

Joint Development in Continental Shelf Areas Beyond 200M

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New Knowledge and Changing Circumstances in the Law of the Sea

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Outline:

- I. Conceptualization of JD agreements (beyond 200M)
- II. International law and domestic law elements
- III. The role of private entities in JD arrangements
- IV. Beyond 200M / BBNJ
- V. Offshore installations and structures
- VI. Conclusions and outlook

I. Conceptualization of JD agreements (beyond 200M)

- State practice: 2000/14 US-Mexico; 2012 Mauritius-Seychelles
- Cooperative efforts between two or more States for the exploitation of mineral resources that:
 - a) straddle a maritime boundary; (after delimitation)
 - b) are found in areas of overlapping claims within 200M; or
 - c) beyond 200 M:
 - i. Entitlement (Article 76(1) of UNCLOS)
 - ii. Relation between delineation of outer limits and delimitation of maritime boundaries
- **Is there an open-issue regarding the sovereign rights in the extended continental shelf?** State practice: Portugal's MSP legal regime – prevalence of 'one single continental shelf'

I. Conceptualization of JD agreements (cont.)

- Characteristics: *“never two straws in one glass”*
 - a) Resource-efficiency
 - b) Access to resources that would otherwise be off-limits
 - c) Reinforcement of capabilities
 - d) Aiding in the delimitation of (part/totality of) maritime boundaries: the “economic value” of delimitation

I. Conceptualization of JD agreements (cont.)

- States' obligations in disputed maritime areas (within and beyond 200M):
 - a) Cooperate (applicable also regarding the ISA)
 - b) Negotiate in good-faith and exercise mutual restraint
 - c) Share information (applicable also regarding the ISA)
 - d) Due regard for the rights and freedoms of third States (also with the ISA)

- Economic activities in disputed maritime areas
[Arts 74(3) and **83(3)** of the UNCLOS, **also beyond 200M**]

Articles 74(3) and 83(3) of UNCLOS

*“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.”*

- Unilateral exploration and exploitation in disputed areas: **ITLOS-SC, Ghana/Côte D’Ivoire, (2015) (2017)**

I. Conceptualization of JD agreements (cont.)

- Unitization
- Mineral resources clauses:
 - a) Maritime boundaries treaties and JD agreements
 - b) Relevance of mineral resources clauses
 - c) Obligation to include mineral resources clauses
 - d) Non-compliance with mineral resources clauses
 - e) States' obligations in the absence of mineral resources clauses:
 - i. Negotiate in good faith and of mutual-restraint
 - ii. Share information

II. International law and domestic law elements

- Rights and obligations regarding non-living resources under the law of the sea:
 - i. Exclusive economic zone (200M)
 - ii. Continental Shelf (+200M – ‘one single continental shelf’)
 - iii. The Area
- Rights and duties of coastal States regarding:
 - i. Exploitation of resources
 - ii. Offshore installations and structures
- The ancillary role of area-based management tools (MSP, MPAs) in the JD areas, also beyond 200M

II. International law and domestic law elements (cont.)

- Essential legal and functional elements of JD agreements:
 - i. Identification of the JDA
 - ii. State participation
 - iii. Creation of joint entities
 - iv. Access to operations
 - v. Safeguard of pre-existing rights
 - vi. Taxation, sharing of costs and revenues
 - vii. Employment, health and safety
 - viii. Protection & preservation of the marine environment
 - ix. Unitization
 - x. Liability
 - xi. Applicable law and dispute settlement mechanisms with and between operators

III. The role of private entities in JD arrangements

- State-own entities or private entities
- Relevant geological data
- Technological and investment capabilities and know-how
- Access to operations and revenue schemes
- Different levels of participation in the implementation of a JD agreement: product sharing agreements, concession or licencing regime
- Legal security and certainty
- Other elements: economic benefits and activity profitability (transport, refining and other infrastructures), political stability and security

IV. Beyond 200M

- Integrating different legal regimes:
 - Extended continental shelf and the High Seas (e.g. MPAs)
 - Extended continental shelf and Area (revenue sharing obligation in Article 82 v. principle of common heritage of mankind in Articles 136, 142 ...)
 - MSR [Article 246(6) of UNCLOS]

- Unsettled issues:
 - New implementing agreement on BBNJ
 - Common resources with the Area (Article 142 of UNCLOS)

- Importance of regional cooperation (e.g. RFMOs)

V. Offshore installations and structures in JD areas

- Legal regime within and beyond 200M
- Classification of oil rigs
- Construction and operation (with the high seas)
- Removal and decommissioning (with the high seas)
- States' responsibility for pollution from seabed activities

VI. Conclusions and outlook

- Cooperation is essential for resource-efficiency
- JD is economically-driven
- There is no obligation to develop common offshore hydrocarbon deposits or to enter into JD agreements
- There is no consistent State practice within and beyond 200M, and still many old and new challenges ahead
- States' obligations in the absence of agreement:
 - Due regard and mutual restraint
 - Negotiate in good faith
 - Cooperate and adoption of procedural duties
- Increasing role of private entities and non-State actors in international law

Þakka þér fyrir

Thank you

Obrigado

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