Implications of Recent Southeast Asian State Practice for the International Law on Offshore Joint Development

by

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Sub-Headings of Presentation

• Legal Concept of Joint Development (JD)

• International Obligation for JD?

• Models of State Practice in JD

• Common Elements of Joint Development Agreements (JDAs)

• Implications of Recent East & SE Asian State Practice for JD Concept
The ‘Joint Development’ Concept

What does ‘Joint Development’ mean?
• Two (or more) States that have legitimate rights in a common hydrocarbon deposit or field formally agree to co-operate in exploring and exploiting the common deposit according to a pre-arranged share of the revenues to be gained from such exploitation.
The ‘Joint Development’ Concept

When does a situation calling for the Joint Development of a common deposit arise?

• In an area of overlapping continental shelf/EEZ claims; or

• When a common deposit is found to lie across, or ‘straddle’, a previously delimited maritime boundary line between the States concerned. This latter situation is also known as ‘Transboundary Unitization’.
The ‘Joint Development’ Concept

Critical Question:
Is the Joint Development of common deposits, whether found in overlapping claim areas, or lying across already delimited maritime boundaries, required under international law?
The Legal Status of the ‘Joint Development’ Concept (I)

- Treaty law: Articles 74.3 & 83.3 of the 1982 UN Convention on the Law of the Sea (UNCLOS): ‘Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.’

- See also Article 142 of UNCLOS on deposits lying across the outer limits of the Continental Shelf and the deep sea-bed ‘Area’.
The Legal Status of the ‘Joint Development’ Concept (II)

International case law:

• North Sea Continental Shelf cases, Netherlands v Federal Republic of Germany (FRG) & Denmark v FRG, 1969, ICJ (accessible from ICJ website: http://www.icj-cij.org);

• Eritrea-Yemen (Red Sea) Arbitral Award, 1999; and Guyana-Suriname Arbitral Award, 2007 (both of these accessible from the Permanent Court of Arbitration website: <http://www.pca-cpa.org>)
The Legal Status of the ‘Joint Development’ Concept (III)

• State practice in the form of bilateral Joint Development/Transboundary Unitization Agreements across the world;

• The opinions of publicists?
Main International Obligations for Joint Development

- Obligation to Co-operate (towards JD, but not required to reach/adopt JD Agreement)

- Co-operation includes Consultation and Exchange of Information (including potentially lucrative data collected on shared hydrocarbons)

- Obligation of Mutual Restraint (but no veto power for any interested State)
Joint Development/ Transboundary Unitization Models of State Practice

• Joint Development Model I: One State exploits the shared offshore hydrocarbon deposit on behalf of another State, paying this State a share of the revenues

• Joint Development Model II: Compulsory unitization and joint ventures between operators for the exploitation of shared deposits

• Joint Development Model III: Institutional framework established to facilitate co-operation in the exploitation of shared deposits.
Joint Development Model I

Examples of State Practice:

Bahrain-Saudi Arabia (1958)

Qatar-U.A.E.

Iran-Sharjah
Administered by Saudi Arabia oil revenue shared with Bahrain

Fasht Abu-Sa'fah (oil wells)
JDA Model I: Back to the Future?

Recent East & SE Asian State Practice:

- Brunei-Malaysia Exchange of Letters – Brunei Jurisdiction, with Petronas participation.
- Q. Is there sharing of State Revenues?
China-Japan Joint / Co-operative Development over Chunxiao/ Shirakaba Field
Joint Development Model II

Examples:
UK-Norway & UK-Netherlands TUAs
France-Spain, in the Bay of Biscay
Japan/ South Korea
Malaysia-Vietnam
Nigeria/ Equatorial Guinea (Ekanga/Zafiro field)
Trinidad & Tobago/ Venezuela
Japan/Korea joint development zone
Joint Development Model III:

Examples:
Saudi Arabia/ Sudan (1974)
Malaysia-Thailand (1979/1990)
Australia-Indonesia (1989) /East Timor (see below)
Colombia-Jamaica (1993) (includes sharing of fisheries resources)
Nigeria/Sao Tome et Principe (2001)
Australia-Timor Leste or East Timor (2002, 2003 & 2006)
Map showing outline of the Unit Area and outline of the Unit Reservoirs for Aus- East Timor Leste - northeast corner of Timor Gap Zone/JPDA
Common Elements within Joint Development/Transboundary Unitization Agreements

1) Specific Designation of a Joint Development Area or Zone (JDA/ JDZ)

2) Inclusion of a Non-Prejudice Clause

3) The Obligation to Co-operate and Negotiate in Good Faith Towards a JDA

4) Criminal and Civil Jurisdiction within the JD Area/Zone
Common Elements within Joint Development/Transboundary Unitization Agreements (continued…)

5) Joint Institutional Framework

6) Previously Granted Concessions

7) Environmental Protection

8) Dispute Resolution
Conclusions

The international law for offshore joint development consists of \textit{substantive} and \textit{procedural} aspects:

- \textit{Substantive} developments in State practice on Joint Development;

- \textit{Procedural} duties based on Articles 74.3 and 83.3 of 1982 UNCLOS and elaborated in Guyana-Suriname Arbitral Tribunal Award, 2007
Continuing Issues for Further Research

1) What actions can a State take to confirm its sea-bed jurisdiction claim in an area of overlapping claims?
2) The fate of previously granted concessions/ licences/ interests in disputed continental shelf areas
3) The petroleum development regime applied in a JD Area/ Zone
Outlook for Future JDAs

A. Pre-Joint Development Agreements?
1) 1979 Mal-Thai MOU, followed by 1990 JDA
2) 2001 Thai-Camb MOU, now repealed by Thai in 2009?

B. JDAs to settle maritime jurisdiction aspects of bilateral territorial disputes?
1) Indo-Mal Ambalat dispute in the Sulu/Celebes Seas;
2) Cameroon-Nigeria, off the Bakassi Peninsula in the Gulf of Guinea.

C. JDAs over regional seas:
1) Illulissat Declaration on the Arctic Ocean;
2) China-ASEAN Declaration on the South China Sea.