopt laws providing for civil liability for its subjects with respect to damage to subsea cables in certain limited circumstances, as well as anchors and fishing gear sacrificed to avoid causing damage to subsea cables.

This obligation for states to ensure that subsea cable damage is a punishable offence arguably articulates a broader principle that states should take meas-

ures to protect subsea cables. The question is whether this principle could be extended to support the argument that the courts of a coastal state should have jurisdiction to consider civil claims for damage to subsea cables in the EEZ of the state, and also to cover acts and omissions not only of nationals and ships registered under the flag of the state, but to any person causing such damage. There is little support in Articles 113, 114 and 15 cfr. Article 58(2) for such a wide-ranging interpretation, including since Article 113 focuses on punishable offences, and since Article 114 and 115 focus on persons already under the jurisdiction of the state, as opposed to jurisdiction based on the place where the damage to the subsea cable occurred.

Secondly, another argument could be based on the fact that the courts of the coastal state will have the closest connection to an incident resulting in subsea cable damage within its EEZ, at least in situations where the cable has been laid by the government or a company based in the coastal state. If a ship registered in, say, a non-European country damages a subsea cable in the Danish EEZ, procedural issues including the investigation of the incident and evidence arising out of such investigations would make it more convenient to have any legal proceedings regarding the incident take place before the Danish courts – as opposed to the distant courts of the country where the ship is registered. On the other hand, it could be argued that Article 113 seeks to address exactly this situation by ensuring that all states must adopt laws that make it an offence to damage subsea cables. In theory, it should not matter whether the Danish courts or a foreign court considers the issue, as the regulation should be in place in all jurisdictions to hold parties responsible for the offence of damaging subsea cables.

All in all, while various legal principles can be ascertained from the provisions of UNCLOS with respect to subsea cable damage, there is little support from such general principles for an argument that the courts of a coastal state should have jurisdiction to consider subsea cable damage claims arising within its EEZ.

6. Case law regarding jurisdiction for subsea cable damage in the EEZ

There is little case law on the issue of jurisdiction with respect to subsea cable damage in the EEZs; however, the issue has been considered with respect to the North Sea in judgments of the English courts. The European Court of Justice (CJEU) has also considered the status of the EEZ in the context of tax law. The relevant cases are discussed below.

a. English case law

*Virgin Media Ltd v Joseph Whelan T/A M & J Fish*⁶ (the “Willie Joe”)

This matter before the Admiralty Court of England and Wales concerned damage to a subsea cable located in the English EEZ. Virgin Media owned the Sirius South telecommunications cable, which runs between Lytham St Annes and Dublin. The cable was allegedly damaged when Joseph Whelan’s Irish-registered fishing vessel, “Willie Joe”, collided with the cable while trawling for scallops.

The case focused on whether the English courts had jurisdiction to hear Virgin Media’s claim for damages. It was agreed that the alleged collision occurred in the English EEZ but outside the country’s territorial waters.

The court ruled that the Admiralty Court did not have jurisdiction to consider the case, which was therefore dismissed. Referring to Section 22 of the Senior Courts Act 1981, the court emphasised that the Admiralty Court lacked jurisdiction over collisions in the EEZ unless otherwise provided by agreement between the parties or where specific exceptions applied. Although Section 22 was not directly applicable in cases of collisions with fixed structures, the court reasoned that its principle should apply to subsea cables as well.⁷

The court further examined the Article 7(2) of the Brussels 1 Regulation (referred to in the judgment as the “Judgments Regulation”) and concluded that the term “place” in this provision should be interpreted to align with UNCLOS

6) VIRGIN MEDIA LTD v JOSEPH WHELAN T/A M & J FISH, [2017] EWHC 1380 Admlty of 9 June 2017 (the “Willie Joe”).

