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Joint Development Agreements: Legal Structure and Key Issues

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United Nations Convention on the Law of the Sea

- The UN Convention on the Law of the Sea (UNCLOS) came into force in 1982.
- It confers sovereign rights upon coastal states.
- Article 56 of the UNCLOS grants these rights for the purpose of exploring and exploiting, conserving and managing natural resources.
- Articles 57, 76(1) and 77 of the UNCLOS give coastal states a legal claim to a continental shelf of at least 200 nautical miles from their coastal baselines, over which they can exercise sovereign rights for the purposes of exploration and exploitation of its natural resources.



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A State's Continental Shelf

- A State's continental shelf extends 200 nautical miles from the coastal baseline.
- This can cause problems especially where there is less than 400 nautical miles between the states.
- The dispute between China and Japan concerning the East China Sea concerned the delimitation of continental shelves.
- China claimed that it was entitled to the entire East China Sea continental Shelf that extends eastward to the Okinawa Trough.



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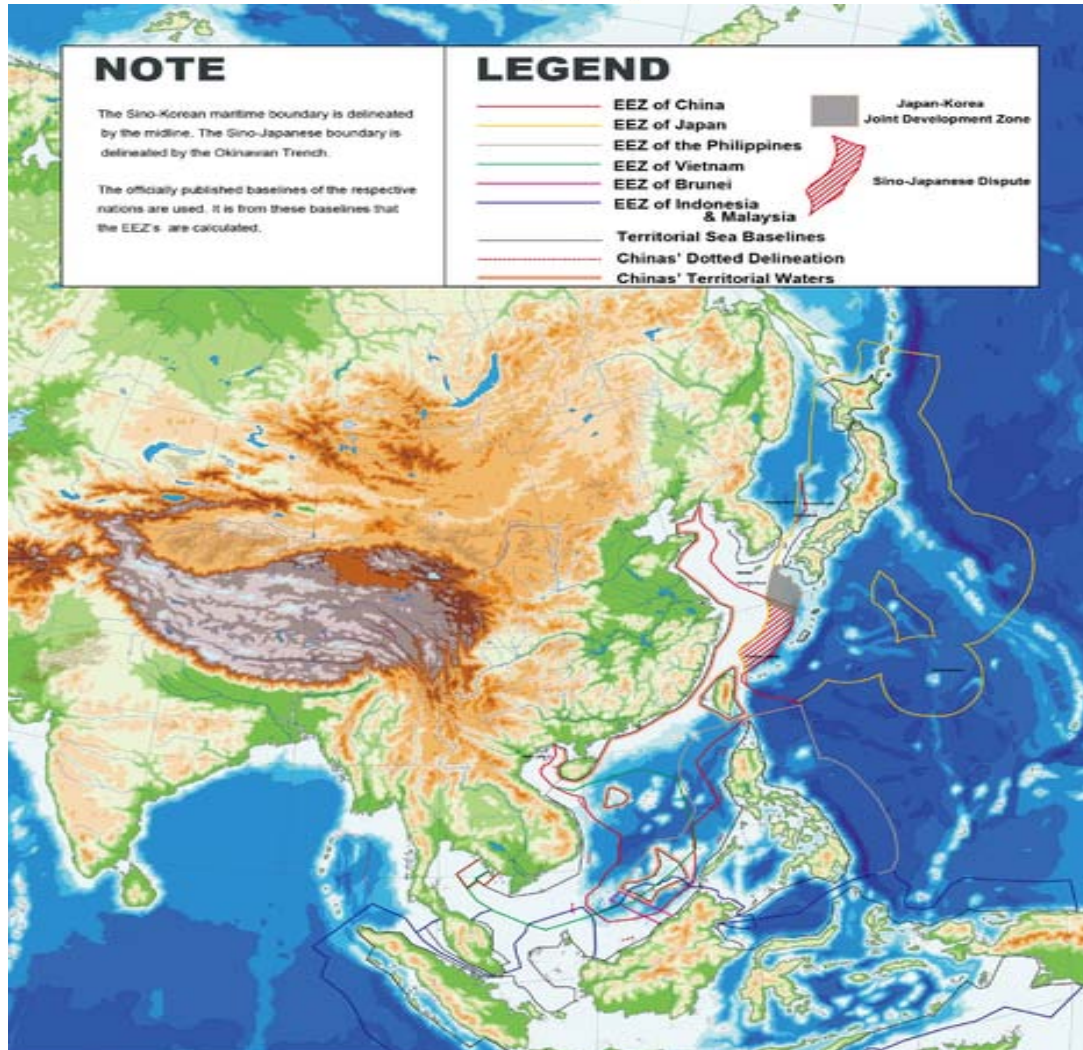


