



Schulich School of Law

Transboundary Arrangements and Joint
Development Zones

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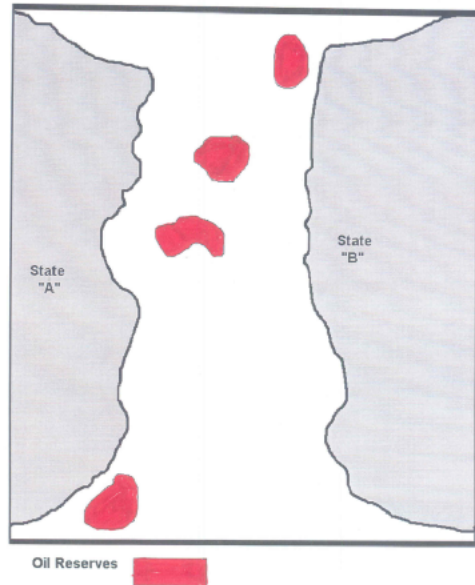
Introduction

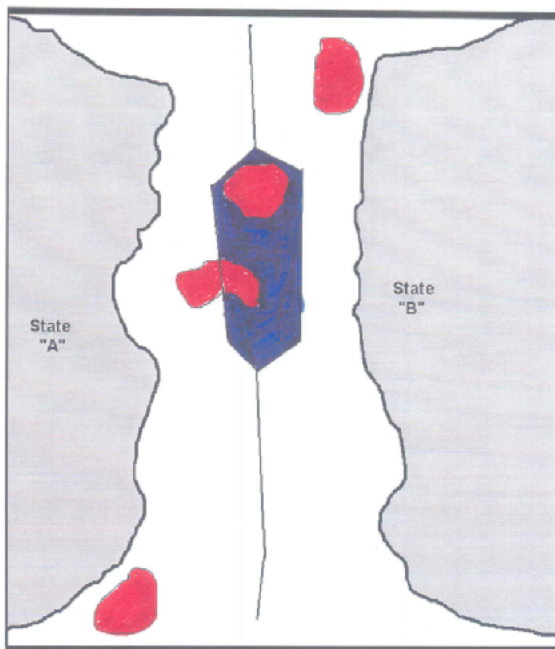
- Joint Development Zones (JDZs) for Non-Living Resources
- One of a number of cooperative measures for the management of ocean resources and uses in two contexts:
 - Where resources or uses “cross over” or “straddle” a **delimited** maritime boundary
 - Where there is a **disputed zone**, and resources and uses must be managed/explored/exploited within it

- UNCLOS and other agreements give many examples of requirements for practical cooperation across boundaries
 - Reminder: a boundary is not an end point in a management challenge
- Fishing *Activities* (especially traditional)
 - Tendency to Ignore Lines
- Fishery *Management* - Joint and Straddling Stocks and Highly Migratory Species
 - Need for Harmonized Approaches
 - UN Fish Stocks Agreement; RFMOs

- Search and Rescue
- Marine Environmental Protection
 - Pollution prevention; emergency response; EIAs
- Shipping Management
 - Traffic Lanes
 - Reporting In and Out
- These and others addressed by bilateral, sub-regional, regional agreements and arrangements

