

1982 UNCLOS and the Protection of Critical Underwater Infrastructure

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Outline of Presentation



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Part One

Incidents Triggering Interest in the Protection of Critical Underwater Infrastructure

Nord Stream Pipeline in Baltic Sea between Russian Federation and Germany

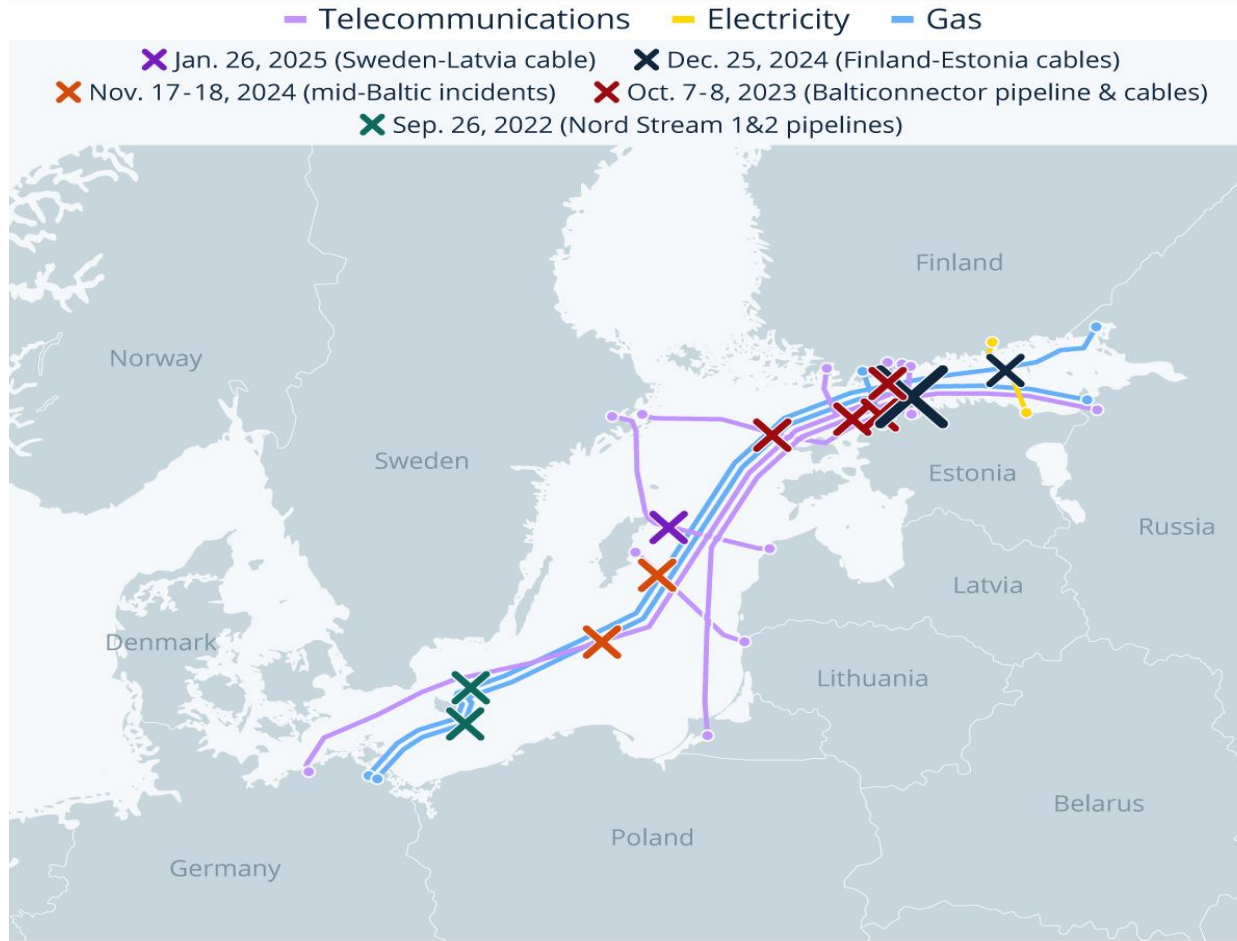


September 2022 Incidents on Nord Stream Gas Pipeline



Baltic Sea Cable Incidents Pile Up

Incidents of damage to underwater cables and pipelines in the Baltic Sea (2022-2025)



