



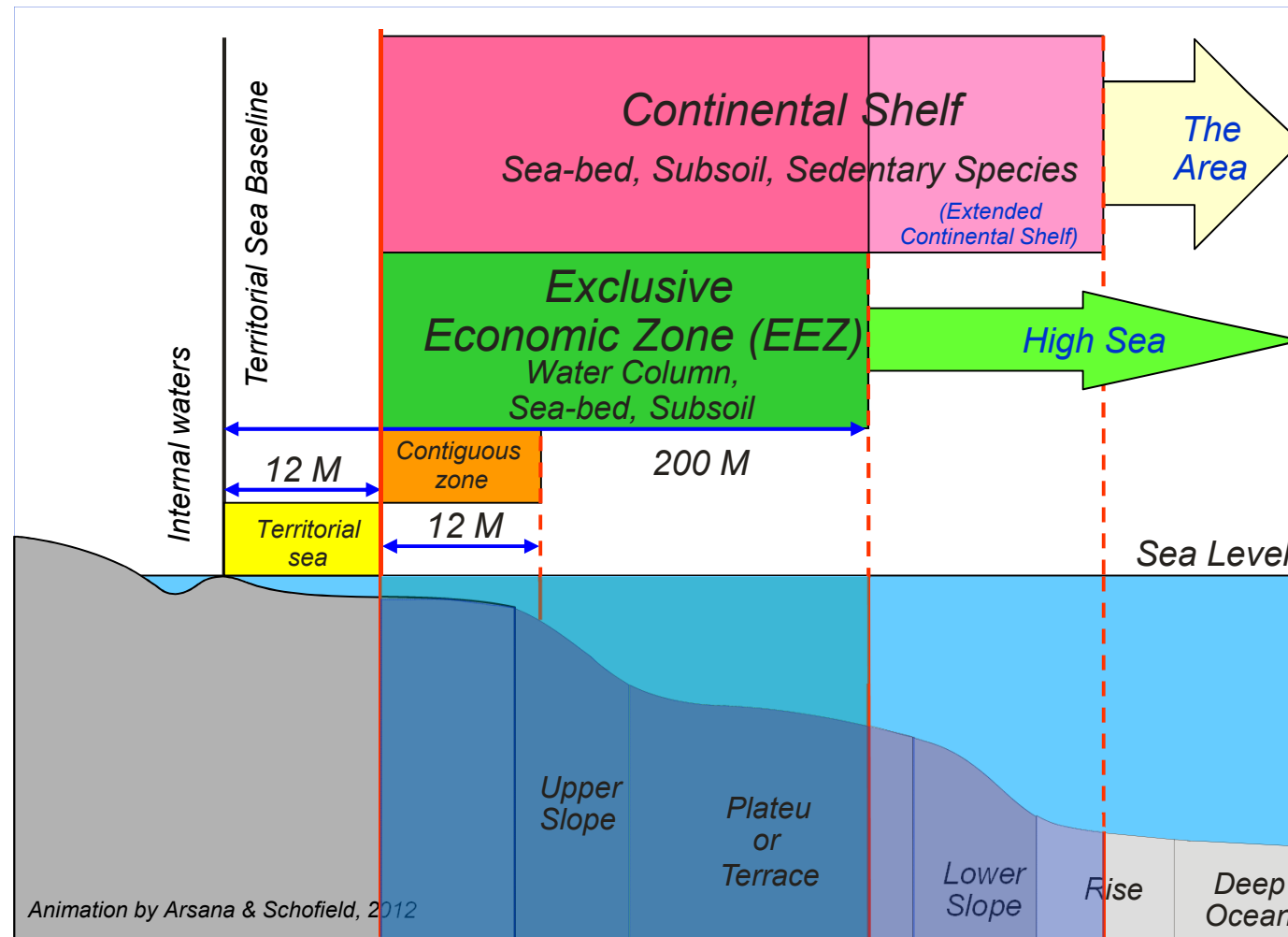
Joint Development of the Continental Shelf where Delimitation is Pending: Cooperative Opportunity or Complication in Oceans Governance

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Maritime Zones under the UN Convention on the Law of the Sea



