

JOINT DEVELOPMENT IN THE GULF OF THAILAND

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INTRODUCTION

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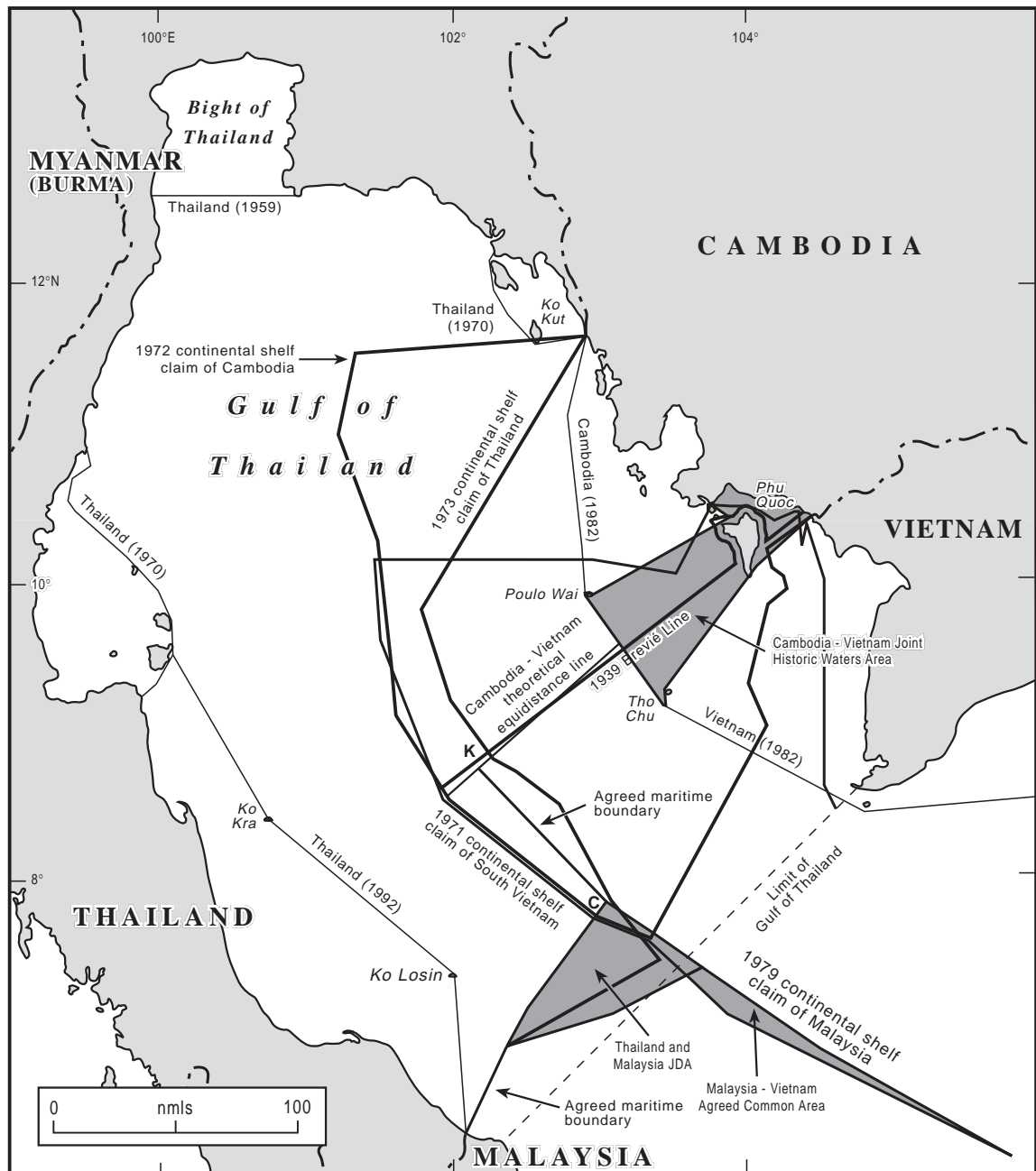
The United Nations Convention on the Law of the Sea (UNCLOS) came into force on 16 November 1994. The Convention created a new juridical order for the sea with a bearing on the partition of natural resources. The 21st century will continue to be a century of maritime delimitation settlement. More than 400 maritime boundaries must be defined, of which only one third have been settled by bilateral agreements or by jurisprudence.¹ The South China Sea, hosting as it does 20 disputes, may be viewed as one of the 'hot' regions in the world in terms of overlapping maritime claims.