7) The Willie Joe at para. 17

rules on EEZ jurisdiction.⁸

In relation to UNCLOS, the Admiralty Court emphasised that UNCLOS does not aim to give a state full rights and sovereignty over the EEZ, but only a limited right to exploit the area in connection with certain economic activities⁹. The Court then held that a coastal State has jurisdiction only when the damage occurs within the EEZ when the coastal State has sovereignty or an exclusive right to undertake the activity in question or when exclusive jurisdiction has been granted with respect to the activity.¹⁰

The matter should be assessed as if the damage had occurred in international waters according to which the jurisdiction of the flag state of the vessel in question has jurisdiction. As the vessel in this case was Irish registered, the court held that Ireland has the strongest connection to the case.¹¹

Comments to the “Willie Joe” case

When viewed in light of the analysis of UNCLOS provided above under point 4, it is probably fair to say that the findings of Admiralty Court in the “Willie Joe” case did not provide a thorough, in-depth analysis of the relevant provisions of UNCLOS. In fact, the judgment does not refer at all to UNCLOS Article 60, including the exclusive rights and jurisdictions set out therein with respect to “installations”, which term arguably covers subsea cables.

Further, the findings of the Admiralty Court do not appear persuasive when it comes to the interpretation of the word “installations” in Article 56 of UNCLOS. Leaving aside the dictionary definition of the word and its application to subsea cables, the Admiralty Court found that subsea cables were excluded from the scope of this term, mainly based on the following view on the purpose of UNCLOS¹²:

“It is self-evident that the overall purpose of UNCLOS is to allow a coast-

8) The Willie Joe at para. 31

9) The Willie Joe at para. 24

10) The Willie Joe at para. 32

11) The Willie Joe at para. 21

12) The Willie Joe at para. 25

al State certain power and rights over structures such as oil platforms and structures which are especially in need of protection. However, it is also clear that subsea cables do not fall within the definitions of the interests referred to in UNCLOS. If they had been such a matter could and would have been specifically referred to.”¹³.

First, there is little support for the view that subsea cables were not considered to be in need of protection to the same extent as offshore platforms and structures in the negotiations that led to the adoption of UNCLOS, nor to the predecessor conventions for subsea cables (the Paris Convention and the Geneva Convention, as discussed above). Secondly, while the view put forward in para. 25 may have been shared by some at the time the judgment was passed, after the increased activity regarding subsea cable damage over the past 8 years, the wording of the judgment rings hollow on this point. On the contrary, the need to protect subsea cables seems to be at least as acute as the need to protect offshore platforms.

Secondly, para. 25 of the judgment does not go into detail with the careful balance struck under UNCLOS with respect to the rights of coastal states to their EEZs vis-à-vis the rights of other states to lay subsea cables in those EEZs. That careful balance nevertheless does not dictate (neither does the wording of UNCLOS) that the courts of the coastal states should not have jurisdiction to consider matters regarding subsea cable damage claims – in fact, the wording of UNCLOS rather supports the opposite position, including since the legal certainty provided by such jurisdiction with the courts of the coastal states would be in the interest of both coastal states and other states. This point seems to have been disregarded entirely by the Admiralty Court, perhaps because the parties’ arguments did not go into detail on this point.

Thirdly, the Admiralty Court’s seems to disregard that Article 60(2) does in fact provide that coastal states have jurisdiction with respect to installations constructed and operated for economic purposes other than those mentioned in Article 56.

All in all, it is difficult to say whether the findings of the Admiralty Court in the “Willie Joe” case will be followed in later cases.

13) The Willie Joe at para. 25

*Conocophillips (UK) Ltd v Partnereederei MS Jork [2010] EWHC 1214*¹⁴

This case concerned a collision between a German ship, the “MS Jork”, and Conocophillips’ unmanned platform located off the English coast. The claimant, Conocophillips, claimed damages from the ship owners for damage to the platform and for loss of earnings. The platform was located 40 nautical miles offshore – outside the territorial waters but within the English EEZ.

The question was whether the English Commercial Court had jurisdiction to hear the action. The case was heard under Article 5(3) of the Brussels I Regulation (now Article 7(2)), which provides that in actions for non-contractual damages, jurisdiction shall lie at the place where the harmful event occurred or may occur.