Source: TALOS Manual (5th edition, 2014) University of Wollongong



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

Continental Shelf and EEZ delimitation

LOS Articles 74 and 83

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

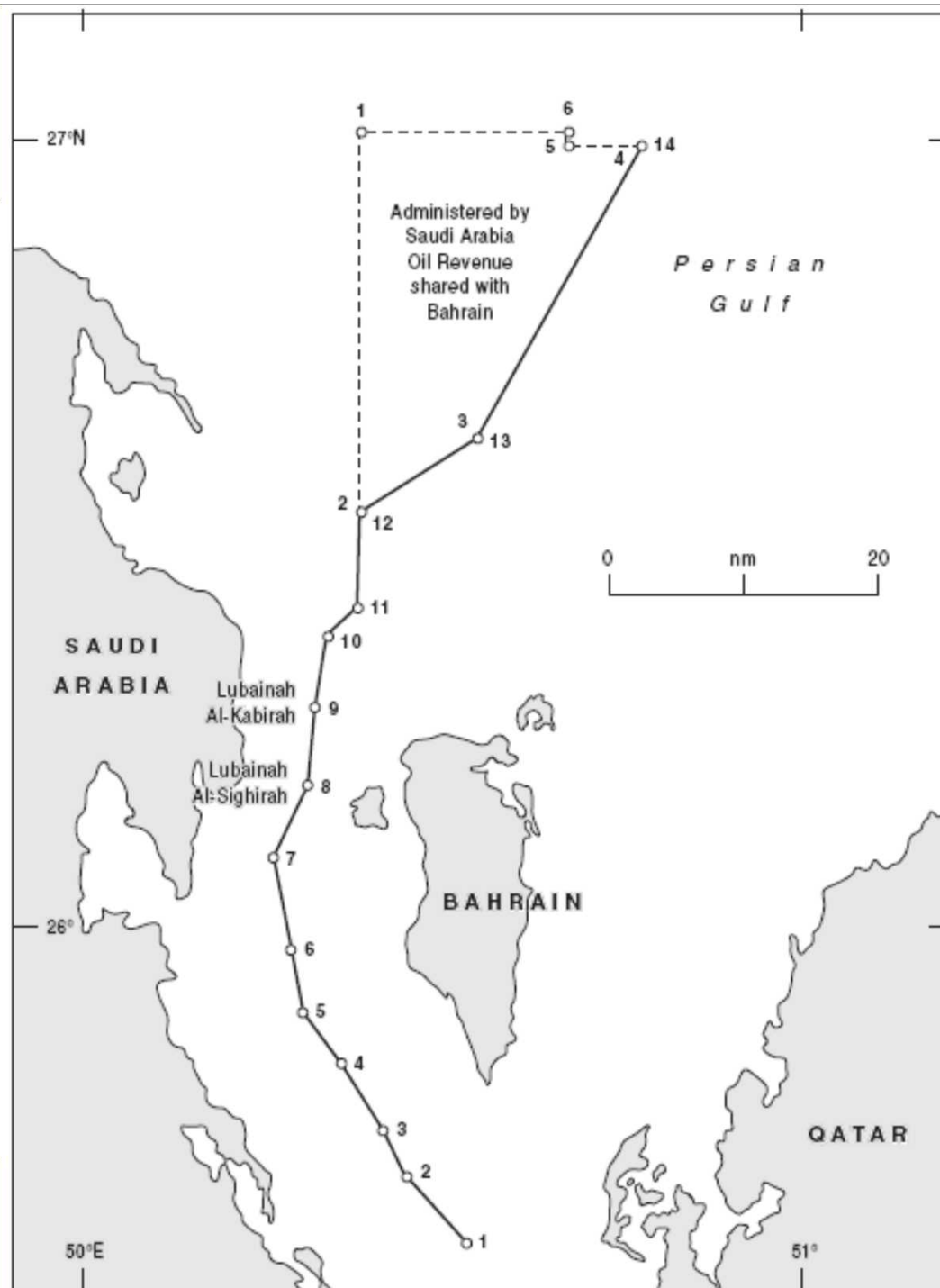
Key Components of Joint Development

- 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)
- Iceland-Norway in the North Atlantic (Jan Mayen Island) (1981)
- Faroes-UK in the North Atlantic (1999)
- Boundaries defined so security/enforcement jurisdiction clear cut