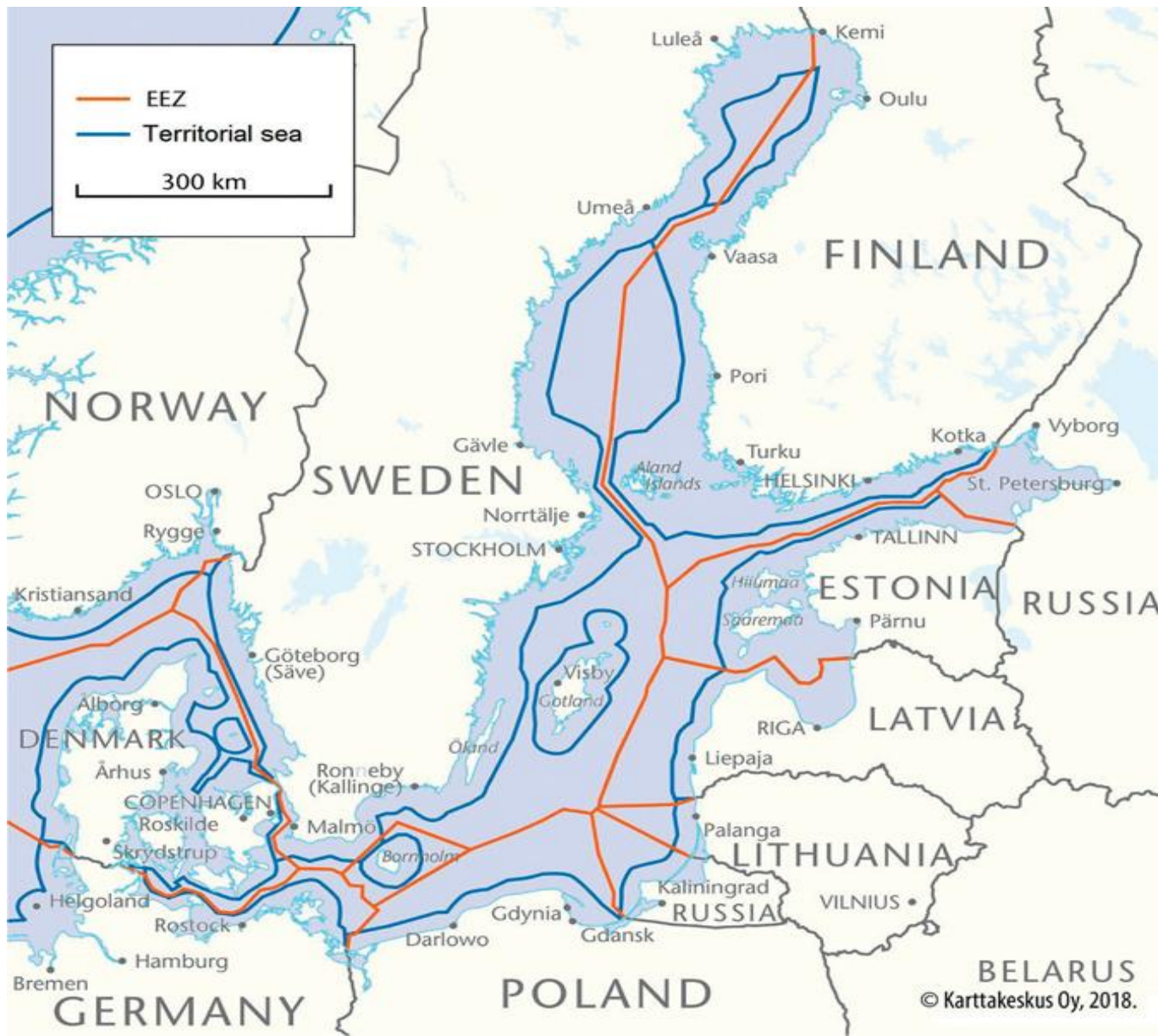
Source: Media reports



Baltic Sea – Submarine Cables



Maritime Zone Claims



Gray Zone Activities

- Actions by non-State actors designed to achieve strategic, geopolitical objectives of a State
- Example: Dragging of Anchor by fishing vessel or merchant ship to break submarine cable in the Exclusive Economic Zone (EEZ)
- May in fact have been directed by a State organ, but there is no evidence to prove that the master was acting under the direction and control of a foreign State

- Most of Incidents took place in the Exclusive Economic Zone (EEZ) of Coastal States
- Triggered debate on whether coastal States can assert jurisdiction over foreign ships suspected of damaging critical underwater infrastructure in their EEZ:
 1. Submarine telecommunication cables
 2. Submarine power cables
 3. Gas and Oil Pipelines
 4. Pipelines from Offshore Oil Installations
 5. Power Cables from Offshore Wind Farms

Part Two

Issues under 1982 UNCLOS

Incidents in Territorial Sea or Archipelagic Waters

- Territorial Sea and Archipelagic Waters are under the sovereignty of the coastal State
- Foreign ships have the right of innocent passage
- Coastal State can arrest ships that carry out activities that are “not innocent”
- Article 19(2) Activities making passage “not innocent”:
 - (k) any act aimed at interfering with any system of communication or any facilities or installations of the coastal State

Rights of Coastal State in Territorial Sea and Archipelagic Waters

Article 21. Laws and Regulations of the Coastal State Relating to Innocent Passage

1. The coastal State may adopt laws and regulations relating to:
 - (b) the protection of navigational aids and facilities and other facilities or installations;
 - (c) the protection of cables and pipelines

Article 27. Criminal Jurisdiction on Board a Foreign Ship

- Coastal State can arrest a foreign ship in connection with a crime committed during passage if the consequences of the crime extend to the coastal State
- These provisions also apply to ships exercising innocent passage in Archipelagic waters

Ships Exercising Transit Passage

- Under Article 38(3), Any **activity which is not an exercise of the right of transit passage** through a strait remains subject to the other applicable provisions of the Convention.
- The dragging of an anchor to cut cables or pipelines is not an exercise of the right of transit passage.
- Therefore, in my opinion the ship could be arrested by the State bordering the strait

Incidents in the Exclusive Economic Zone

- The most difficult legal issues arise when ships break cables or pipelines in the EEZ
- Article 58(2) of UNCLOS provides that Articles 88 to 115 (most rules on jurisdiction over ships of the high seas) also apply in the EEZ
- The general principle under Article 92 is that ships on the high seas are subject to the exclusive jurisdiction of the flag State

Cutting of Cables or Pipelines and “Incidents of Navigation”

- Another issue is whether the breaking of a cable or pipeline by dragging an anchor is an “incident of navigation”
- Article 97 states that In the event of an incident of navigation, no penal or disciplinary proceedings may be instituted against the master or other person in the service of the ship except by the authorities of the **flag State** or the **State of nationality of such person**
- In other words, if a ship dragging an anchor and breaking a cable in the EEZ is an “incident of navigation”, the coastal State has no jurisdiction and no power to arrest the ship that broke the cable

Article 113. Breaking or Injury of a Submarine Cable or Pipeline

Every State shall adopt 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 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**

Issues relating to Article 113

- Article 113 also applies to the breaking of cables or pipelines in the EEZ because of article 58(2)
- The rationale for article 113 seems to be that because the general principle is that ships on the high seas are subject to the exclusive jurisdiction of the flag State, it is the responsibility of the **flag State** to enact laws making it a **serious criminal offence** for **its nationals** or **ships flying its flag** to break cables or pipelines either intentionally or through culpable negligence
- **The Problem:** Most flag States have not enacted laws to implement their obligation under Article 113

Can a ship breaking a submarine cable on the high seas or in the EEZ or be arrested for “Piracy”

Article 101. Definition of Piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends, by the crew of the passengers of a private ship or private aircraft, and directed:
 - on the high seas, against another ships or aircraft, or against persons or property on board such ship or aircraft;
 - against a ship, aircraft, persons or **property in a place outside the jurisdiction of any State.**