The Commercial Court emphasised that a platform such as the one in question is covered by Article 60 of UNCLOS, which applies to artificial islands, installations and structures. The court also found that the concept of “place” in Article 7(2) of the Brussels I Regulation should be extended to include the platform or installation within the continental shelf.¹⁵

However, in its judgment the Court applied English statutory law on jurisdiction in the form of an order issued under the Petroleum Act 1998. That order only governs jurisdiction with respect to installations and activities connected with the exploration of, or the exploitation of the natural resources of, the shore or bed of waters or the subsoil beneath. As such, the order – and thereby the judgment of the Commercial Court – does not apply to the issue of jurisdiction under Article 60(2) of UNCLOS with respect to the construction, operation and use of installations for other economic purposes than exploration and exploitation, cfr. Article 60(1) as discussed above. As such, the judgment is not directly relevant for the issue of jurisdiction in relation to subsea.

Nevertheless, the judgment does confirm the application of Article 60 of UNCLOS to offshore installations such as platforms with respect to jurisdiction.

14) CONOCOPHILLIPS (UK) LTD V PARTNEREEDEREI MS JORK, [2010] EWHC 1214 Comm (the “MS Jork”)

15) MS Jork at para. 36

b. European Court of Justice case law

*Weber v Universal Ogden Services Ltd*¹⁶

This case concerned a contract between a Scottish company and a German national who was employed for part of the period from 1987 to 1993 on ships or drilling vessels operating on or over the Dutch continental shelf.

The Dutch Supreme Court referred questions to the European Court of Justice regarding the interpretation of the Brussels I Regulation. The questions to the European Court of Justice concerned the interpretation of Article 5(1) of the Brussels I Regulation (now Article 7(1)), according to which, in matters relating to contractual relations, a person may be sued with respect to a claim under a contract in another EU Member State where the contractual obligation giving rise to the proceedings has been or must be fulfilled. The main issue was whether work performed in an area covered by the Dutch continental shelf should be considered or equated with work performed in the Netherlands, so that the contractual obligation under the contract for the work was to be fulfilled in the Netherlands.

The European Court of Justice ruled that work performed by a worker on fixed or floating installations situated on or above a Contracting State's part of the continental shelf in connection with the exploration and/or exploitation of its natural resources must be regarded as work performed on its territory¹⁷.

The judgment is an example of a situation where an economic activity carried out on the continental shelf provides a basis for granting jurisdiction to the coastal state. The outcome would arguably be the same if the work was performed in a coastal state's EEZ. However, the activities in the case were specifically related to an offshore platform, rather than a subsea cable. As such, the case is only indirectly relevant for the question of jurisdiction with respect to subsea cable damage claims.

*C-111/05*¹⁸

In this case, the European Court of Justice considered whether the Sixth Direc-

16) *Weber v Universal Ogden Services Limited*, C-37/00, 27 February 2002 ("Weber")

17) *Weber* at para. 36

18) Case C-111/05 of 20 March 2007.

tive¹⁹ applied to an undersea fibre-optic cable that connected two EU member states but passed through an EEZ and international waters. The key question was whether the operation took place within the “territory” of a member state and was therefore subject to VAT under the Sixth Directive.

The European Court of Justice found that the transaction in question was not carried out within the territory of a Member States for the part of the cable lying outside the territorial waters. The court emphasised that:

*“the sovereignty of the coastal State over the exclusive economic zone and the continental shelf is merely functional and, as such, is limited to the right to exercise the activities of exploration and exploitation laid down in Articles 56 and 77 of the Convention on the Law of the Sea. To the extent that the supply and laying of an undersea cable is not included in the activities listed in those Articles, that part of the operation carried out in those two zones is not within the sovereignty of the coastal State. That finding is confirmed by Articles 58(1) and 79(1) of the Convention, which permit, subject to certain conditions, any State to lay undersea cables in those zones.”*²⁰

It is worth noting that the court did not specifically mention or consider Article 60 of UNCLOS, regardless of the connection between those two Articles through the reference in Article 60(1)(b) to Article 56. It would have been interesting to read the court’s view on the issue of jurisdiction under Article 60(2) of UNCLOS with respect to the operation and use of installations for other economic purposes than exploration and exploitation, cfr. Article 60(1) as discussed above. That part of Article 60 arguably governs subsea cables, and according to the findings of the court at para. 59, this would mean that the activities relating to subsea cables lie within the sovereignty of the state.