The Gulf of Thailand, and the South China Sea as a whole, is characterised by a slow pace in maritime boundary delimitation. This phenomenon can be attributed to several factors. Firstly, broad geopolitical disagreements have hampered countries from reaching swift agreements. Secondly, the region has been affected profoundly by the colonial experience and problems exist over the interpretation of certain colonial treaties. For example, Cambodia and Thailand disagree over the interpretation of the France-Thai treaty of 1907 while Vietnam and Cambodia do not share the same view on the role of the Brevié line in maritime delimitation negotiations.² Thirdly, there are many islands and islets in the region which have raised difficulties in relation to maritime jurisdiction. If maritime disputes in Asia generally tend to focus on the issue of island sovereignty,³ the maritime disputes in the Gulf of Thailand deal principally with the question of the effect of islands on delimitation.⁴

Delimitation in the Gulf has not proved easy. The confrontation between two blocs - Indochina and ASEAN - and the civil war in Cambodia has effectively prevented several of the littoral states from conducting negotiations with one another. However, where negotiations have been possible, the coastal states have shown a tendency to enter into provisional arrangements, such as joint development, in order to peacefully shelve disputes and exploit natural resources without prejudice to a final delimitation.

On 21 February 1979, a Memorandum of Understanding (MoU) on joint development was concluded between Thailand and Malaysia. An agreement on Cambodian-Vietnamese historic waters was concluded on 7 July 1982, placing a maritime area under a joint utilisation regime.⁵ Before concluding the agreement on their maritime boundary in August 1997, Thailand and Vietnam had also discussed the possibility of joint development for their overlapping claims area.⁶ Additionally, Vietnam and Malaysia applied the same principles in their MoU of 5 June 1992 instituting a joint exploitation regime for a "Defined Area" in the Gulf of Thailand. Finally, in 1999, Vietnam, Thailand and Malaysia agreed in principle on joint development for a small overlapping area.

These agreements have put the region at the forefront of the application of joint development arrangements, not only within Asia but the world.⁷ The Gulf will also be the region which has the first multilateral agreement on joint development if the tripartite accord between Thailand, Vietnam and Malaysia is approved in the near future. Why is this model preferred in the Gulf? What are the factors which ensure the success of a joint development agreement? What lessons can be drawn from this experience?



CLAIMS AND AGREEMENTS IN THE GULF OF THAILAND

The Gulf of Thailand is characterised by overlapping claimed areas. Although the extent of these overlapping areas has been reduced over time through the conclusion of maritime boundary agreements, substantial areas of overlap remain, notably between Cambodia and Thailand. The Gulf is also host to multiple claims to the same maritime space with Vietnam claiming part of the Thai-Malaysian joint zone (see map). These overlaps date from the period June 1971 to May 1973 when South Vietnam, Cambodia and Thailand made unilateral claims to the continental shelf in the Gulf of Thailand.⁸

Although the coastal states in the Gulf have generally employed equidistance as a method to construct their unilateral claims, they have clearly adopted conflicting views as to the effect of islands – resulting in overlapping claims. Three agreements on maritime delimitation have been concluded in the Gulf: two between Malaysia and Thailand⁹ and another between Vietnam and Thailand.¹⁰

In 1972 Thailand and Malaysia succeeded in delimiting their territorial sea boundary and continental shelf boundary out to a point 29 miles offshore. However, the two

sides disagreed on the weight to be accorded to the islet of Ko Losin in the delimitation. This is an uninhabited Thai islet, standing 1.5 meters high above the sea level, which has no economic life of its own. According to Malaysia, this islet should have no effect on the delimitation. In contrast, the Thai side insists that Ko Losin is a valid basepoint. The two equidistant lines between Malaysia and Thailand drawn by the respective sides created an overlapping area. The disagreement eventually led to a temporary, practical solution. On 21 February 1979, a Memorandum of Understanding (MoU) on a joint development area was concluded by Thailand and Malaysia. The joint area was limited by the two unilateral claim lines – the 1973 claim of Thailand and the 1979 claim of Malaysia.¹¹ The gas reserves in the Thai-Malaysian Joint Development Area (JDA) were estimated to be 6.5 trillion cubic feet at the end of 1996.¹²

