Key Definitions

PIRACY
(Art. 101, UNCLOS)

Any illegal acts of violence or detention or any act of depredation
Committed for Private Ends
By one ship against another ship/property or persons
On the High Seas

ARMED ROBBERY
(IMO Resolution A.1025 (26))

Any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy
Committed for Private Ends
Directed against a ship/property or persons
Internal waters, archipelagic waters and territorial sea
Major Shipping Routes in SEA
Total Incidents per Region 2012

Source: IMB Annual Report 2012

- Far East: 1
- America: 17
- Indian SC: 19
- SEA: 110
- Africa: 150
Incidents in SEA in 2000 and 2012
PART II
GEOPOLITICS AND SOUTHEAST ASIA
Development of ASEAN

• ASEAN created in 1967 with Indonesia, Malaysia, the Philippines and Thailand, accelerate by Cold War Politics


• Timor Leste and Papua New Guinea have observer status at ASEAN

• For more than 40 years, ASEAN functioned without a formal constitution but in 2007, adopted the ASEAN Charter, an attempt to make it a more rules-based institution
Southeast Asia as a Maritime Region

- SEA is a distinctively maritime region
- 9 out of 10 ASEAN States are coastal States and 2 of these States are the world’s largest archipelagic States (Indonesia and Philippines)
- SEA Waters sits astride key access routes between the Indian and Pacific Ocean
- Economically and strategically important to the economies of Northeast Asia, the United States and other Western maritime powers
Virtually all Southeast Asian waters are enclosed as territorial seas, EEZs or archipelagic waters.

Resulting in overlaps between maritime claims of neighbouring States.

Maritime delimitation further complicated by coastal configuration with gulfs that penetrate deeply into the mainland, many large and small islands and wide and narrow continental margins.

Island sovereignty disputes.
PART III:
ASEAN APPROACHES TO MARITIME BOUNDARIES
## ASEAN Approaches to Maritime Boundaries (1969 – 2012)

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No. of Delimitation Agreements</strong></td>
<td>29</td>
</tr>
<tr>
<td>Between ASEAN Members</td>
<td>14</td>
</tr>
<tr>
<td>Between ASEAN Members and Non-ASEAN Members</td>
<td>15</td>
</tr>
<tr>
<td><strong>No. of Provisional Arrangements</strong></td>
<td>10</td>
</tr>
<tr>
<td>Between ASEAN Members</td>
<td>6</td>
</tr>
<tr>
<td>Between ASEAN Members and non-ASEAN Members</td>
<td>4</td>
</tr>
<tr>
<td><strong>No. of Disputes Submitted before Court or Tribunal</strong></td>
<td>1</td>
</tr>
</tbody>
</table>
Delimitation Agreements

- 16 of 29 Delimitation Agreements were agreed in late 1960s/1970s
- ASEAN States have (so far) expressed a preference for single purpose boundaries either of the continental shelf or territorial sea
- Majority of agreements are simple allocation of rights and jurisdiction along a boundary
- Dispute settlement in majority of agreements is by recourse to “negotiations and consultations” rather than third party dispute settlement
- Serious disputes rarely arise after Delimitation Agreements in SEA are concluded (with exceptions)
## Provisional Arrangements

