

**Special problem which arise from the lying and repair of cables in  
Areas of Overlapping Boundaries Claims and the Best Practices  
which can be adopted by Industries and Government to overcome  
this problem**

**Overlapping Maritime Boundaries in the South China Sea**

**Archipelagic waters and internal waters:**

- Indonesia has no problem because it has submitted the coordinates for the entire archipelagic straight baselines to the UN Secretariat.
  
- Indonesia has not yet determined the “closing lines” for its internal waters within the archipelagic waters.
  
- There is uncertainty with regard to the Philippines archipelagic waters, because it claims the waters inside the archipelagic baselines as internal waters, while the UNCLOS stipulates that the waters inside the archipelagic baselines are archipelagic waters which recognize the existence of the regimes of “innocent passage” and “archipelagic sealane passage”.
  
- There is also uncertainty with regard to the straight baselines drawn by China around the Paracel island as if these baselines would give the status of archipelagic state to the Paracel islands which they may not entitled too. It should be noted that the laying and repairing of cables in areas of archipelagic waters would be within the sovereignty of the archipelagic state.

**Territorial sea:**

Again, the measurement of territorial sea would depend on the baselines. While Indonesian archipelagic baselines are clear and in conformity with UNCLOS, there are doubt about the baselines of China, Vietnam, Malaysia and the Philippines. Again, while the UNCLOS stipulates that the territorial sea is 12 miles from the baselines, this may not be the case with the Philippines.

**Contiguous Zone:**

- There is no clear practice yet in the South China Sea with regard to the outer limit of the Contiguous Zone in the South China Sea.

**Exclusive Economic Zone:**

So far there is no boundary of EEZ yet in the South China Sea, mainly because:

- Various claims of sovereignty to islands, rocks, and reefs.
- The uncertainty with regard to the maritime zones that can be claimed by these features.
- The uncertain locations of the baselines.
- The unclear meaning of the Chinese “historical” claims to the South China Sea as a whole (the undefined location and coordinates of the 9 Chinese dotted disconnected 9 lines).

### **Continental Shelf:**

- There are agreements between Indonesia and Malaysia as well as between Indonesia and Vietnam on the delimitation of their continental shelves in the South China Sea.
  - But there is no agreement between other neighboring states in the South China Sea.
- Now there are also various claims and counter claims to the extended continental shelf beyond 200 nautical miles from the base lines in the South China Sea.

Specifically for Indonesia, there may also be problems with regard to the relationship between the District and Provincial waters as well as the waters of the “Island Provinces” inside the Indonesian maritime zones.

Therefore the best practices for Industry and Government would seem to be:

- For industry, to try to verify with the Government concerned where are their maritime claims in the South China Sea and what would be their policies with regard to the overlapping claims, either to islands, rocks, reefs, and other features. And what would be the essence of those policies: territorial, jurisdictional, or just specific interests.
- To encourage the Governments concerned to negotiate and to settle their various maritime boundaries and claims to the features. If necessary, they should follow third party dispute settlement mechanism as stipulated in UNCLOS and in the UN Charter.
- Luckily, most of the South China Sea littoral states are already parties to UNCLOS, except Thailand, Cambodia and “Chinese Taipei”.

- Another possibility would be to suggest “Joint Development“ or ”Joint Cooperation” to deal with the laying and repairing of underwater cables among or between the neighboring countries concerned and the industries.

As far as Indonesia is concerned, Law number 6/1996 stated that:

- Underwater telecommunication cables already laid by foreign county or institution passing through Indonesian water without making landfall shall continue to be respected (Article 9 (4)).
- Article 9 (5 and 6) of the Law also stipulate that the government of Indonesia will allow the maintenance and the replacement of the underwater cables after receiving appropriate notice on the location and the intention to repair and replace those cables.
- It should be noted that this provision is only related to underwater cables for telecommunication and does not deal with underwater cables for power / energy transmission or for dealing with pipelines for oil and gas.
- With regard to underwater cables for energy transmission and pipelines for oil and gas transportation, the matters are regulated under the Law number 22/2001 on Oil and Gas, which would cover all Indonesian territory which include lands, waters, and the continental shelf of Indonesia.
- In addition, the Indonesian Government Regulation no 36/2002 on the Regime of Innocent Passage through Indonesian waters stipulate in article 5 that foreign ships exercising the rights of innocent passage through Indonesian archipelagic waters and territorial sea are not allowed to carry activities that would upset or

interfere with communication system, facilities, or other communication installation, or disturb underwater cables and pipelines.

- Similar prohibition is also applicable to foreign vessels exercising the right of “Archipelagic sealane passage” through Indonesian archipelagic sealanes as stipulated in article 7 (3) of the Government Regulation no 37/2002”.
- Specifically with regard to the issue of submarine cables of neighboring countries, article 51 (2) of UNCLOS stipulates that “an archipelagic state shall respect existing submarine cables laid by other state and passing through its waters without making a landfall. An archipelagic state shall permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair or replace them. This provision was later incorporated into Article 9 of the Indonesian Law no 6/1996 as indicated above.

Article 51 (1) of UNCLOS also stipulates that “... an Archipelagic state shall respect existing agreements with other states and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighboring states in certain areas falling within archipelagic water..” .

One of such agreements was an Agreement between Malaysia and Indonesia in 1982 (before the adoption of UNCLOS), in which Malaysia recognized Indonesian archipelagic status as enunciated in UNCLOS and Indonesia recognized the right of communication of Malaysia between Serawak and Peninsular Malaysia through certain archipelagic waters of Indonesia in Natuna Sea, including the right to lay down, repair, and replace under water cables and pipelines after passing through certain mechanism.

Article 2 (2f) stipulates that Indonesia shall continue to respect the Malaysian “legitimate interest relating to existence, protection, inspection, maintenance, repair and replacement of submarine cables and pipelines which are already in position and the laying of other

sub marine cables and pipelines in the territorial sea and archipelagic waters of the Republic of Indonesia between East and West Malaysia and the seabed and the subsoil there of”.

Finally, it would seem important that the ICPC should inform the coastal countries in the South China Sea of the location, the type, history, as well as the owner, or owners of those various underwater cables in the South China Sea, together with their maps as or if available.