Similarly, there is also an overlapping area of 2,500km² created by Malaysian and Vietnamese claims. On 9 June 1971, South Vietnam opened the bidding with a claim to the seabed, drawn as a median line between the coastal islands of Malaysia and Vietnam. In 1979, the Malaysian authorities published charts showing their claim to the continental shelf. The outer limit of their claim was a median line between the Malaysian island of Redang and the Vietnamese cape of Ca Mau, ignoring Vietnamese coastal islands.

The decision to embark on joint development of this overlapping claims area was prompted by Malaysian hydrocarbon exploration activities in the Gulf, particularly from the mid-1980s onwards. Geologically, the overlapping area is located on the Malay basin with a sediment thickness of 8-9km and was considered to be a good petroleum possibility. Malaysia therefore signed three petroleum contracts with foreign enterprises, whose areas overlap with the area claimed by Vietnam. In May 1991, one of these operators, Hamilton (USA and Australia) announced that a test of the Bunga Orkid-1 well located within the overlapping claims area showed a rate of 4,400 barrels of oil per day. Gas reserves in the Malaysian-Vietnamese overlapping area as a whole were estimated to be 1.1 trillion cubic feet.¹³

These developments led to Vietnamese protests and on 30 May 1991, a note was sent to the Malaysian Foreign Ministry reaffirming that the friendly and cooperative spirit between the two countries did not allow any country to unilaterally grant to a third party the right to explore for and exploit petroleum in the overlapping area. Vietnam expressed its willingness to negotiate with Malaysia on the subject of their continental shelf delimitation, on the basis of respecting sovereignty and mutual interests in conformity with international law. Consequently, all petroleum exploration and exploitation projects carried out by PETRONAS (the national petroleum company of Malaysia) were suspended pending the result of negotiations with the Vietnamese side.

Hamilton's discovery pushed the two parties towards rapidly finding an acceptable solution for extracting petroleum resources. During the official visit of Vietnamese Prime Minister Vo Van Kiet to Kuala Lumpur in early 1992, an agreement on opening negotiations to delimit the continental shelf was reached.¹⁴ Following this, the first round of Malaysian-Vietnamese negotiations was carried out successfully in Kuala Lumpur on 3-5 June 1992. The area in which the two sides agreed to apply a joint development model in a spirit of understanding and cooperation and without prejudice to the final delimitation was determined.

In the MoU of 5 June 1992, both sides agreed that as a result of their continental shelf boundary claims located off the northeast coast of West Malaysia and off the southwest coast of Vietnam, there existed an overlapping area, concerning only the two parties, called the "Defined Area." Both sides agreed to exclude any area

claimed by a third country. The area claimed by Thailand as well as Malaysia and Vietnam has been a topic of separate negotiations since the end of 1997.

The “*Defined Area*” is long (over 100 miles) but narrow (less than 10 miles). As a result of its narrowness, any petroleum field discovered will probably fall only partially within the zone. Where a petroleum field is located partly in the Defined Area and partly outside that area in the continental shelf of Malaysia and Vietnam, both parties shall arrive at mutually acceptable terms for the exploration and exploitation of petroleum therein.

THE JOINT ZONES COMPARED

The Thai-Malaysian MoU of 1979 and Vietnamese-Malaysian MoU of 1992 have the same purpose – that of setting up a joint development arrangement in order to enable the exploitation of petroleum resources for the mutual benefit of the concerned parties. Both have 8 articles. In both cases, Article I defines the limits of the JDA. The Thai-Malaysian JDA of 7,300 square miles is limited by 7 points, marked from A to G. The southern limit of the area deviates from the equidistant line between the coastal lines of the two countries so that the JDA overlaps the tripartite Vietnamese-Thai-Malaysian overlapping area. The Vietnamese-Malaysian JDA is delimited by straight lines linking 6 points marked from A to F whose coordinates are presented in Article I of the MoU.