The disputed boundary between Japan and China



A State's Continental Shelf

- Japan rejected China's claim.
- There are a number of gas fields in the disputed area.
- China declared an EEZ extending 200 nautical miles as well as the entire East China Sea continental shelf which extended 277 nautical miles from the baseline.
- Japan claimed an EEZ extending 200 nautical miles from its straight baselines.
- Given the width of the East China Sea is less than 400 nautical miles, there was a dispute.



EEZ Map:
China's EEZ
in red and
Japan's EEZ
in yellow.



Defining a Joint Development Agreement (JDA)

- The reason for a JDA is that hydrocarbon deposits overlap States' continental shelves. Thailand and Malaysia disputed an area of continental shelf in the Gulf of Thailand that led to the 1979 and 1990 JDAs. Japan and South Korea also disputed the East China Sea that led to the 1974 JDA.
- JDA is defined as: *“an Agreement between two states to develop so as to share jointly in agreed proportions by inter-state co-operation and national measures the offshore oil and gas in a designated zone of the seabed and subsoil of the continental shelf to which both or either of the participating states are entitled in international law”*.



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Joint Development Agreement Parties

- A Joint Development Agreement is a bilateral agreement – an agreement between two States.
- States enter into a Joint Development Agreement in order to exploit the natural resources in the Joint Development Area.
- Examples of States that have entered Joint Development Agreements are Malaysia and Thailand in 1979 and 1990 and Australia and East Timor in 2001.
- In some cases there is a commission that oversees third party contractors who carry out the development process.



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General Principles governing Joint Development

- The process of Joint Development has to have regard to third party states and their rights.
- The East China Sea has been claimed by both China and Taiwan. This part is in the Japan and South Korea Joint Development Zone.
- The South China sea has been claimed by China, Vietnam and the Philippines.
- The process has to be aware of the rights of other states in superjacent waters. Article 6 of the agreement between France and Spain stated the agreement did not affect the legal status of superjacent waters.



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Pre-existing rights

- Rights may have been granted to one of the States party to the Joint Development Agreement.
- These pre-existing rights may be, for example, exploration rights or production rights.
- In the Joint Development Agreement between Malaysia and Thailand the Thai Government granted a concession to Triton an American oil company to carry out the development work in the Joint Development Zone.
- International law prohibits any unilateral action taken by a State to cancel any pre-existing rights.



Forms of Joint Development Agreements

- Three forms:
- 1) A State manages the joint development zone on behalf of both the States, while the other State monitors the development and shares the revenue after managing costs are deducted. See Saudi Arabia/Bahrain agreement 1958.
- 2) Compulsory Joint Venture between states in joint development zones. A single operator carries out the development. See Japan/South Korea agreement 1974
- 3) States set up a joint authority that manages the development. See Malaysia/Thailand agreements 1979 and 1990.



Financial Provisions

- The taxation regime will cover pre-production payments, training and infrastructure contribution, production based payments, Income tax payments, Production sharing, Resource Rent or additional profit taxes.
- There will also be a Double Taxation clause that says that tax paid in the other States will be creditable against taxes in their own State. The taxes will be creditable in the context of a double tax treaty between the two States involved in the Joint Development Agreement, or unilaterally.





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Applicable Law and Jurisdiction

- Treaty law applies to Joint Development Agreements.
- It only governs relations between States and it requires implementation in a municipal legal system if it is to bind private parties.
- To give the agreement and the development contracts legal effect between the States and their contractors and between the contractors and the third parties it is necessary to provide in the agreement a legal framework for the exercise of coastal State jurisdiction in conformity with the general accepted limits under international law.