Exploration and Exploitation of Non-Living Resources

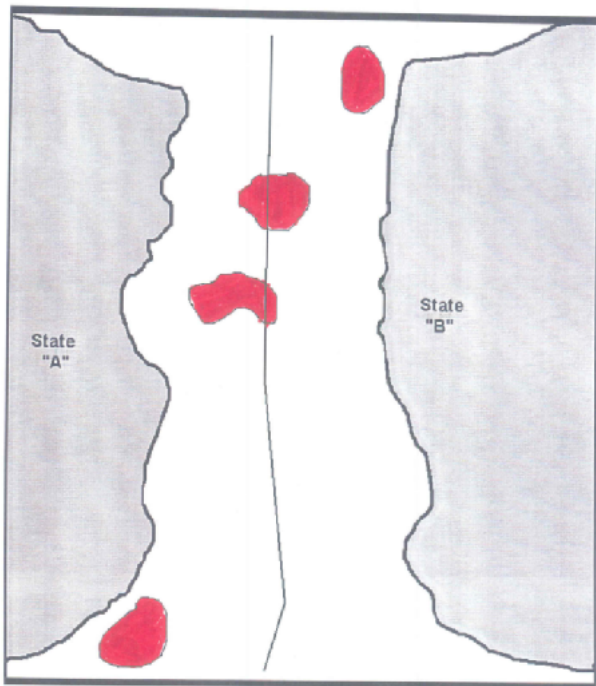




Agreed Boundary ———

Disputed Zone 

Oil Reserves 

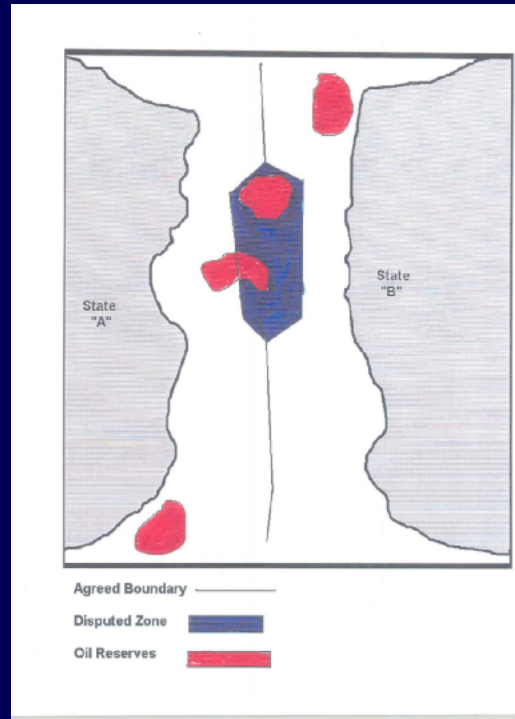


Agreed Boundary —————

Oil Reserves

Terminology

- Unitization
 - From domestic law
 - Treatment of a “straddling” reserve as a unit
 - Do not apply “rule of capture” – but cooperate in sharing of reserve
 - Mainly applicable to existing boundaries, but can apply *within* a JDZ or between JDZ and other zone



- Interim Measures
 - In advance of or absence of boundary
 - May include JDZ, or may just specify permissible and non-permissible conduct: forms of exploration; prohibition on exploitation etc.
- Commercial Joint Ventures
 - Associated with JDZ, but with private entities
 - Their rights, obligations can be specified under domestic law, in accord with JD agreement



Joint Development “proper”

- State-to-State (to State??)
- Agree to Share (in Established Proportions?)
the Resources in Designated Zone
- Can apply to Disputed or Agreed Areas
- Sharing of RIGHTS to Exploit and
RESPONSIBILITIES to Manage

“...cooperation between States with regard to exploration for and exploitation of certain deposits, fields or accumulations of non-living resources which either extend across a boundary or lie in an area of overlapping claims

”
.

R. Lagoni – quoted in Guyana/Suriname arbitration

In forms limited only by the imagination and interests of the parties.



Is there an obligation to pursue JDZ in disputed areas?

- Long recognized that it is common practice, and **desirable**, for states to engage in some degree of unitization and/or JD (see *North Sea Cases, 1969*)
 - But more a matter of *encouraging* the practice – no definitive obligation in customary law to *agree*
- This concern – especially pre-boundary – carried into UNCLOS in the provisional measures provisions in Arts 74(3) and 84(3)

Obligations Addressed in *Guyana/Suriname, 2007*



Art. 76(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.

Two obligations identified: i) make efforts to enter into arrangements; ii) not hamper or jeopardize eventual agreement

i) At most – an obligation to negotiate in good faith (and this is unsettled)

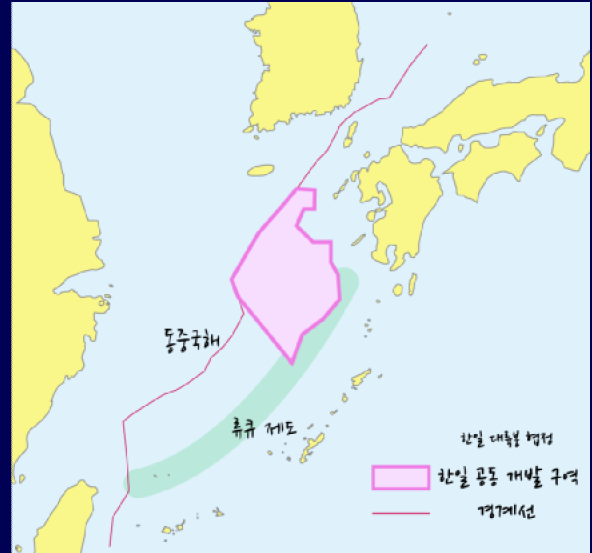
ii) Hamper or jeopardize assessed by activities that permanently affect other's interests: eg. Survey vs drilling/exploitation