Source:
International
Maritime
Boundaries



Torres Strait

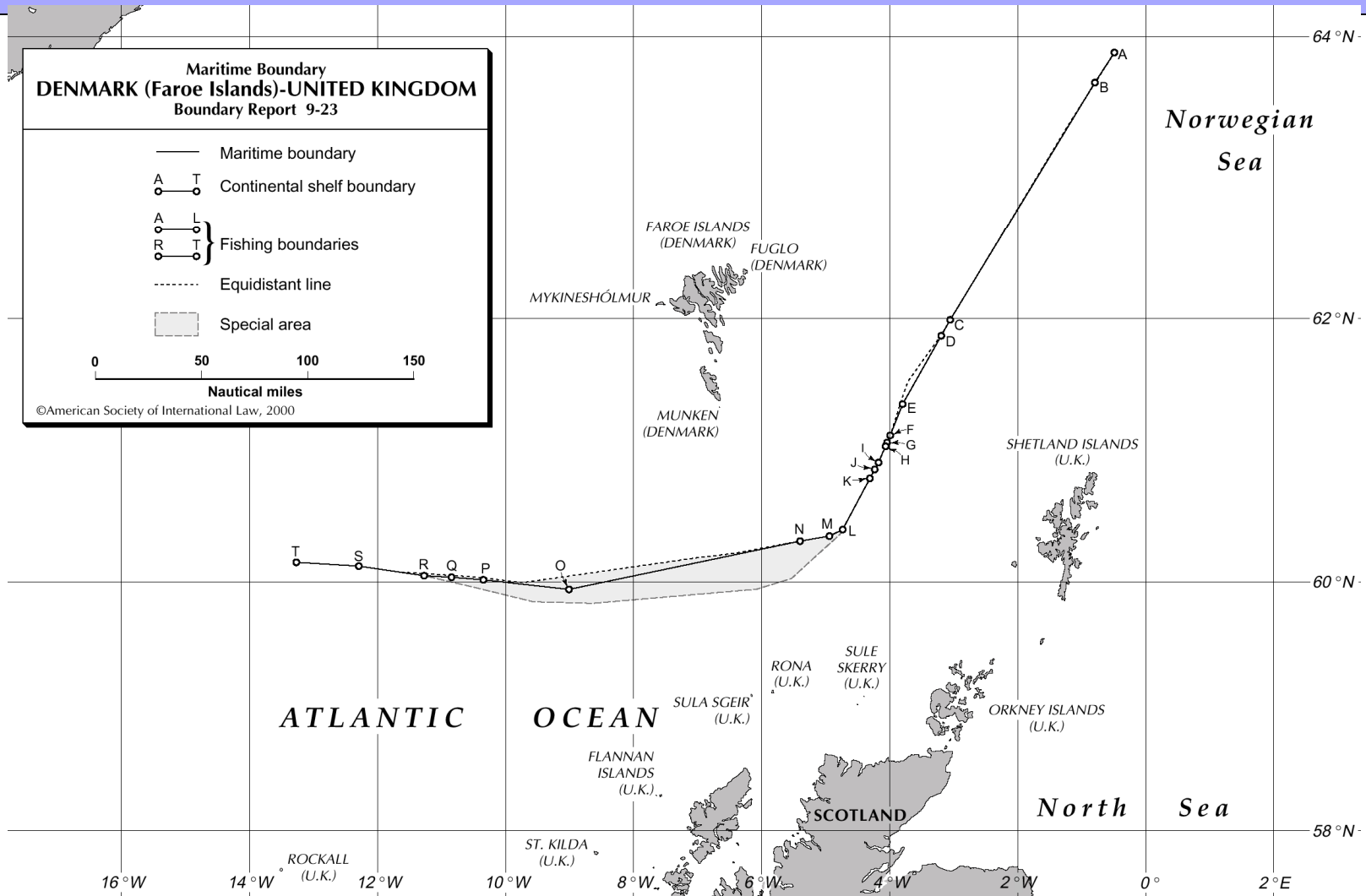


Source: Geoscience Australia

University of Wollongong



Faroes-UK



Source: *International Maritime Boundaries*

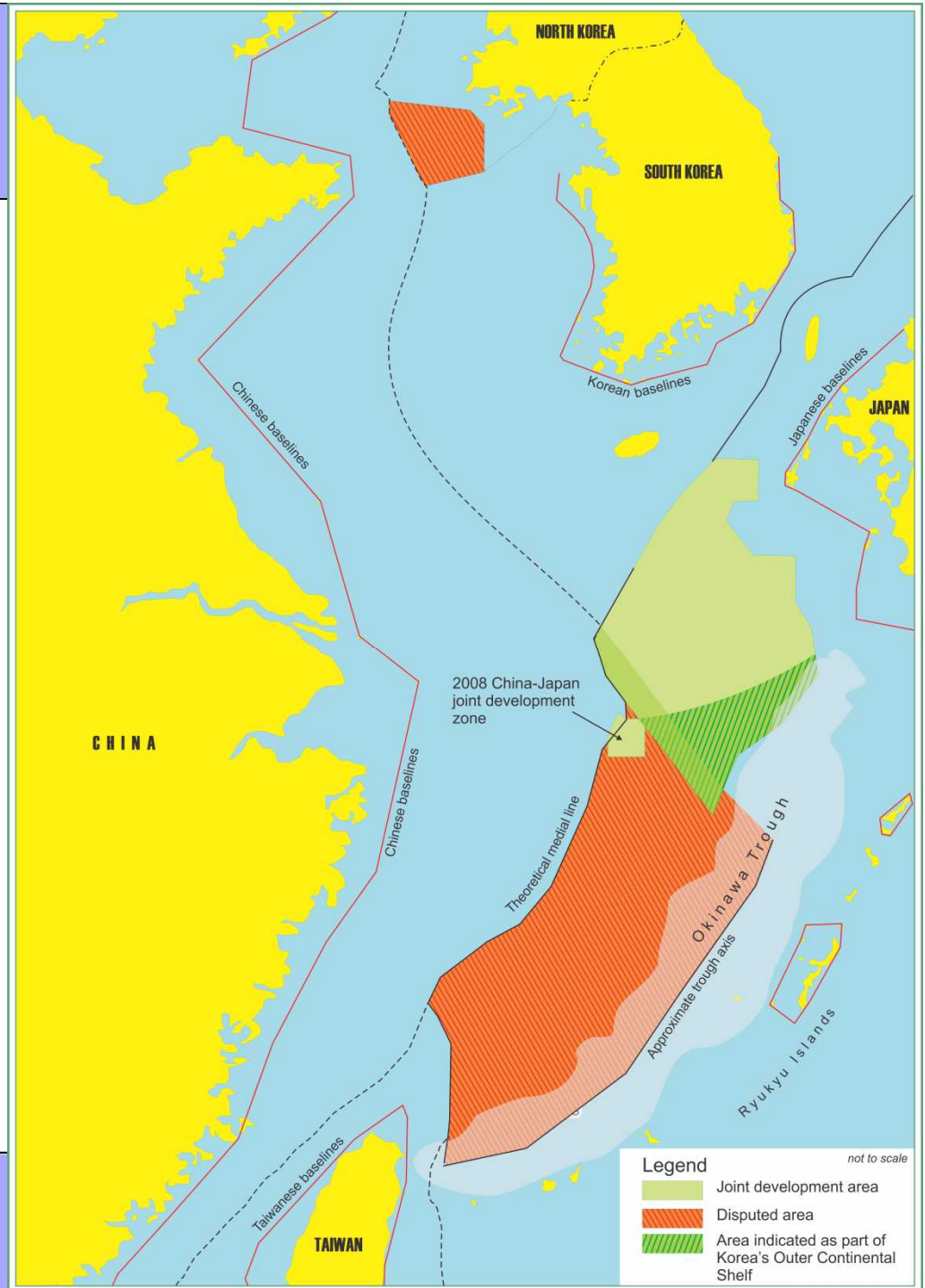
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Joint Zones in lieu of delimitation