<table>
<thead>
<tr>
<th>Year</th>
<th>Parties</th>
<th>Area</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>Malaysia, Thailand</td>
<td>Gulf of Thailand</td>
<td>Joint Development (Seabed Resources)</td>
</tr>
<tr>
<td>1990</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>Cambodia, Vietnam</td>
<td>Gulf of Thailand</td>
<td>Historic Waters</td>
</tr>
<tr>
<td>1989</td>
<td>Australia, Indonesia</td>
<td>Timor Sea</td>
<td>Joint Development (Seabed Resources)</td>
</tr>
<tr>
<td>1992</td>
<td>Malaysia, Vietnam</td>
<td>Gulf of Thailand</td>
<td>Joint Development (Seabed Resources)</td>
</tr>
<tr>
<td>1999</td>
<td>Malaysia, Thailand, Vietnam</td>
<td>Gulf of Thailand</td>
<td>Joint Development (Seabed Resources)</td>
</tr>
<tr>
<td>2001</td>
<td>Cambodia, Thailand</td>
<td>Gulf of Thailand</td>
<td>Joint Development (Seabed Resources)</td>
</tr>
<tr>
<td>2002</td>
<td>ASEAN, China</td>
<td>South China Sea</td>
<td>Conflict Management</td>
</tr>
<tr>
<td>2002</td>
<td>Australia, Timor Leste</td>
<td>Timor Sea</td>
<td>Joint Development (Seabed Resources)</td>
</tr>
<tr>
<td>2005</td>
<td>China, Philippines, Vietnam</td>
<td>South China Sea</td>
<td>Joint Marine Seismic Undertaking</td>
</tr>
<tr>
<td>2012</td>
<td>Malaysia, Indonesia</td>
<td>Straits of Malacca</td>
<td>Conflict Management</td>
</tr>
</tbody>
</table>
Joint Development Arrangements in the Gulf of Thailand

Cambodia – Vietnam joint ‘historical waters’ area

Malaysia – Thailand joint development area

Malaysia – Vietnam joint development area

Cambodia – Thailand revoked MoU?

FACTORS CONDUCIVE TO MARITIME BOUNDARY ARRANGEMENTS

- Economic / Resource Induced
- Good Relations between ASEAN States
- Strategic
- Security
- Flexibility in Legal Positions
Source: ITLOS Decision
Dispute between Bangladesh and Myanmar over maritime delimitation in Bay of Bengal

Negotiations occurred sporadically from 1974 – 1986

Factors which led to submission of dispute to ITLOS in 2009:

- Neither Party willing to budge on delimitation principles
- Discovery of large reserves in Bay of Bengal + demand from both countries + development of offshore drilling technology
- Unilateral Exploration and Drilling in Bay of Bengal by Myanmar in 2008
- 2008/2009 Submission of Continental Shelf Claim (Preliminary Information)
ITLOS - Bangladesh/Myanmar

- Bangladesh submitted dispute to Annex VII Arbitration in 2009 but Myanmar requested that the dispute be referred to ITLOS
- ITLOS rendered a decision in record time (Approximately 2 years)
- Decision perceived as fair to both Bangladesh and Myanmar
- Bangladesh already reported to have issued blocks for oil exploration after the decision
PART IV:
IMPLICATIONS FOR ASEAN
The ASEAN Way

• Clear that ASEAN States have a preference for negotiated agreements (be it a delimitation agreement or a provisional arrangement) as opposed to third party dispute settlement for maritime boundary disputes

• ASEAN approaches to maritime boundaries arguably consistent with wider cultural inclination to resolve disputes through consensus and consultation and a cultural aversion to judicial settlement

• So-called ASEAN Way characterized the first 30 years of ASEAN Agreement
  ➔ Includes the principle of seeking agreement and harmony, non-confrontation, quiet diplomacy versus public washing of dirty laundry and legalistic solutions
  ➔ Members largely rely on patient consensus-building to arrive at informal understandings or loose agreements.
Maritime Boundaries as an Exception to the ASEAN Way?

- ASEAN Member States have demonstrated that when it comes to issues which affect their economic resources and security interests, ASEAN States have always preferred formal/legal structures or rule-based conduct:
  - Negotiations of Boundaries take place in formalized processes
  - Use international law principles to frame their negotiations
  - Delimitation Agreements and Provisional Arrangements are Legal Solutions endorsed by UNCLOS and which clearly set down rules of conduct between States in maritime spaces
Negotiations versus Judicial Settlement

• Implicit criticism of Asian States (including ASEAN States) for not using binding dispute settlement to resolve disputes.

• But the question must be asked: is binding dispute settlement always appropriate?

• The value of third party dispute settlement mechanisms will depend on a wide variety of factors.

• Negotiated Agreements are particularly useful for ASEAN States who have a predisposition towards compromise and flexibility vis-à-vis each other.