Part Three

Cables and Pipelines Landing in Singapore

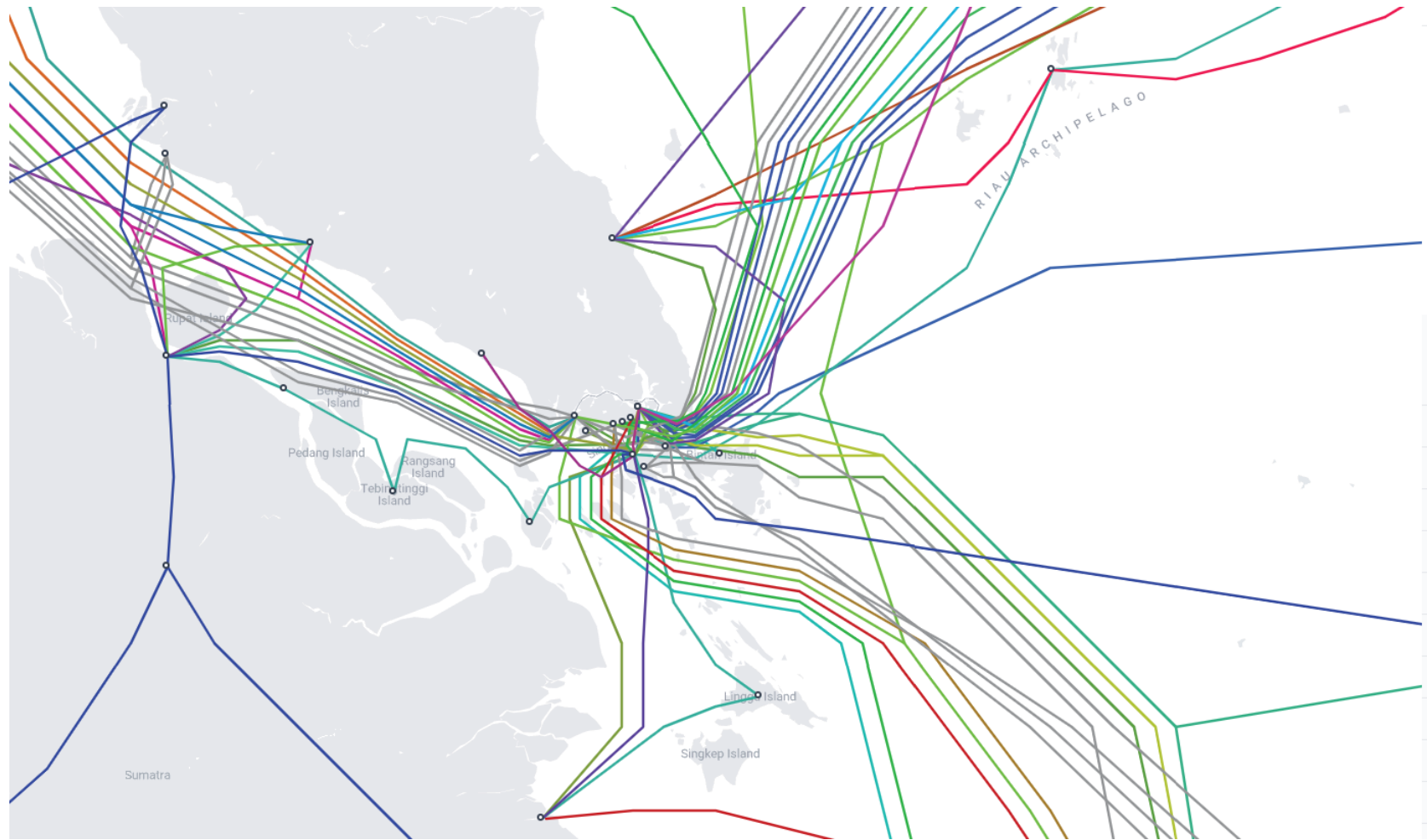
Cables & Pipelines Landing in Singapore

- Cables and Pipelines in Singapore waters in the Singapore Strait almost certain to be buried
- The breaking of cables landing in Singapore is very likely to be in waters subject to the sovereignty of neighboring States (territorial sea or archipelagic waters), not in their EEZ
- Therefore, the States in Southeast Asia do not have the same need as the Baltic and Scandinavian States to extend their jurisdiction to address the issue of cable cutting by ships in their EEZ

