Joint Development of the Continental Shelf where Delimitation is Pending: Cooperative Opportunity or Complication in Oceans Governance

Professor Clive Schofield

AUSTRALIAN NATIONAL CENTRE FOR OCEAN RESOURCES & SECURITY
Maritime Zones under the UN Convention on the Law of the Sea

- Territorial Sea
  - Baseline
  - 12 M
- Contiguous zone
- Exclusive Economic Zone (EEZ)
  - Water Column, Sea-bed, Subsoil
- Continental Shelf
  - Sea-bed, Subsoil, Sedentary Species
  - Extended Continental Shelf
- High Sea
  - Upper Slope
  - Plateau or Terrace
  - Lower Slope
  - Rise
  - Deep Ocean

Implications of Creeping Coastal State Jurisdiction

- Extended maritime claims
  - 200 nautical mile claims = 147km² million (43M² million)
  - 41% of the area of the oceans
  - PLUS: c.30km² million of extended continental shelf areas (and counting)
- Proliferation in overlapping claims to maritime jurisdiction, “new” potential maritime boundaries and maritime boundary disputes
- c.54% of potential maritime boundaries agreed
- **BUT**: many agreements partial or not in force
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, 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.

The legal rationale for joint development arrangements
Key Components of Joint Development

- A formal agreement
- Definition of a special zone
- Without prejudice clauses
- Definition of the resources to which the arrangement applies
- Agreement on the laws and jurisdiction governing exploration, operations and revenue sharing
- Uncontested sovereignty over the area designated as a joint development zone
- Political will
Joint Zones as an addition to delimitation

- Bahrain-Saudi Arabia in the Persian Gulf (signed 1958)
- Qatar-United Arab Emirates (Abu Dhabi) in the Persian Gulf (1969)
- France-Spain in the Bay of Biscay (1974)
- Colombia - Dominican Republic in the Caribbean (1978)
- Australia-Papua New Guinea in the Torres Strait (1978)
- Faroes-UK in the North Atlantic (1999)
- Boundaries defined so security/enforcement jurisdiction clear cut
Source: International Maritime Boundaries
Faroes-UK

Source: International Maritime Boundaries

University of Wollongong
Joint Zones in lieu of delimitation

- Kuwait-Saudi Arabia in the Persian Gulf (1965)
- Japan-South Korea in the Sea of Japan (1974)
- Sudan-Saudi Arabia in the Red Sea (1974)
- Australia-Indonesia in the Timor Sea (Timor Gap) (1989)
- Malaysia-Thailand in the Gulf of Thailand (1990)
- Malaysia-Vietnam in the Gulf of Thailand (1993)
- São Tomé-Nigeria in the Gulf of Guinea (2001)
- Australia-Timor Leste in the Timor Sea (2002)
The East China Sea
Advantages of Joint Development

- Unlocks intractable disputes
- Sidesteps sovereignty issues
- Allows development/management of resources/environment to proceed without delay
- Without prejudice clauses effectively address concerns over compromising jurisdictional claims (at least in a formal legal sense)
Additional Advantages

• Avoids the need for a costly ‘once and for all’ boundary delimitation exercise
• Often perceived to be an ‘equitable’ solution
• Cooperative – no ‘winner’ or ‘loser’
• Flexible in area, administration, function and duration
  - Can apply to living or non-living resources
  - Can be general or resource-specific
  - Can be permanent or temporary
  - Can be applied to security issues
• Consistent with international law
• Models exist
Challenges in the Application of Provisional Arrangements of a Practical Nature

- The Limits of zones of cooperation
  - Does using the limits of overlapping claims areas legitimise and encourage excessive maritime claims?
  - Third party rights – other claimants?

- Complexity and Continuity
  - Intricate arrangements and ongoing costs
  - Difficult to negotiate and sustain
  - Need to endure for the long haul
  - A challenge to State sovereignty
  - A source of friction in relations?
Challenges in the Application of Provisional Arrangements of a Practical Nature

- Downstream issues
  - As much of a prize as the marine resources themselves?
  - Dealing with the impacts of “success”
- Gulf of Thailand examples - a concentration of State practice
- Gulf of Guinea
- Timor Sea arrangements
Cambodia – Vietnam joint ‘historical waters’ area

Malaysia – Thailand joint development area

Malaysia – Vietnam joint development area

Cambodia – Thailand Memorandum of Understanding

São Tomé and Príncipe – Nigeria JDZ
Map 5 - Consolidated depiction of all Australian-Indonesian maritime boundaries after entry into force of the Treaty
Overlapping claims in the Timor Sea

Opportunities and Challenges in the Application of Provisional Arrangements of a Practical Nature

- **Great potential merit but…**
  - Not to be entered into lightly, simply because negotiations deadlocked

- **Significant implementation challenges to overcome**
  - What area?
  - Third party rights
  - Institutional issues
  - Certainty and Continuity
  - Downstream issues
  - Political dimensions