The first principle touched on by the two MoUs is the management of resources in the JDAs. The Thai-Malaysian MoU established the Malaysian-Thai Authority (referred to as the Joint Authority) for the purpose of the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping area for a period of fifty years (from the date the MoU comes into force). The Joint Authority consists of two joint chairmen, one from each country and an equal number of members from each country. A further MoU dealing with the constitution and establishment of the Joint Authority was subsequently signed by the two countries on 30 May 1990.

In the case of Vietnam and Malaysia, the two sides used another model of management. Article III of the 1992 MoU stipulates that Malaysia and the Socialist Republic of Vietnam agree to nominate their national oil companies PETRONAS and PETROVIETNAM, respectively, to undertake the exploration and exploitation of petroleum in the Defined Area. For this purpose, PETRONAS and PETROVIETNAM must enter into a commercial arrangement. The terms and conditions of that arrangement are subject to the approval of both governments. The commercial arrangement duly concluded by the two national petroleum companies on 25 August 1993 envisages the establishment of a Coordination Committee to provide policy guidelines for the management of petroleum operations in the Defined Area, operating on the principle of a unanimous vote. The Coordination Committee consists of eight members (of whom four members shall be appointed by PETRONAS and PETROVIETNAM respectively) with equal voting rights.

The validity of the existing PSCs will not adversely affect the equal sharing of economic benefits to both parties.

In contrast to the Thai-Malaysian model, the chairmanship of the Committee will be alternated between the parties every two years. For the existing Petroleum Sharing Contracts – PSCs signed by Malaysia before the conclusion of that arrangement – the two parties have agreed that PSC contractors will continue to carry out operations in the Defined Area. This represents a Vietnamese compromise for technical and economic reasons, and for the purpose of speeding up the optimum exploration and exploitation of petroleum in the arrangement area. However, the PSC contractors must duly inform both parties of the progress of petroleum operations and any amendments, changes and supplements to the PSCs are subject to the prior agreement of both parties. The validity of the existing PSCs will not adversely affect the equal sharing of economic benefits to both parties. PETROVIETNAM agreed to authorise PETRONAS to directly manage petroleum operations under the existing

PSCs under the broad direction of the Coordination Committee in accordance with the provisions of the MoU, the commercial arrangement and the PSCs.

The Vietnamese-Malaysian model arguably shows more flexibility than the Thai-Malaysian model...

The Vietnamese-Malaysian model therefore arguably shows more flexibility than the Thai-Malaysian model in terms of the management of joint development. The Coordination Committee is appointed by national petroleum companies, not by the governments directly as in the Thai-Malaysian model. Any dispute or disagreement arising from or in connection with commercial and petroleum operations will be settled by the two national companies, under the broad direction of the Coordination Committee. Any resolution or decision reached by the Coordination Committee will be consistent with the friendship, prudence and modern practice of the international petroleum industry. Only disputes or disagreements that cannot be settled amicably by the Coordination Committee will be submitted to the governments of Malaysia and Vietnam for settlement. Thus, the concerned governments will not interfere deeply into business operations. This model also shows a pragmatic approach on the part of the Vietnamese in allowing existing petroleum operations to continue unchecked. Demanding no changes to existing PSCs reached previously by Malaysia, the Vietnamese agreed to undertake joint activities on the basis of giving total responsibility to PETRONAS.

PETRONAS carries out all joint development operations and remits to PETROVIETNAM its equal share of net revenue free of any taxes, levies or duties.

The second principle mentioned in both MoUs is the equal sharing of all costs, expenses, liabilities and benefits resulting from petroleum activities in the JDAs. However, they implement this principle in different ways. In the Thai-Malaysian model, all costs incurred and benefits derived by the Joint Authority from activities carried out in the JDA will be borne equally and shared by both parties. In the Vietnamese-Malaysian model, the two parties also assume and bear equally all costs and benefits carried out under the commercial arrangements, but the system of joint management is replaced by the total mandate of PETRONAS, which undertakes directly all PSC operations in the Defined Area under the direction of the Coordination Committee. PETRONAS carries out all joint development operations and remits to PETROVIETNAM its equal share of net revenue free of any taxes, levies or duties. In other words, the applicable law for petroleum operations in the JDA is the Petroleum Law of Malaysia. Vietnam agreed to this arrangement to avoid interfering with the existing PSC contractors in the Defined Area and because it lacked an adequate petroleum law at that time.¹⁵