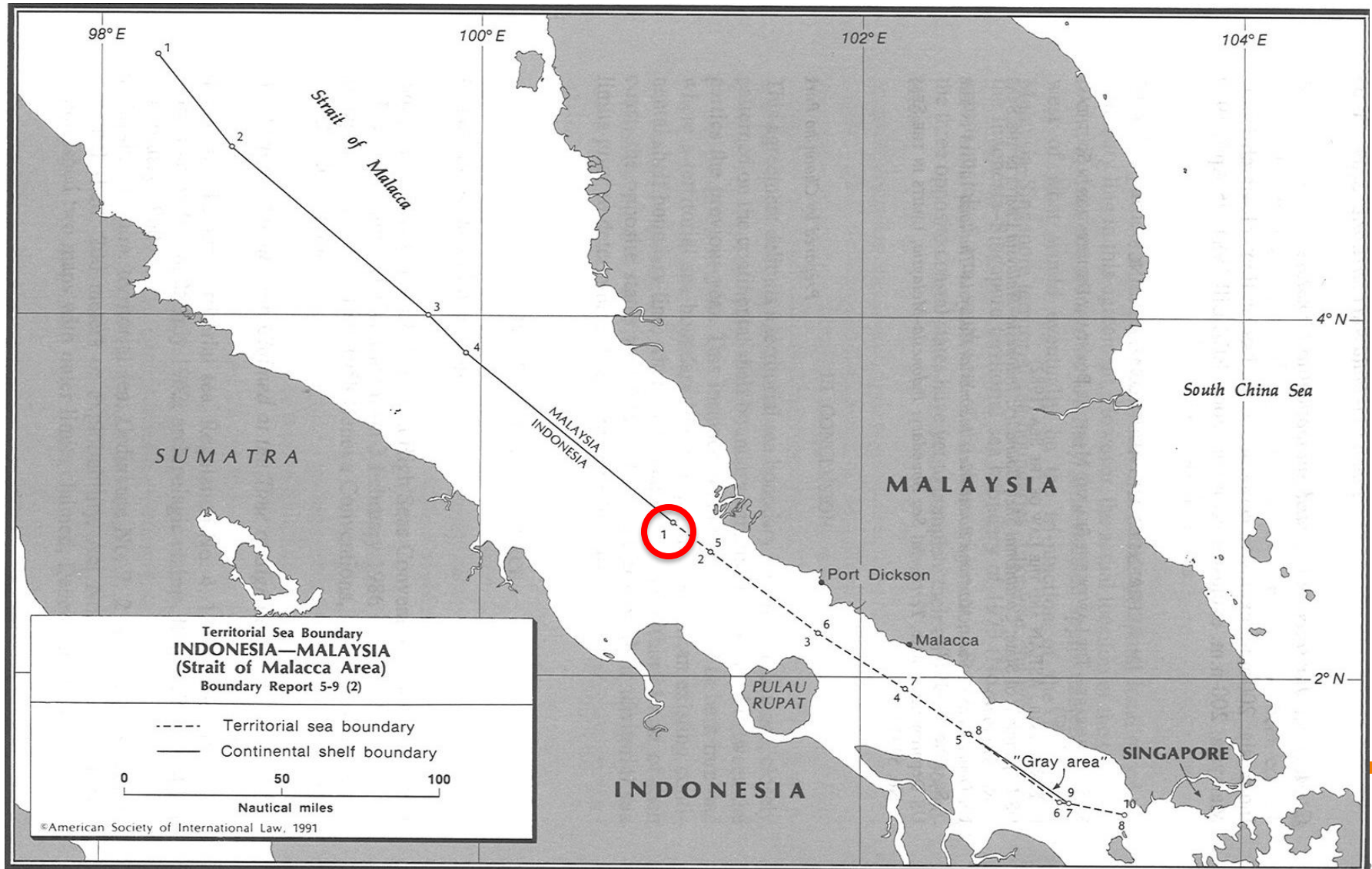
Submarine Cables Landing in Singapore

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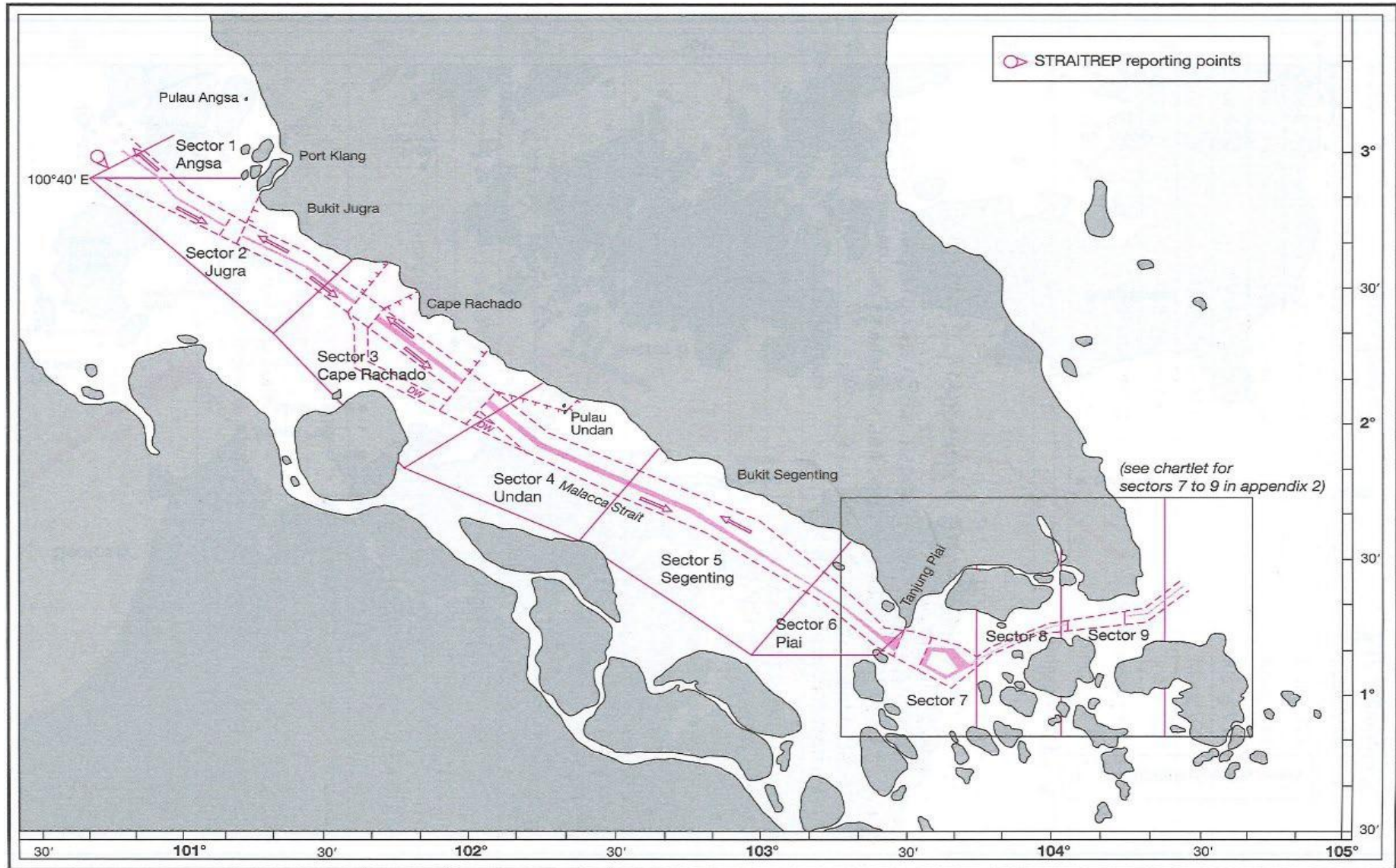
Indonesia-Malaysia Territorial Sea and Continental Shelf Boundaries - Malacca Strait