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Determining the Joint Development Area

- The co-ordinates of the Zone must be set at the start of the agreement to avoid disputes over the location and extent of the petroleum deposits.
- The Joint Development Area can be determined in reference to the Territorial Sea or through geographical delineation.
- The Sudan/ Saudi Arabia agreement stated that ‘no part of the territorial sea shall be included in the Common Zone.’ The Kuwait / Saudi Arabia agreement expressly included the Territorial Sea.
- The Area can also be calculated with reference to a named chart.

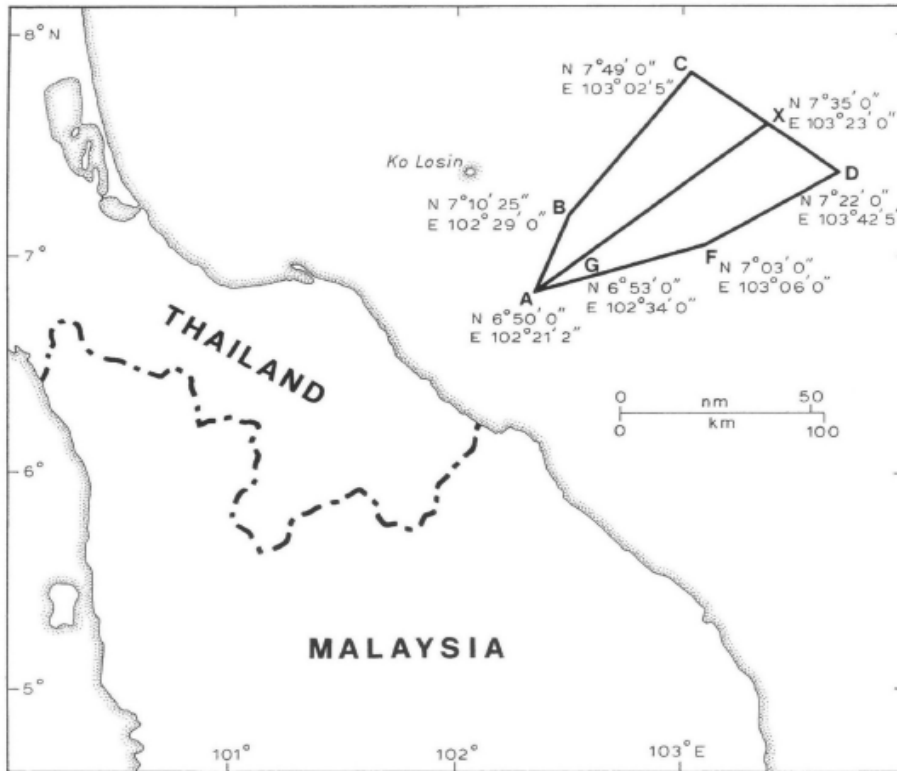


Figure 1 The Area under the 1979/1990 Joint Development Agreements between Thailand and Malaysia © Kluwer Law International, 1999

The Joint Development Area under the 1979/1990 JDA between Malaysia and Thailand





Duration of the Agreement

- The termination provisions of the agreement are of importance to not only the States concerned but also to their contractors and licensees.
- Article 22 of the Agreement between East Timor and Australia in 2001 states that ‘The Arrangement will be in force until there is a permanent sea-bed delimitation between East Timor and Australia or for 30 years from the date of its entry into force, whichever is sooner.’
- It also says that the ‘this agreement may be renewed by agreement between East Timor and Australia.’



Dispute Settlement

- The dispute resolution clause in the Australia / East Timor agreement says that:
- There is a general requirement that any dispute concerning the interpretation or application of the 2001 Arrangement shall be settled by consultation or negotiation.
- Any unresolved disputes are to be submitted to an arbitral tribunal. The tribunal shall have three arbitrators appointed: one from East Timor, one from Australia and the third arbitrator shall be a citizen or permanent resident of a third country which has diplomatic relations with both East Timor and Australia.



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