Joint Development in Continental Shelf Areas Beyond 200M

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New Knowledge and Changing Circumstances in the Law of the Sea
The Law of the Sea Institute of Iceland
Korea Maritime Institute
The Netherlands Government
K.G. Jebsen Centre for the Law of the Sea
28–30 June 2018, Reykjavik, Iceland
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)

- 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.”

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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