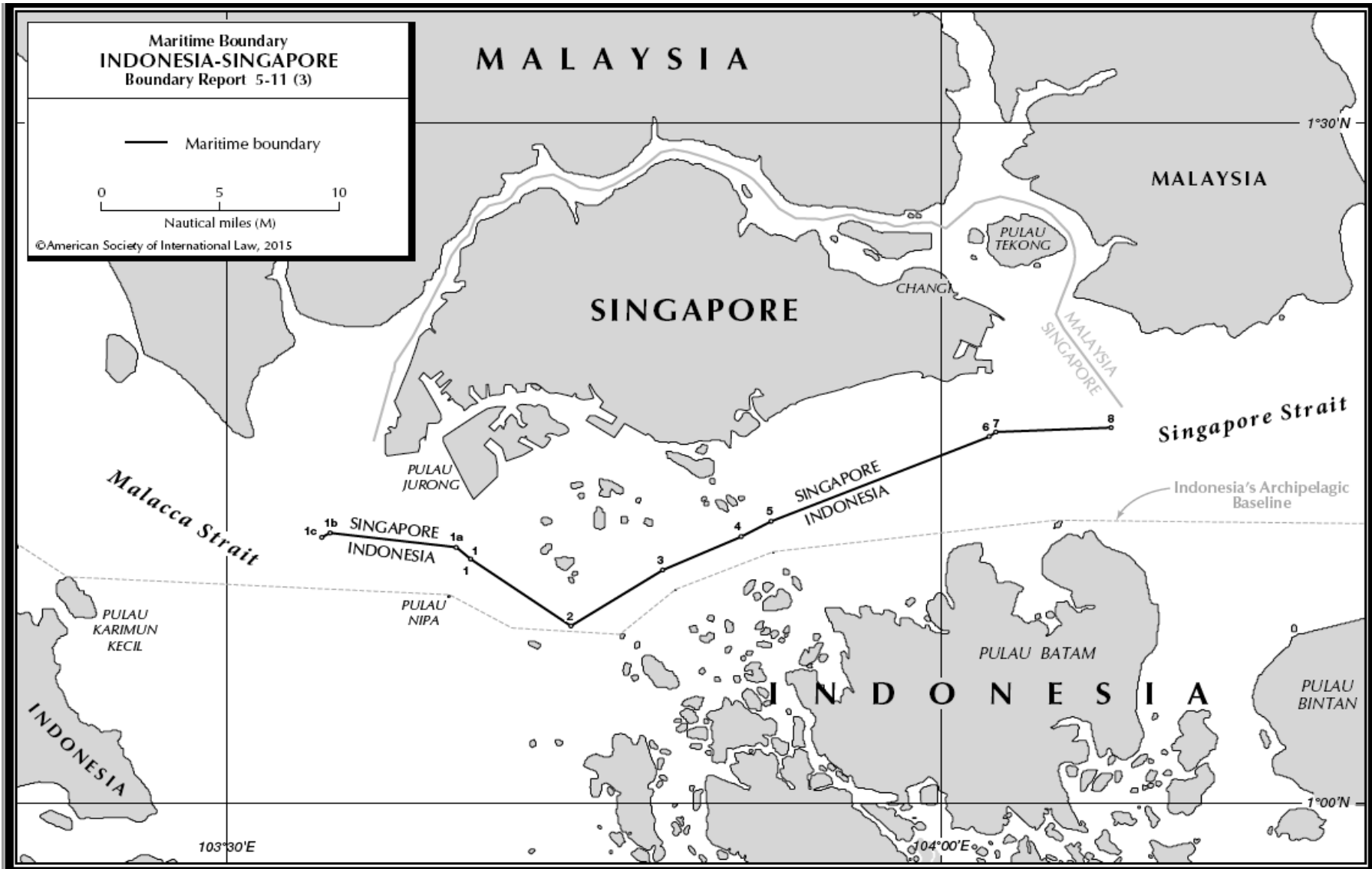
Malacca Strait – STRAITREP & TSS

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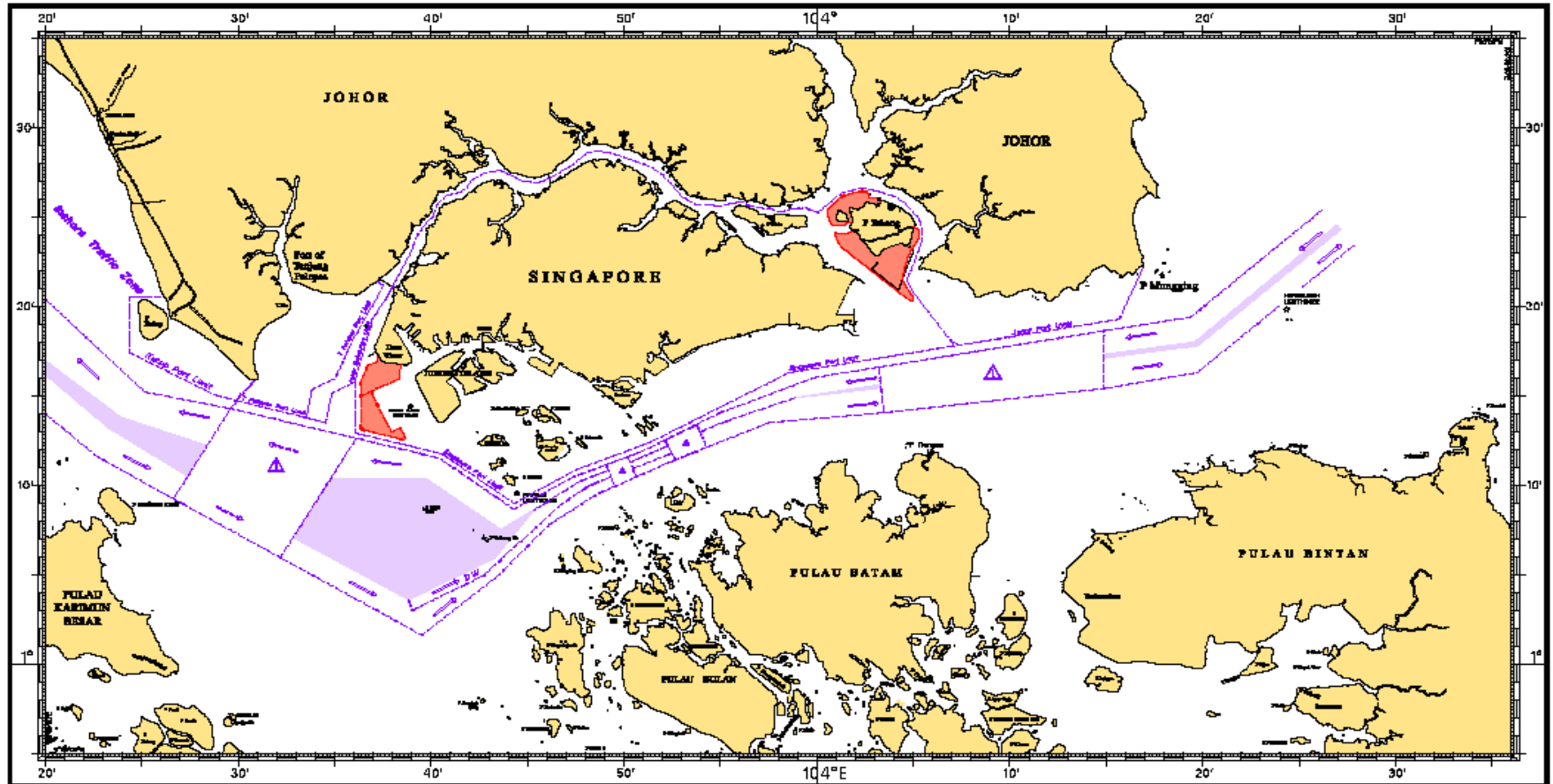