Article IV of the Thai-Malaysian MoU notes that the national authorities of either party have rights relating to fishing, navigation, hydrographic and oceanographic surveys, the prevention and control of marine pollution and other similar matters in the JDA and such rights shall be recognised by the Joint Authority. The Thai-Malaysian MoU also includes a criminal jurisdiction line, which divides the JDA into unequal parts – 930 square miles and 1,100 square miles for Malaysia and Thailand respectively.¹⁶ This line is not the boundary line of the continental shelf between the two countries in the JDA and it is not in any way prejudicial to the sovereign rights of either party. Besides the conflicts over petroleum resources, the Thai and Malaysian authorities also face the problem of illegal fishing and similar matters in the JDA. In contrast, the Vietnamese-Malaysian relationship is less affected by fishing questions, not least because of the smaller size of the zone and the large maritime spaces over which both countries exercise jurisdiction. This probably explains why the Vietnamese-Malaysian MoU does not mention any matters beyond petroleum activities in the JDA.

The third principle of the JDAs concerns the matter of unity of deposit. Both MoUs envisage the situation where a single geographical petroleum or natural gas structure or field, or other mineral deposit extends beyond the limits of the JDA. In this situation, the party or parties concerned will communicate to each other all relevant information and shall seek to reach agreement as to the manner in which the

structure, field or deposit will be most effectively exploited. For example, Article II of the Vietnamese-Malaysian MoU states:

Where a petroleum field is located partly in the Defined Area and partly outside that area in the continental shelf of Malaysia or the Socialist Republic of Vietnam, as the case may be, both parties shall arrive at mutually acceptable terms for the exploration and exploitation of petroleum therein.

Concerning the principle of dispute settlement, both MoUs state that any difference or dispute arising out of the interpretation or implementation of the provisions of the MoU shall be settled peacefully by consultation or negotiation between the two parties on the basis of good neighbourliness and in conformity with international law.

The Thai-Malaysian MoU is valid for fifty years. If no satisfactory solution is found to the problem of the delimitation of the continental shelf boundary within this fifty year period, the Joint Authority shall continue indefinitely. The Vietnamese-Malaysian MoU does not envisage any set term. The commercial arrangement concluded by the national petroleum companies states that it remains effective until:

- (a) *the MoU expires; or*
- (b) *the termination of this Arrangement as may be agreed by both Parties and/or both the Government of Malaysia and the Government of Vietnam; or*
- (c) *the termination of the PSC.*

Despite having the same objectives - joint development of oil and gas resources – and being applied to similar maritime disputes in the same region, the two models discussed are different and they provide different results. The Thai-Malaysian MoU was signed in 1979 but the two parties only exchanged their instruments of ratification on 30 May 1990. It took 15 years for the Thai and Malaysian authorities to overcome legal obstacles to realise the implementation of their joint development arrangement. In the case of the Vietnamese-Malaysian model, the first petroleum was extracted from the Bunga Kekwa field on 29 July 1997, four years after the conclusion of the commercial arrangement. This event can be viewed as a great success and vindication of the Malaysian-Vietnamese model of joint development in the Gulf.

FACTORS PROMOTING SUCCESS IN A JOINT DEVELOPMENT ARRANGEMENT:

LEGAL BASIS AND THE POLITICAL WILL OF PARTIES

Joint development arrangements can be found in international practice with both determined and undetermined limits, and in relation to both disputed and undisputed areas.¹⁷ The legal basis for joint development was provided by the International Court of Justice in the North Sea Continental Shelf cases when it was stated that:

*if...the delimitation leaves to the Parties areas that overlap, there are to be divided between them in agreed proportions or failing agreement, equally, unless they decide on a regime of joint jurisdiction, use, or exploitation for the zone of overlap or any part of them.*¹⁸

Furthermore, paragraph 3 of articles 74 and 83 of UNCLOS provide that:

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 jeopardise or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

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concerned are free to choose any mode of arrangements for the overlapping areas in conformity with international law. In practice, the creation of a JDA constitutes an effective provisional arrangement permitting countries to overcome territorial disputes and facilitate the exploitation of natural resources in a transitional period. In the context of preventing any prejudicial exploitation and avoiding any waste by non-utilisation of natural resources, the application of a joint development regime for all or a portion of an overlapping area constitutes an attractive and agreeable measure pending a final delimitation. However, the MoUs concluded in the Gulf of Thailand were agreed before UNCLOS entered into force (on 16 November 1994). Do these MoUs have a legal foundation in customary international law?