- 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

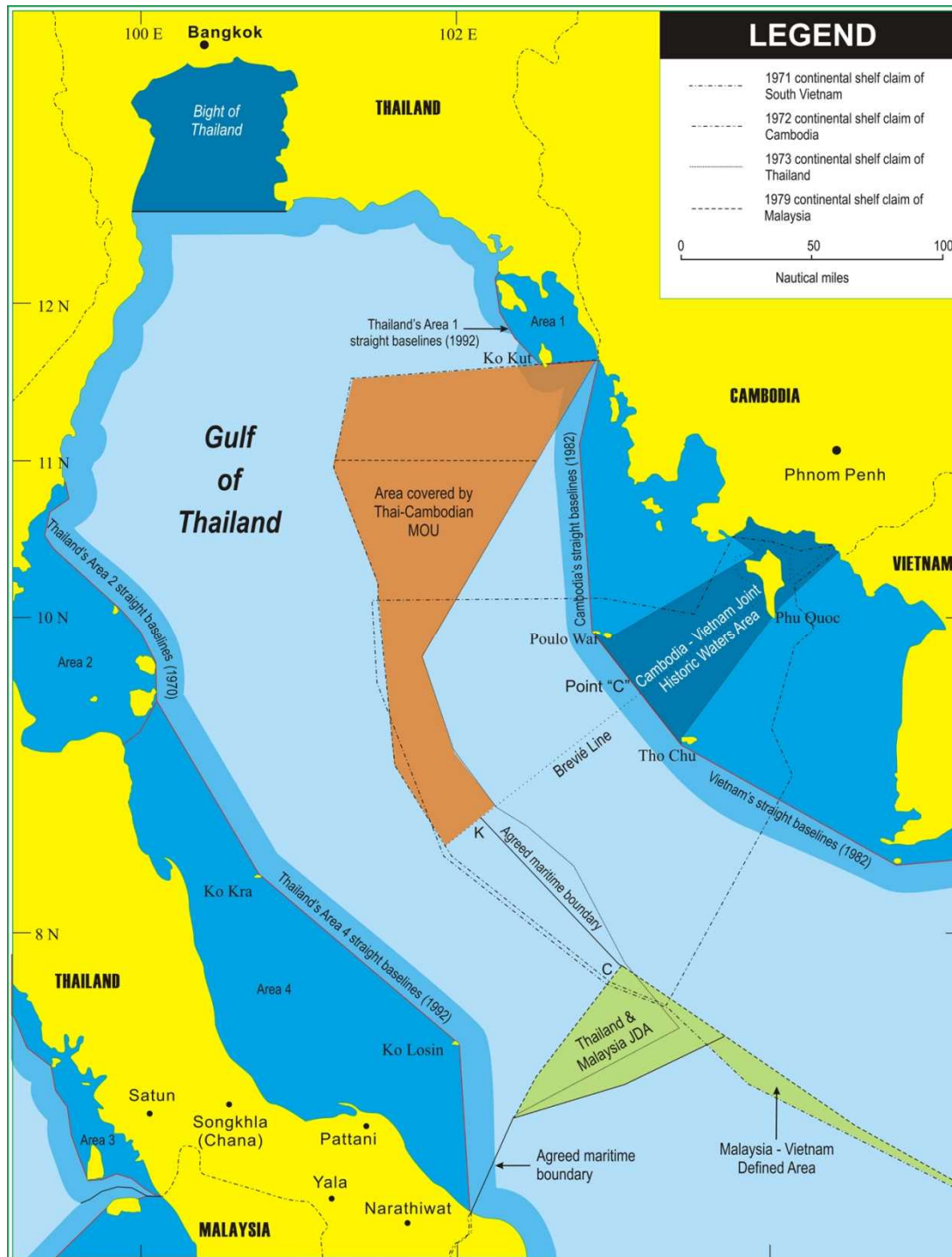
- Avoids the need for a costly 'once and for all' boundary delimitation exercise
- Often perceived to be an 'equitable' solution
- Cooperative – no 'winner' or 'loser'
- **Flexible** in area, administration, function and duration
 - Can apply to living or non-living resources
 - Can be general or resource-specific
 - 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



The Gulf of Thailand

Cambodia – Vietnam
joint 'historical waters' area

Malaysia – Thailand
joint development area

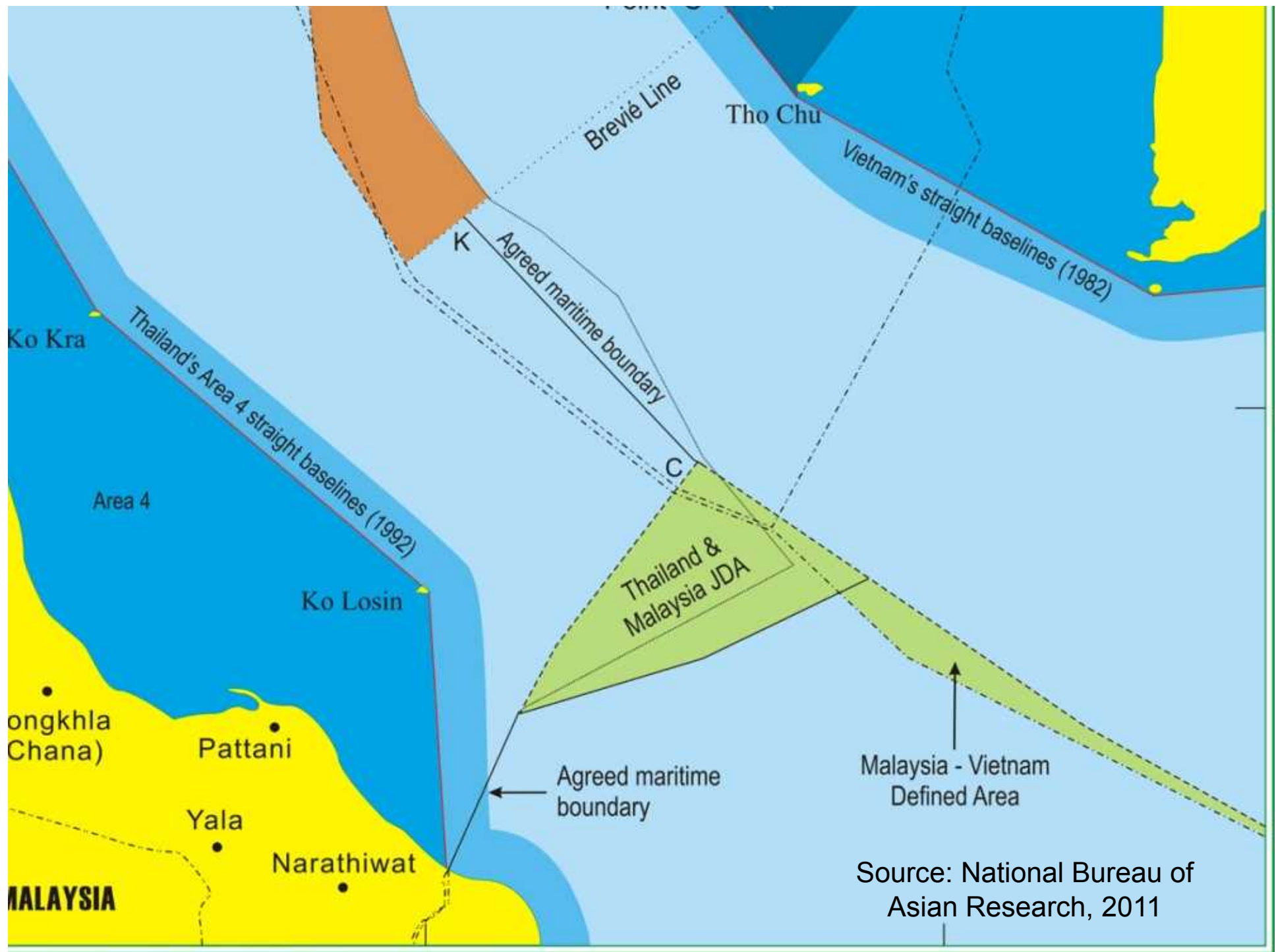
Malaysia – Vietnam
joint development area