Indonesia-Singapore Territorial Sea Boundary - Singapore Strait



Singapore Strait – Traffic Separation Scheme

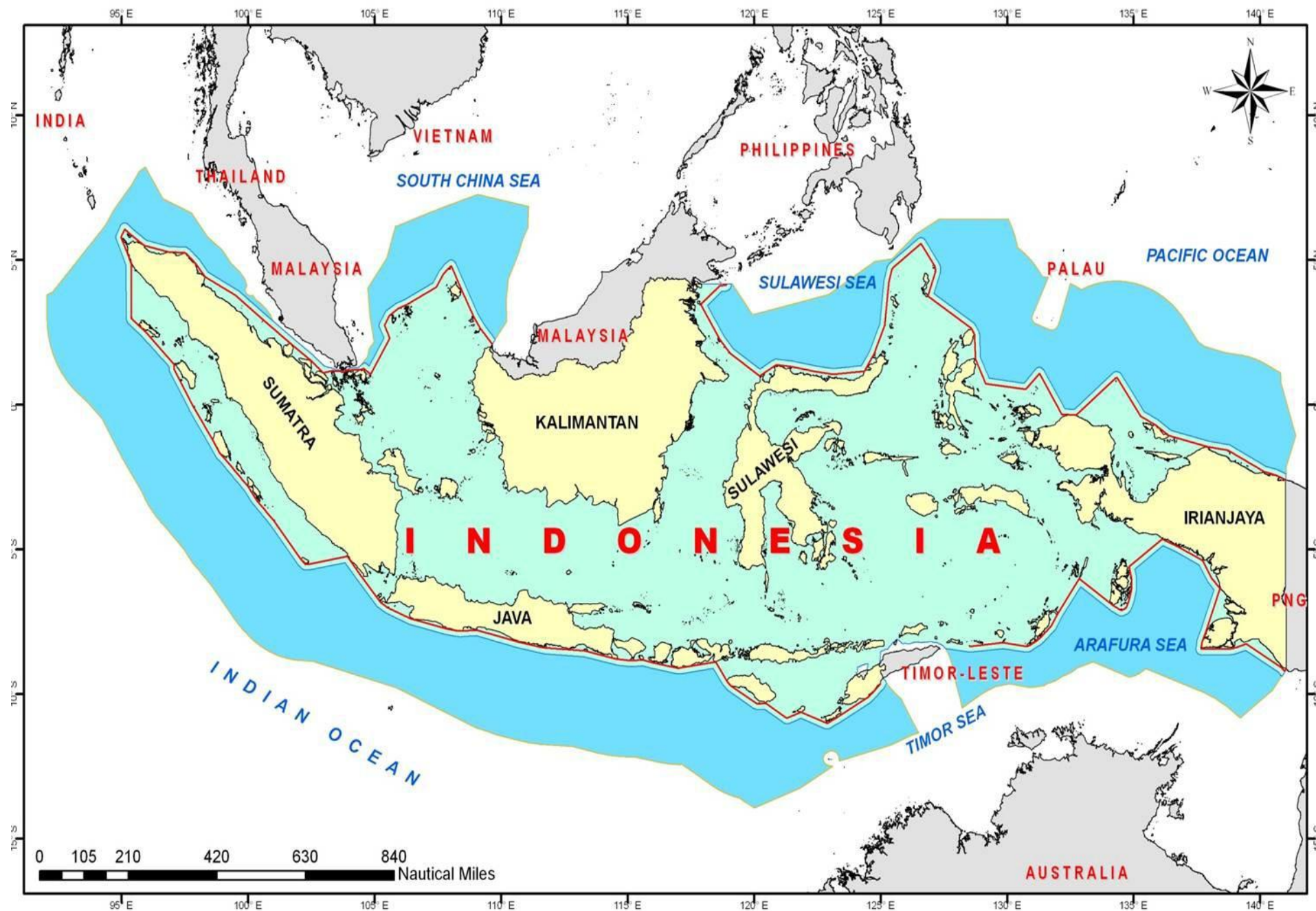
SINGAPORE STRAIT - PORT LIMITS AND TRAFFIC SEPARATION SCHEME



Prepared by Waddell/TechRI Hydrographic Dept. WPA 6 Feb 06 CA 616/06 Scale 1:240 000