Examples of JDZs

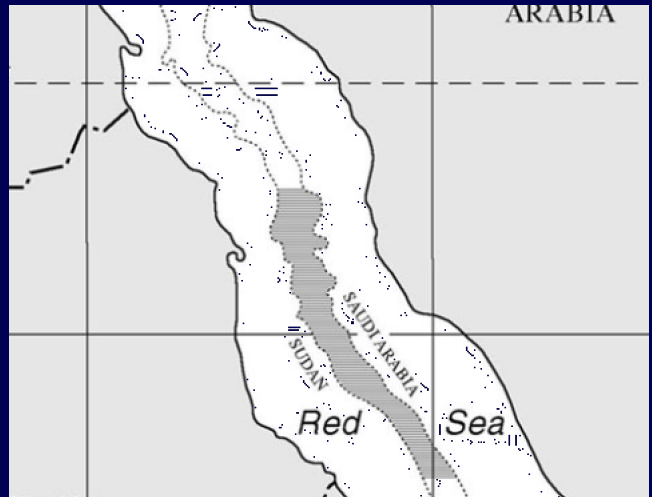
Japan/Korea 1974:

- 50 years
- Sub-zones — nomination of concessionaires
- Law of each party applied in zones
- Consultative Joint Commission



Sudan- Saudi Arabia 1974

- Joint Commission, carries out state functions to permit, regulate
- More fully joint management



Source – D. Ong

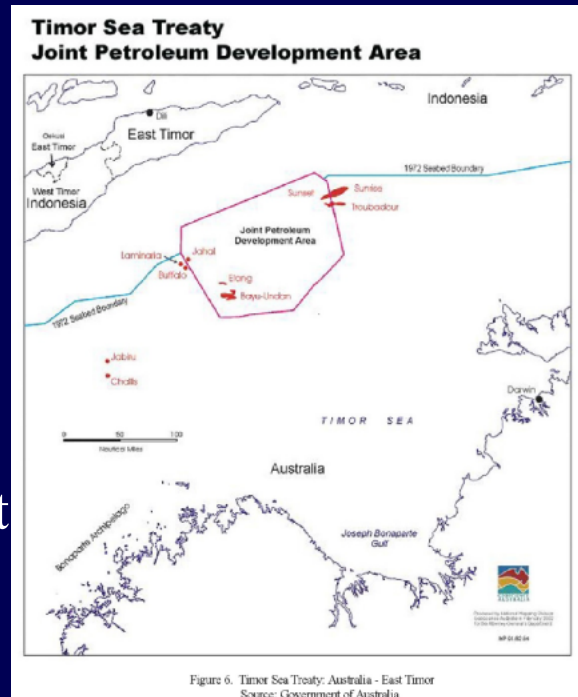
Thailand/Malaysia 1979/1990

- 1979 MOU; Joint Authority with wide range of management functions
- Criminal jurisdiction divided
- 1990 – clarified fiscal, royalty provisions



East Timor-Australia 1989

- Boundary agreement; unitization; Zone of Cooperation
- JDA: complex: 3 sub-zones with 1 shared and 2 separate control
- Shared area subject to Joint Authority
- Since challenged by East Timor





Forms of Agreement

- Within Delimitation Agreement
 - For Known or Unknown Reserves
 - May be Limited in Detail
 - Minimum: Establishing Unitization Principle
- Stand-Alone
 - In Absence of Any Delimitation
 - In Addition to a Delimitation
 - More Likely to be Detailed and Focus on Known Reserves



Forms cont'd

- Detailed, Umbrella or "Anticipatory"
 - Detailed Spells Out Full Nature of Cooperation
 - Umbrella: General Provisions Which May be "Fleshed-Out" for Specific Reserves
 - Anticipatory: In Absence of Known Reserve, Set Out General Obligations if They Are Found



BASIC CONTENT ISSUES

- Definition of Zones and Sovereignty Issues
 - Define Zone by Coordinates, A Reserve or "Generic" to Cover All Trans-Boundary
 - Sovereignty: settled or avoided
 - Joint Development Can Proceed With or Without Agreement on Sovereignty



Content cont'd

- Scope: Resource and Functional
 - Limited to Particular Resource/s?
 - Range of Functions Covered: From Exploration to Exploitation



Content cont'd

- Jurisdiction, Licensing and Enforcement
 - Must Define Application, Licensing Regime
 - Civil and Criminal Jurisdiction Over Operators
 - Licensing: Single, Dual or Joint?
- Health, Safety and Environment
 - Which Regime in Place?
 - Danger of Matters Falling "Between Jurisdictions"



Content cont'd

- Financial Provisions
 - Royalty/Resource Rents
 - Tax Regime
 - Local Benefits



INSTITUTIONS AND PROCESSES

- Regulatory Authority
 - One State: Manage and Pay-out Benefits
 - Separate: Each State in Designated Areas
 - Joint: Cooperative Board Controlled By Parties
 - Independent Commission



- Dispute Settlement
 - Include Arbitration Clause?
 - Duties to Negotiate?
 - Other Conciliation, Mediation Options