Onorato has argued that joint development could constitute a rule of customary international law, binding on three points: first, a state concerned may not unilaterally exploit the common international petroleum deposit over the timely objection of another interested state; second, the method of exploitation of such a deposit must be agreed on by the states involved; third, these states should enter into negotiations in good faith to arrive at an agreement or at least at a provisional arrangement until a final agreement is reached.¹⁹ Quoting the ICJ opinions in the Tunisian and Libyan continental shelf case in 1982, and citing state practice (14 cases), conventional international law, general principles of law and principles of soft law, Zhiguo Gao emphasises that joint development is a binding rule of international law.²⁰ Here, in this author’s view, caution should be exercised.

Joint development is only a temporary solution.

Firstly, international law demands that states negotiate in good faith to reach an agreement or at least a provisional arrangement of a practical nature pending a final agreement. It signifies that a joint development solution is required only for provisional arrangements. It has a provisional but not binding nature. The concept of joint development can be found in state practice, in conventional international law, or in international jurisprudence. However, the definition of joint development is not uniform in conventional international law and jurists have many explanations.²¹ Secondly, the number of cases of joint development arrangements are not sufficient to say that there is existing *opinio juris* on that matter. The final maritime delimitation is always the principle purpose of states. Joint development is only a temporary solution. It therefore seems that joint development is not required as a binding rule of international law.

In the Gulf of Thailand, the states concerned have preferred to conclude Memorandums of Understanding rather than formal agreements or treaties. MoUs are conventional international tools, including treaty-like procedures of signature and ratification. However, they present a way of expressing engagement at a level lower than a treaty. The application of different models of joint development in the Gulf of Thailand shows that the concept and models of provisional arrangements are not necessarily similar. It seems to be premature to conclude that there is a rule of customary international law on joint development. The agreements on joint development have been reached, at first, by the political will of states concerned.

ECONOMIC FACTORS

The possibility of petroleum exploitation in the disputed areas and the potentially significant economic consequences of such developments for the countries concerned was clearly a strong motivating factor promoting cooperation in the form of joint development. Lack of agreement between the claimant states naturally hampers such economic activities as international companies are generally wary of investing in areas where jurisdiction is uncertain and international law does not encourage unilateral exploration and exploitation in a disputed area.

Under such circumstances joint development can be an effective tool for overcoming legal obstacles. The value of joint development lies in its ability to resolve disputes in favour of economic development. For example, Thailand was active in concluding a joint development arrangement with Malaysia in 1979 because the country was

more dependent on petroleum imports than Malaysia. However, in the dispute with Vietnam, Thailand preferred a final delimitation to joint development. In the Vietnam-Malaysia case a joint development solution was rapidly reached because of the parties' economic interest in discovered hydrocarbon deposits.

Joint development guarantees a 'no gain no loss' solution...

Knowledge of the existence of resources in the sea-bed and subsoil of an overlapping area plays an important role in seeking a solution to a particular dispute. Generally, the less awareness there is of the existence of resources in a disputed area, the easier it is to reach a compromise. The discovery of new structures or deposits makes it difficult to reach a solution because the states concerned naturally tend to push their maximum claims. If the potential for petroleum is not great, the states concerned can arrive at an agreement more easily. Joint development guarantees a 'no gain no loss' solution for the states concerned. The equal share of costs and benefits also guarantees equal rights for the parties until a final delimitation is reached. Additionally, when resources are fully exploited, delimitation tends not to be a difficult problem to overcome.

OTHER FACTORS

Another important factor influencing the success of a joint development arrangement is the general degree of cooperation and good relationship between the states concerned. In the Gulf of Thailand context the admission of Cambodia and Vietnam into ASEAN can be viewed as creating more favourable conditions for reaching a solution of delimitation questions and for cooperation in the spirit of ASEAN between states in the region.