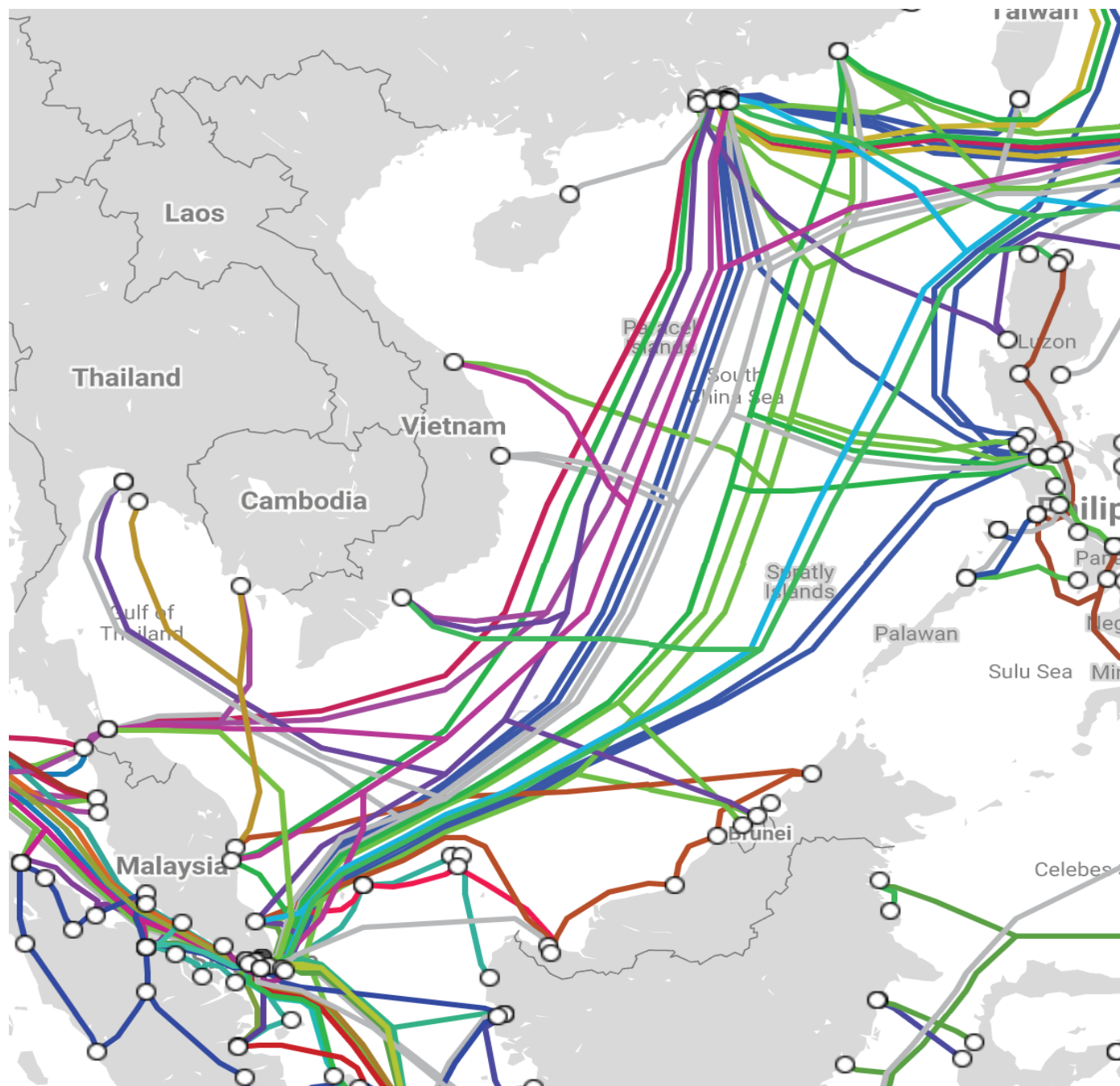
POSITIONS IN WGS 84

HY Code AD0401306



Part Four

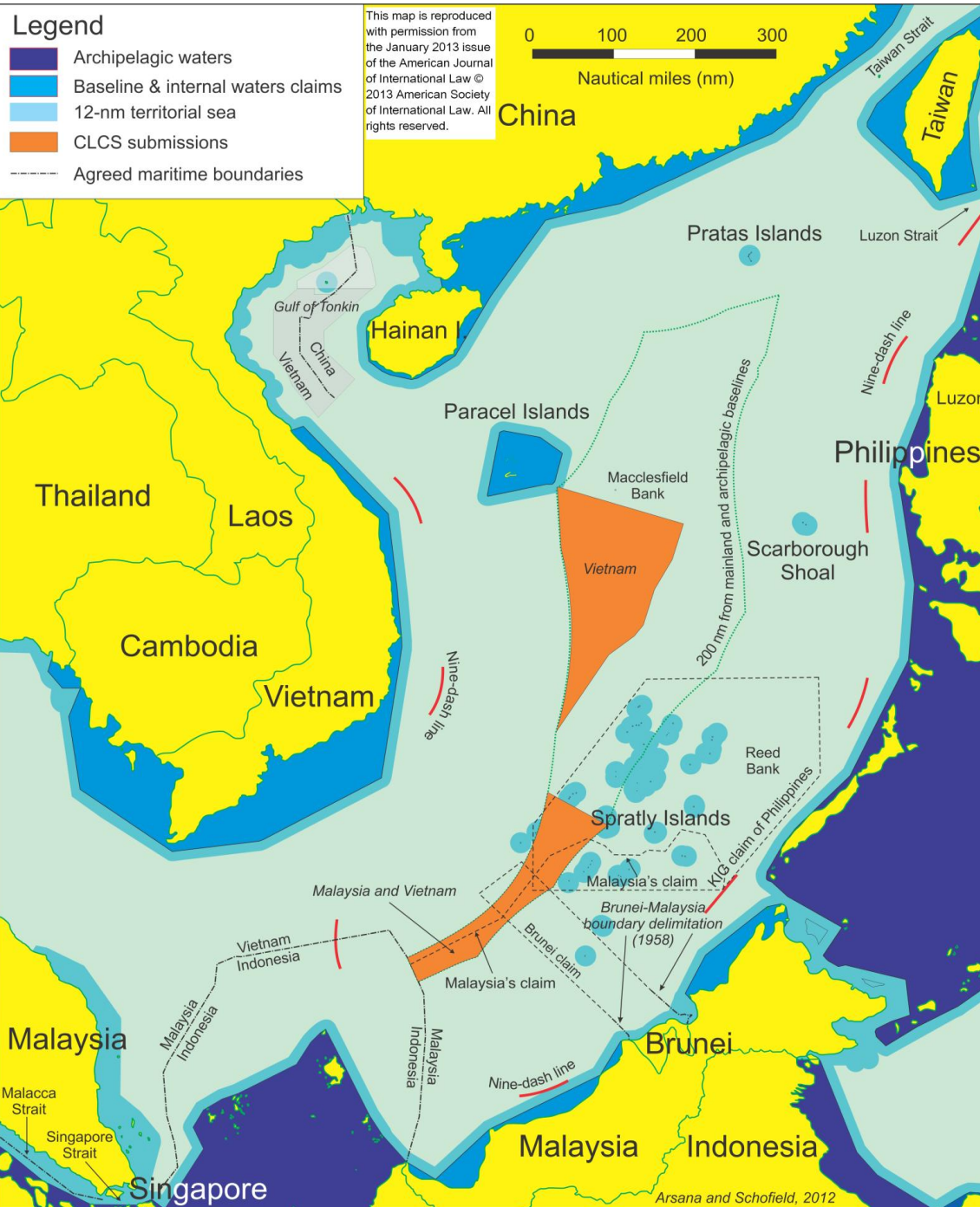
Cables and Pipelines and the South China Sea Disputes