Cambodia – Thailand
Memorandum of
Understanding

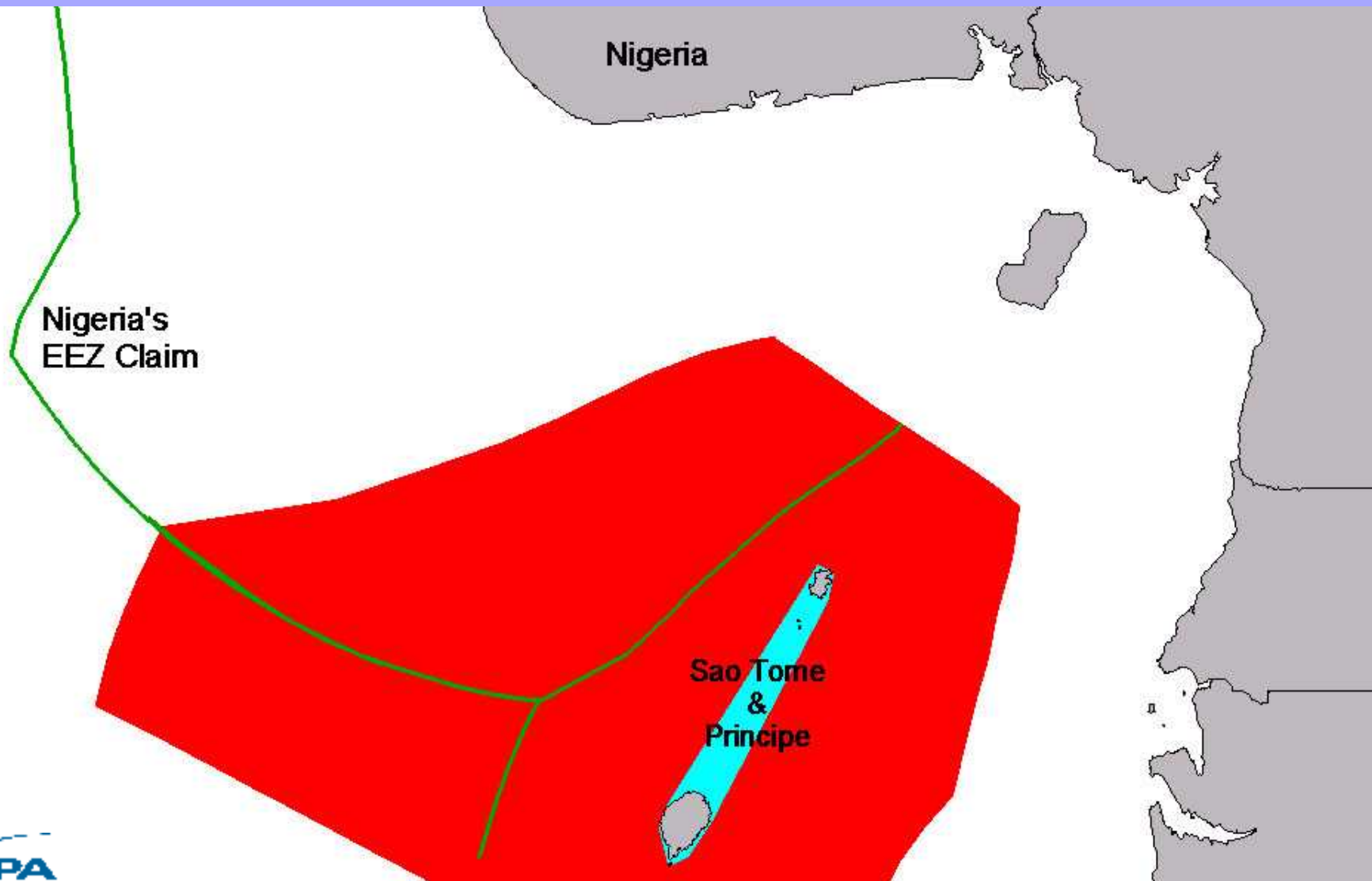
Source: National Bureau of
Asian Research, 2011