Joint development will also only prove a good solution for the states concerned if a mutually acceptable form of management can be agreed upon. The Thai-Malaysian MoU of 1979 envisaged the establishment of a Joint Authority for the management of activities in the JDA. However, the two parties initially failed to find a common position in determining the extent of its powers. This was one of the reasons why the Joint Authority only came into force in 1994, 15 years after the signature of the MoU. Additionally, the good management of joint development may also depend on the dimensions of the JDA. If the disputed area is not big, the states concerned can more easily arrive at a joint development solution for the whole area as in the case of the Vietnamese-Malaysian JDA. In contrast, a large JDA such as the 1974 South Korea-Japan area posed significant management challenges and had to be divided into nine smaller sub-zones (in 1987) to attract foreign investment.

...the fewer parties, the easier it is to reach agreement.

The number of countries involved can also be a factor. Generally, the fewer parties, the easier it is to reach agreement. This explains why all joint development agreements concluded to date worldwide are bilateral arrangements. The recent negotiation between Thailand, Vietnam and Malaysia in 1999 has reached agreement in principle on joint development in the tripartite overlapping area (approximately 800km²) where Vietnamese claims overlap with the Thai-Malaysian JDA of 1979. At present the parties concerned are continuing discussions on technical questions such as organisation and the share of costs and benefits. If a trilateral Malaysia-Thailand-Vietnam agreement is achieved it will be the first multilateral joint development agreement in the world.

Most joint development agreements have dealt with petroleum exploration and exploitation. However, the concept has also been applied to disputes over issues such as fishing management. A good example of this type of joint development arrangement is the Papua New Guinea and Australia agreement of 18 December 1978 concerning the Torres Strait. However, the possibility of managing all kinds of natural resources in joint zones raises complex questions of administration. Therefore this factor should be considered when seeking an effective solution.

CONCLUSION

In this author's view, the experience of joint development in the Gulf of Thailand illustrates that where good neighbourliness and political will are present, joint development offers a convenient way to bypass contentious maritime boundary disputes, facilitating the exploitation of valuable petroleum resources. This addresses the economic needs of the parties on a 'no gain, no loss' basis. It can also be concluded that the less complicated form of organisation adopted in the Malaysia-Vietnam case compares favourably to the institutionally sophisticated Thai-Malaysian experience and may serve as a model for joint development beyond the confines of the Gulf of Thailand.