It is also worth noting that the court focused on whether the area outside of the territorial sea could be considered part of Member States territory for

19) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 2002/93/EC of 3 December 2002 (OJ 2002 L 331, p. 27; (the “Sixth Directive”).

20) C-111/05 at para. 59

the purposes of the Sixth Directive. In this respect, the opinion of General Advocate Léger in the case²¹ provides at para. 109 that the scope of the Sixth Directive “*is limited to the territory of the Member States, as defined by their own legislation*”.

There is no doubt that coastal states do not consider their EEZ to form part of their territory – this would in itself provide jurisdiction for their courts to consider matters arising there, as per Article 7 of the Brussels I Regulation. However, the question is whether the coastal states and their courts can nevertheless exercise jurisdiction over their EEZ (as in the cases of the “Willie Joe” and the “MS Jork”) on the basis of the provisions of UNCLOS, despite the fact that the EEZ is not part of their territory. This is a separate issue from the considerations of Advocate General Léger and of the European Court of Justice, which neither of them found to be directly relevant to the application of the Sixth Directive. As such, although the case involves subsea cables in the EEZ, it does not directly consider the issue of jurisdiction for the courts of a Member State with respect to its EEZ when it comes to civil claims for subsea cable damage.

7. The legal position in Denmark

The Danish courts have yet to consider whether they have jurisdiction to consider a claim for subsea cable damage occurring in the Danish EEZ. Should such a matter be brought before a Danish court, the court’s decision will depend on the interpretation of the relevant provisions of UNCLOS.

While the Danish courts will without doubt find that the EEZ is not part of the territory of Denmark, the courts will certainly consider whether UNCLOS nevertheless grants jurisdiction for them to consider claims for subsea cable damage occurring in the Danish EEZ. If so, the courts would be able to apply Danish procedural law (i.e. Section 243 the Administration of Justice Act and/or Article 7(2) of the Brussels I Regulation) to determine whether they could consider the claim because the damage occurred in a place subject to the jurisdiction of the Danish courts.

As discussed above, various arguments can be put forward in support of an

21) Opinion of Advocate General Léger delivered on 14 September 2026 in case C-111/05.

interpretation of Articles 56, 58 and 60 of UNCLOS that would provide the Danish courts with such jurisdiction. This interpretation would reconcile the seemingly conflicting provisions of Articles 56 and 60 with respect to the rights of coastal states in the EEZ, and Article 58 on the rights other states to lay and operate subsea cables in the EEZ.

The Danish courts may consider the argumentation of the courts in foreign judgments on this point. English case law suggests a relatively narrow and restrictive view of the scope of the provisions of UNCLOS that deal with jurisdiction in the EEZs of coastal states, at least when it comes to the “Willie Joe” case. However, as discussed above in the comments to the “Willie Joe” case, the findings of the court in that case do not seem persuasive, and they are perhaps unlikely to be applied by a Danish court considering a similar matter.

The judgments of the European Court of Justice considered above provide important findings on the application of UNCLOS and the status of the EEZ. However, the current precedents do not directly address or determine whether Member States have jurisdiction to consider civil claims for subsea cable damage in their jurisdictions, leaving it to the courts of the member states to decide or refer the issue to the European Court of Justice.

Finally, the Danish courts may also seek to interpret the provisions of UNCLOS in light of the intention and purpose of the convention. Such intentions are difficult to ascertain, even more so given the fact that the convention was a compromise resulting from negotiations between the many countries involved in the development of the convention. However, the Danish courts are likely to consider the protection of subsea cables as a more important issue than the Admiralty Court in the “Willie Joe” case, and this may guide the courts in their consideration of this issue.

Further, the Danish courts may also consider the common interests of the parties to UNCLOS, i.e. the coastal states and the other states with interests in the EEZ of the coastal states. While those parties may have conflicting interests with respect to the EEZ, it could be argued that they have a common interest in the coastal states having jurisdiction to consider issues regarding subsea cables in their EEZs, due to the legal certainty for both parties achieved thereby. This common interest may also be given weight by the Danish courts when considering this issue.