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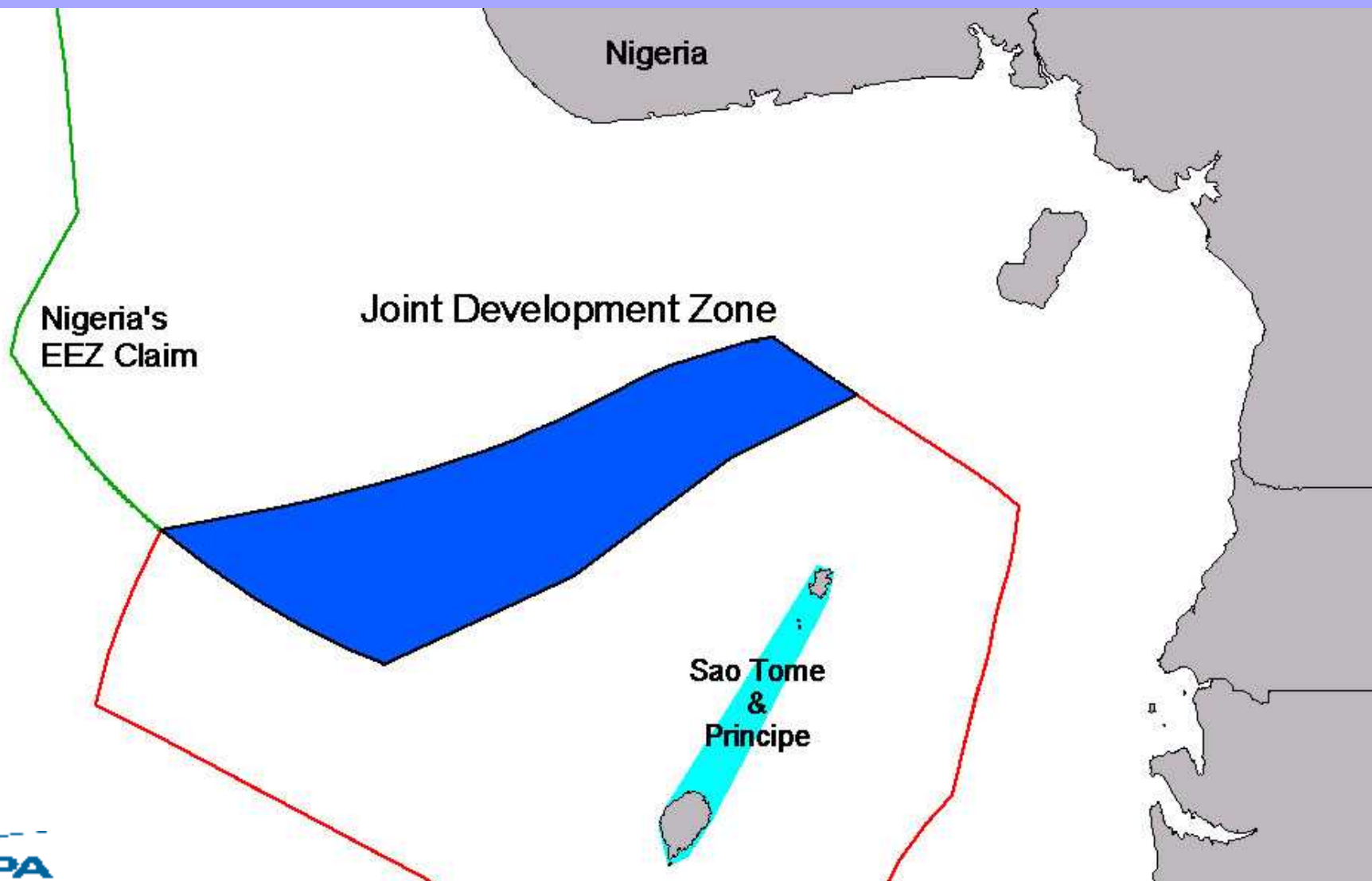
Sao Tomé EEZ