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- 1 R.R. Churchill, "Joint development zones: international legal issues", in Hazel Fox, *Joint development of offshore oil and gas*, vol. II, The British Institute of International and Comparative Law, 1990, p.56.
- 2 J.R.V. Prescott, *The Gulf of Thailand: maritime limits to conflict and cooperation*, MIMA, Kuala Lumpur, Malaysia, 1998, p. 9-11.
- 3 Kuril islands (Russia-Japan); Takeshima island (Japan-South Korea); Senkaku islands (Japan-China-Taiwan); Paracels islands (Vietnam-China); Spratly (Vietnam, China, Taiwan, Malaysia and Philippines).
- 4 Thao Nguyen Hong, *Le Vietnam face aux problèmes de l'extension maritime dans la mer de Chine méridionale*, Thèse, Paris I, 1996, p. 402-428.
- 5 Article 3 of the agreement on Historic waters of Cambodia and Vietnam:
Pending the settlement of the maritime border between the two States in the historical waters...Patrolling and surveillance in these territorial waters will be jointly conducted by the two sides. The local population will continue to conduct their fishing operations and the catch of other sea products in this zone according to the habits that have existed so far. The exploitation of natural resources in this zone will be decided by common agreement.
- 6 Protocol of the first meeting of the Thai-Vietnamese Joint Committee on culture, economic, science and technique cooperation in October 1991:
a) both sides should cooperate in defining the limits of the maritime zones claimed by the two countries;
b) both sides should try to delimit the maritime boundary in the overlapping area between the two countries, and
c) such delimitation should not include the overlapping zones which are also claimed by any third country.
Both sides also agreed that, pending such delimitation, no development activities or concessions in the area of overlap should be assigned or awarded to any operator. The two sides informed each other that there are no development activities or concessions in the area claimed by Vietnam which overlaps the Joint Development Area between Thailand and Malaysia.
In this context, the Thai side proposed that failing the attempt in b) the two sides might consider implementing the Thai concept of joint development area.
- 7 Of 14 cases dealing principally with joint development regime in the world, two are located in the Gulf of Thailand.
- 8 The South Vietnam promulgated the outer limits of its continental shelf on 9 June 1971; Thai proclamation on the limits of its continental shelf was made on 18 May 1973 and the Malaysian map showing the outer limits of its continental shelf was published on 21 December 1979.
- 9 Treaty between the Kingdom of Thailand and Malaysia relating to the delimitation of the territorial seas of the two countries and *Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the delimitation of the continental shelf boundary between the two countries in the Gulf of Thailand on 24 October 1979*. J.R.V. Prescott, *The Gulf of Thailand: maritime limits to conflict and cooperation*, MIMA, Kuala Lumpur, Malaysia, 1998, p. 92-94.
- 10 *Agreement between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Vietnam on the delimitation of the maritime boundary between the two countries in the Gulf of Thailand on 9 August 1997*. Nguyen Hong Thao, "Vietnam's First Maritime Boundary Agreement", *IBRU, Boundary and Security Bulletin*, volume 5:3, Autumn 1997, p. 74-79.
- 11 K. Kittichaisaree, *The Law of the Sea and Maritime Boundary Delimitation in Southeast Asia*, Oxford University Press, Singapore, 1987, Appendix 6.
- 12 J.R.V. Prescott, *The Gulf of Thailand: maritime limits to conflict and cooperation*, MIMA, Kuala Lumpur, Malaysia, 1998, p. 12.
- 13 J.R.V. Prescott, *The Gulf of Thailand: maritime limits to conflict and cooperation*, MIMA, Kuala Lumpur, Malaysia, 1998, p. 14.
- 14 *Nhan Dan Daily*, 25 January 1992.
- 15 Vietnamese Petroleum Law was approved on 6 July 1993.
- 16 J.R.V. Prescott, *The Gulf of Thailand: maritime limits to conflict and cooperation*, MIMA, Kuala Lumpur, Malaysia, 1998, p. 33.
- 17 Hazel Fox, *Joint development of offshore oil and gas*, vol. II, The British Institute of International and Comparative Law, 1990.
- 18 L. Lucchini/M. Voelckel, *Droit de la mer*, tome 2, volume 1, Délimitation, Pedone, p. 115-118.
 T. Onorato and Mark J. Valencia, "International Cooperation for petroleum Development: the Timor Gap Treaty", *Foreign Investment Law Journal*, vol. 5, N0 1, Spring 1990.
 Mark J. Valencia, "Taming troubled waters: Joint development of oil and mineral resources in overlapping claim areas", *San Diego Law Review*, Vol. 23, No 3, 1986.
- 19 North Sea Continental Shelf Cases, judgement of 20 February 1969, *International Court of Justice Reports* 1969, :3.
- 20 T. Onorato, "Apportionment of an International Common Petroleum Deposit: A reprise", *International and Comparative Law Quarterly* 26, 1977, p. 324.

- ²⁰ Zhiguo Gao, "The Legal Concept and Aspects of Joint Development in International Law", *Ocean Yearbook*, v. 13, 1998, p. 123: "Joint development is an emerging rule of customary international law, or at least a principle of soft law, under which unconsented, unilateral, and arbitrary development of shared resources in a disputed area between states is prohibited and unacceptable".
- ²¹ There are some definitions of Joint development:
- "there are two types of joint development schemes: one is the type in which boundary delimitation has been solved and the other is a regime of joint development with the boundary delimited"
- M. Mioyoshi, "The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf", *International Journal of Estuarine and Coastal Law* 3 (1988):3.
- "the cooperation between States with regard to the 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, Report on Joint Development of Non-living Resources in the Exclusive Economic Zone, (Warsaw Conference of the International Committee on the Exclusive Economic Zone, International Law Association, 1988, p. 2).
- Churchill: "JDZ will be considered as being an area where two or more States have, under international law, sovereign rights to explore and exploit the natural resources of the area and where the States concerned have agreed to engage in such exploration and exploitation under some form of common or joint arrangement",
- in: Hazel Fox, *Joint development of offshore oil and gas*, vol. II, The British Institute of International and Comparative Law, 1990, p. 55.

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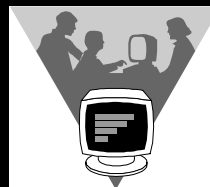
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