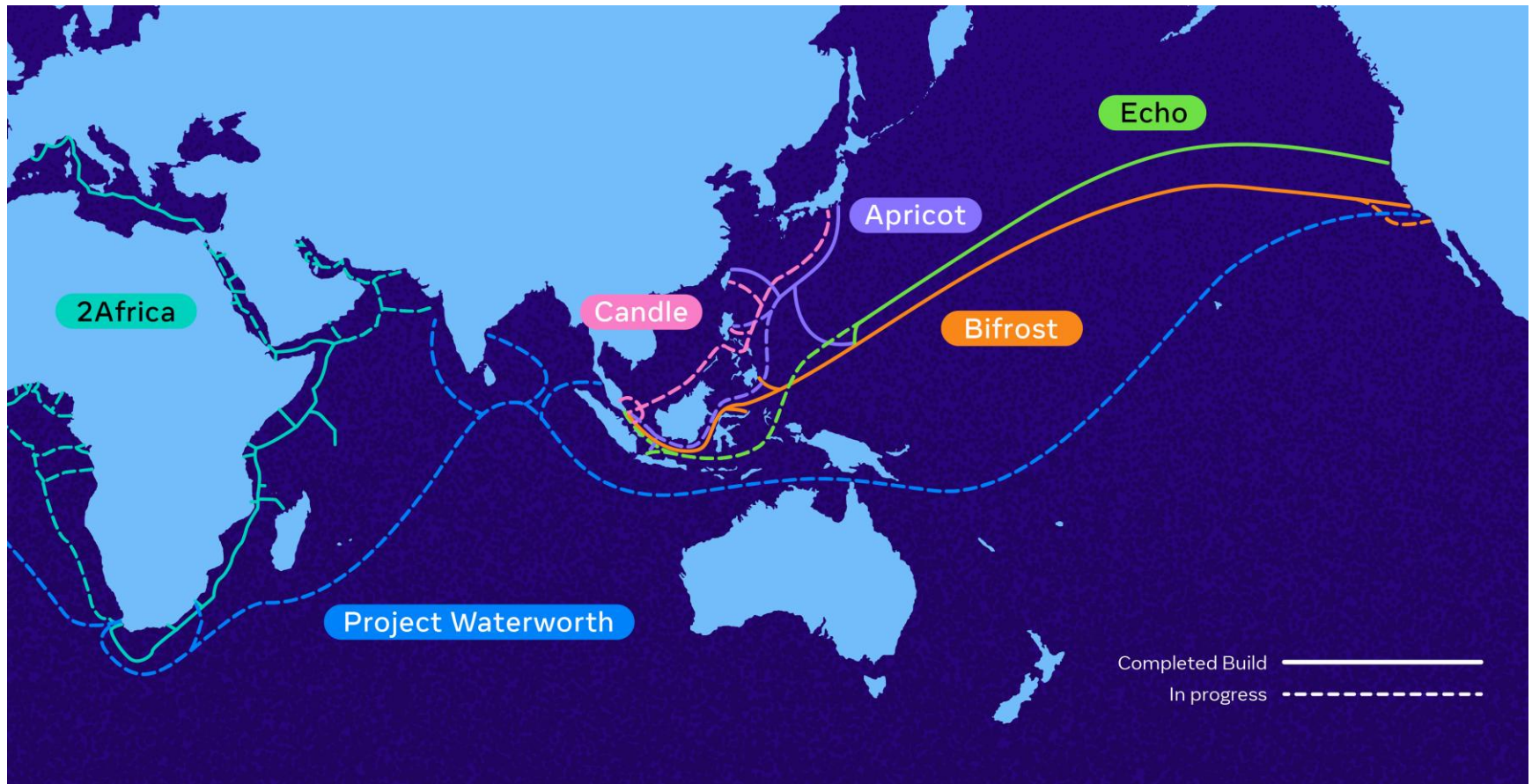
China's 2009 Note to UN Secretary-General on its Claim in the South China Sea



- China's Note Verbale of **7 May 2009** to UNSG officially objecting to the Joint Submission of Malaysia & Vietnam of 6 May 2009 and the Separate Submission of Vietnam of 6 May 2009
- "China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters,
- and enjoys sovereign rights and jurisdiction
- over the relevant waters as well as the seabed and subsoil thereof
- (see attached map)."

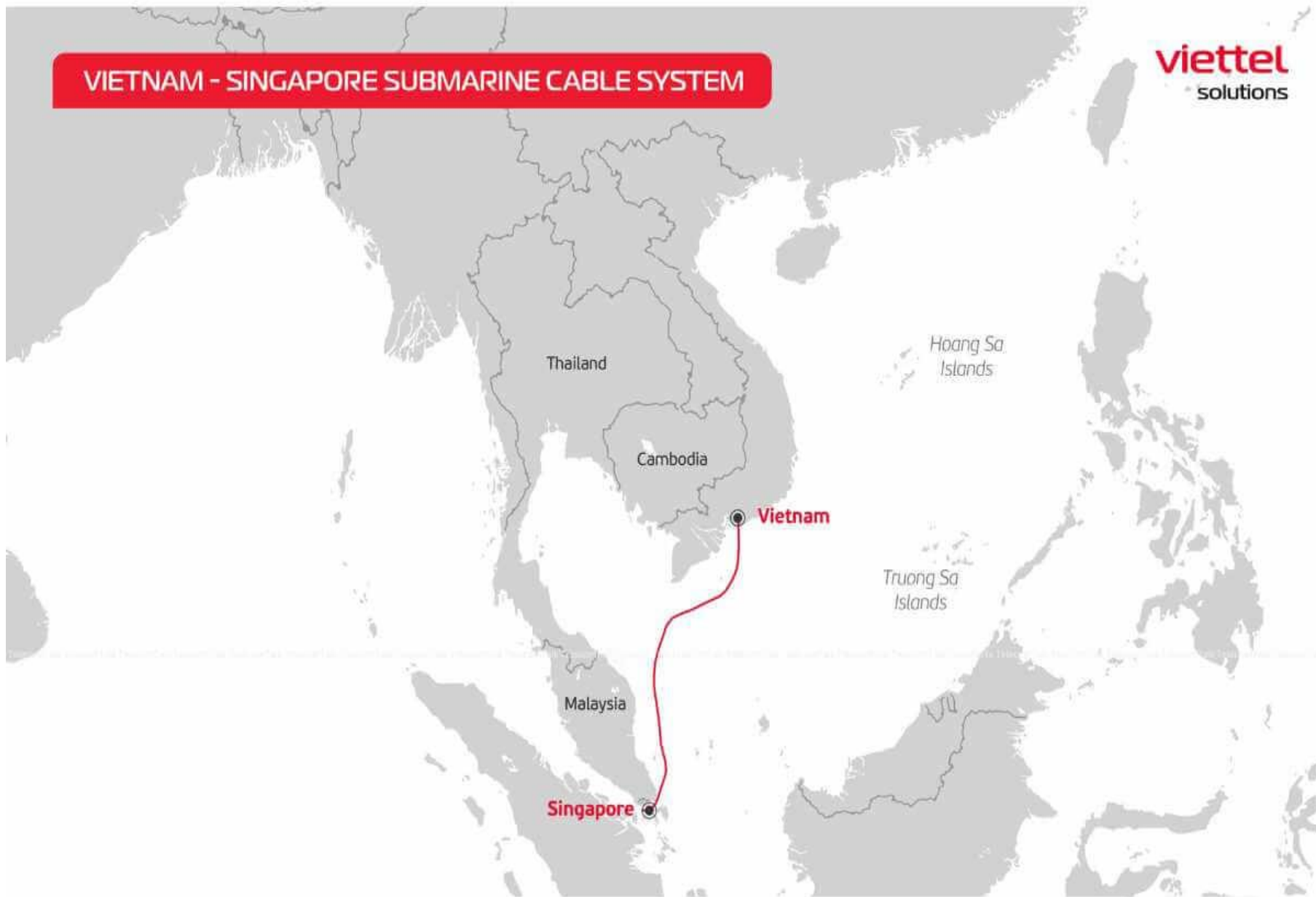


Latest Cables connecting USA and South East Asia avoid South China Sea



VIETNAM - SINGAPORE SUBMARINE CABLE SYSTEM

viettel
solutions



CANDLE – CABLE AVOIDING NINE DASH LINE ?

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Proposed ASEAN Power Grid



Thanks for Your Attention

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