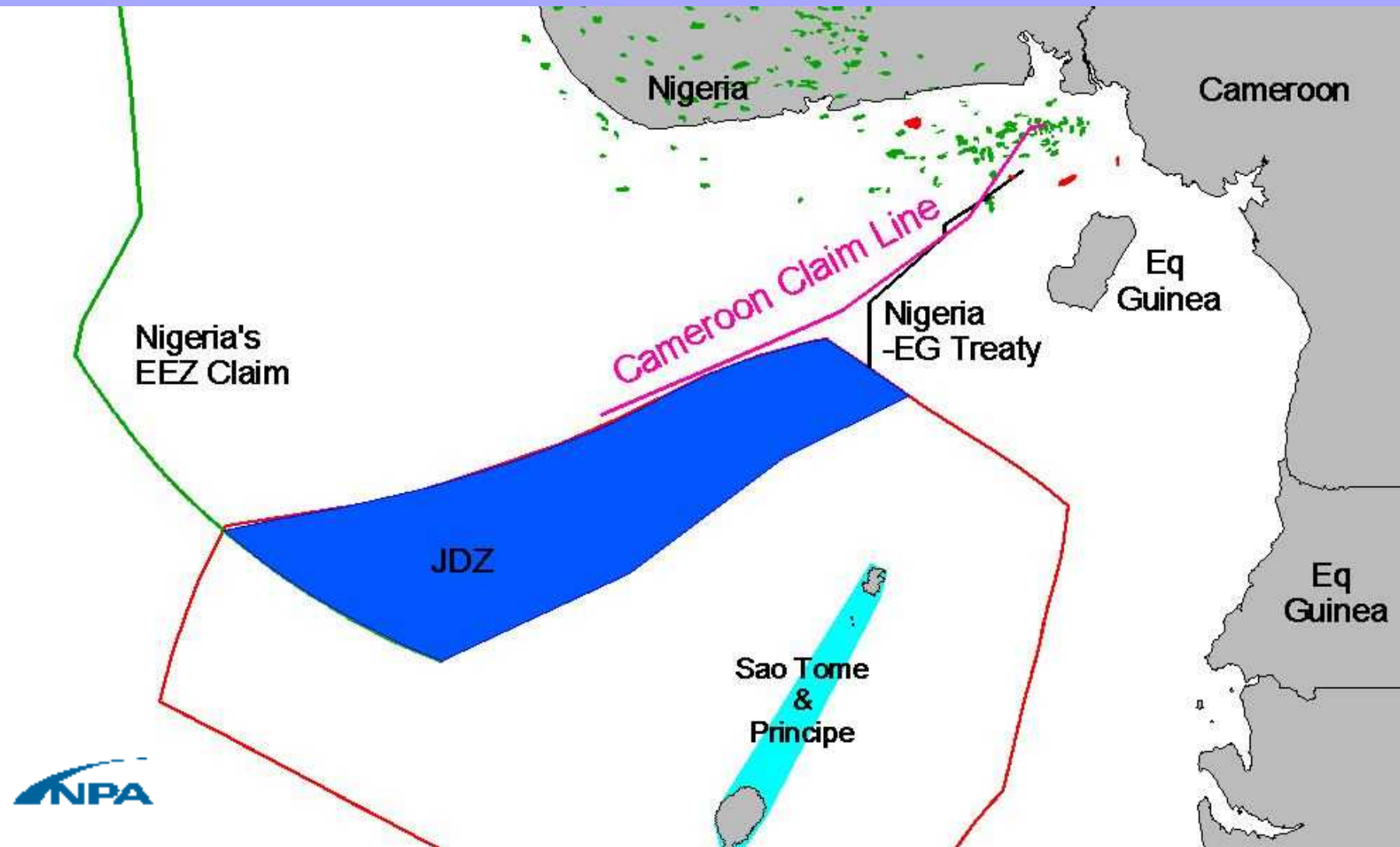
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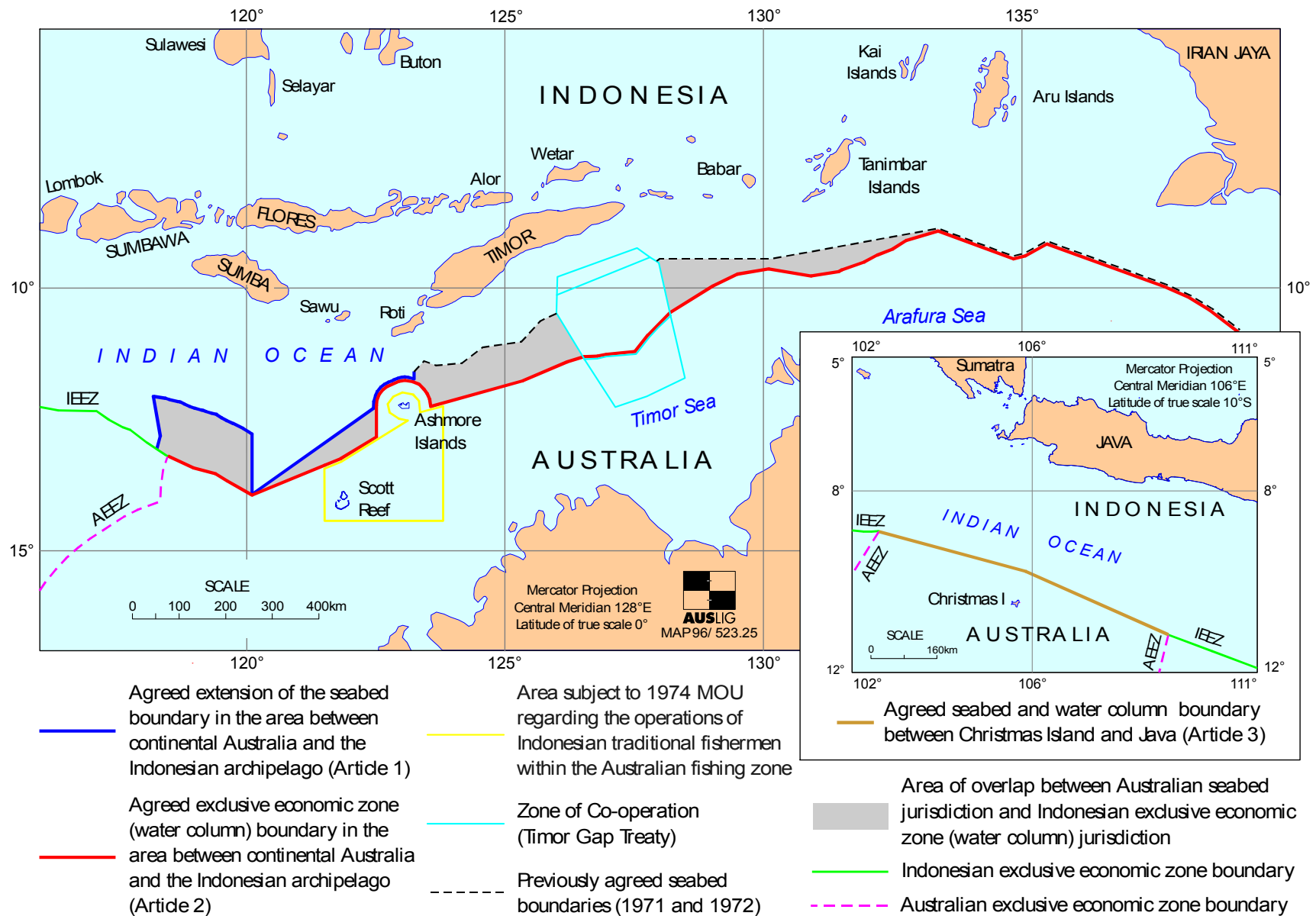


São Tomé and Príncipe – Nigeria JDZ



Cameroon Claim Line

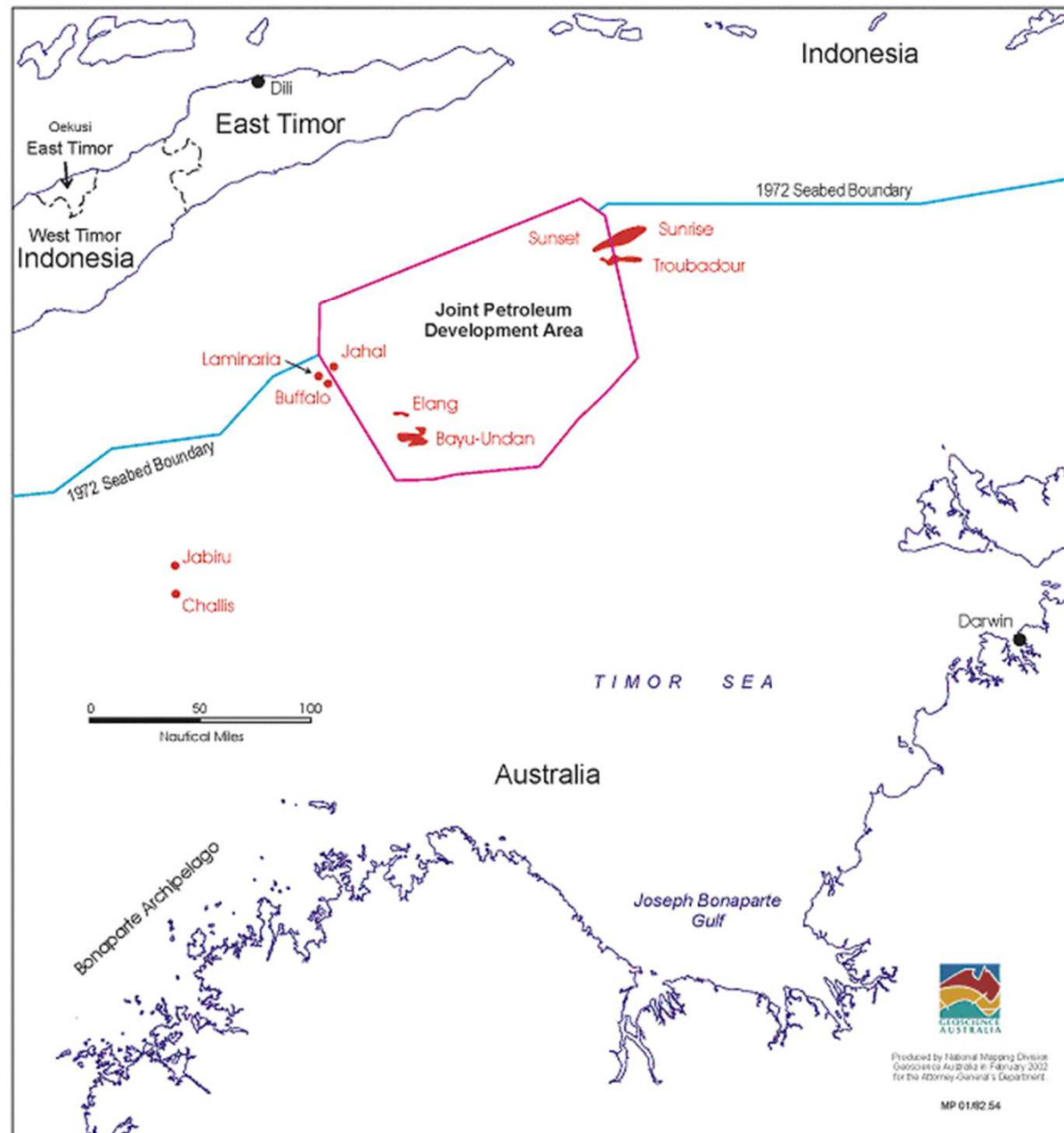




Map 5 - Consolidated depiction of all Australian-Indonesian maritime boundaries after entry into force of the Treaty

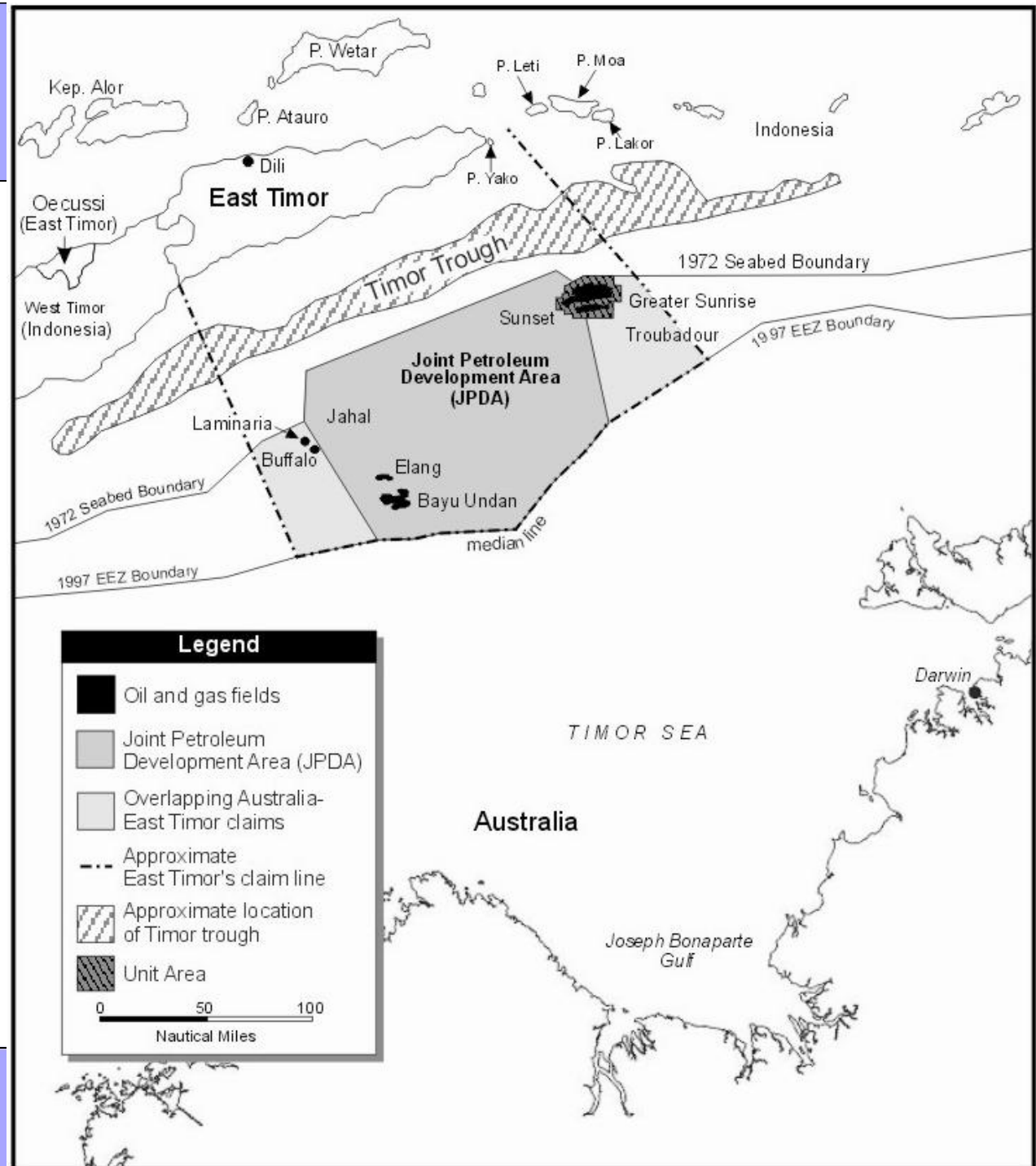
Timor Sea Treaty

Joint Petroleum Development Area



Overlapping claims in the Timor Sea

Source: Clive Schofield, 'Minding the Gap: The Australia – East Timor Treaty on Certain Maritime Arrangements in the Timor Sea', *International Journal of Marine and Coastal Law*, Volume 22 (2007), No.2: 189-234.



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