Joint Development Agreements of Offshore Hydrocarbon Deposits: An Alternative to Maritime Delimitation in the Asia-Pacific Region

Vasco Becker-Weinberg*

Abstract: In the past years, the availability of the technology that allows for the exploitation of offshore resources at depths that were recently unreachable to mankind and the desire to extend national jurisdiction in order to secure access to non-living marine natural resources, has resulted in an increase of coastal States' claims over maritime areas and in particular over the continental shelf.

Amongst the different regions of the planet, the Asia-Pacific region is a clear example of a situation where the potential development of offshore hydrocarbon deposits has been the cause of disputes between the relevant coastal States. In fact, considering on the one hand, the existing disputes and the number of maritime boundaries that have been delimitated in this region and, on the other hand, the growing need for energy sources, the right to develop offshore hydrocarbon deposits is a key issue for the States in the Asia-Pacific region.

Notwithstanding the fact that contemporary public international law, and in particular law of the sea, does not provide a straight forward solution for the settlement of such disputes, State practice and some international jurisprudence have considered interim measures pending maritime delimitation.

In some cases, interim measures such as joint development agreements have allowed for the development of common offshore resources that straddle a boundary line or are found in areas of overlapping sovereignty claims. This was the case of the legal regimes of joint development of offshore hydrocarbon deposits implemented in the Timor Sea, the Northeast China Sea and the Gulf of

* Vasco Becker-Weinberg, Scholar at the International Max Planck Research School for Maritime Affairs. E-mail: weinberg@mpipriv.de.

Thailand.

Therefore, despite the legal disparities of known joint development agreements of offshore hydrocarbon deposits and the fact that the respective concept and legal nature is far from being homogenous, it is possible, after a comprehensive legal analysis of the different agreements, to present a legal solution adapted to the specific circumstances of the Asia-Pacific region, that could ultimately lead to an economic, political and social improvement of this region.

Key Words: Maritime Delimitation; Development of Offshore Hydrocarbon Deposits; Asia-Pacific Region1

Ⅰ. Introduction

A. *Maritime Delimitation and Development of Offshore Hydrocarbon Deposits*

The location and nature of offshore hydrocarbon deposits, in particular their mobility through geological layers of the subsoil which allows these resources to move freely between the pore spaces of rock and the impossibility of their confinement to a certain area, raises important and particular legal questions regarding their common development by two or more States.

Under current law of the sea, States exercise different rights depending on the legal regime applicable to each maritime space, in particular regarding the development of living and non-living marine natural resources.

In the continental shelf, States have the exclusive and inalienable sovereign right to develop the resources found therein, regardless of prior proclamation or

occupation of this maritime space. ① Whereas, in the EEZ, States' rights depend on prior proclamation by the relevant coastal State and should be considered as mere rights of fruition when compared with the regime of the continental shelf, and in particular in what concerns States' sovereignty regarding the development of resources. ②

Under UNCLOS③ the criteria of distance were adopted for the purpose of delimitation of the continental shelf and in order to achieve an equitable result, contrary to the physical characteristics and the natural extension of the seabed which are considered irrelevant. ④

In situations of adjacent or opposite coasts, UNCLOS establishes that delimitation should be carried out with the use of a median line, safe for special circumstances that might justify its amendment, such as the presence of third

---

① Article 77 (2) *in fine* (3) of UNCLOS. *See* Nguyen Quoc DINH, Patrick DAILLER and Alain PELLET, *Droit International Public*, 7th ed., Paris: Librairie Générale de Doit et de Jurisprudence/E. J. A., 2002, p. 1192; Victor PRESCOTT, National rights to hydrocarbon resources of the continental margin beyond 200 nautical miles, in Gerald BLAKE, Martin PRATT, Clive SCHOFIELD and Janet Allison BROWN ed., *Boundaries and Energy: Problems and Prospects*, London/The Hague/Boston: Kluwer Law International, 1998, pp. 51～52; Philip ALLOTT, Mare Nostrum: a new international Law of the Sea, *American Journal of International Law*, Vol. 4, 1992, pp. 767～768; René-Jean DUPUY and Daniel VIGNES, *A Handbook on the New Law of the Sea*, Vol. 1, Dordrecht/Boston/Lancaster: Martinus Nijhoff Publishers, 1991, pp. 315～381; Laurent LUCCHINI and Michel VOELCKEL, *Droit de la Mer, La Mer et son Droit. Les espaces maritimes* (t. 1), ed., Paris: Pedone, 1990, pp. 164～169; Jean COMBACAU, *Le Droit de la Mer*, ed., Paris: Presses Universitaires de France, 1985, pp. 58～67; Charles ROSSEAU, *Droit International Public. Les Relations Internationales* (t. 4), ed., Paris: Sirey, 1980, pp. 358～359.

② Article 56 UNCLOS. *See* International Law Association, *Report of the International Committee on the Principles Applicable to Living Resources Occurring Both within and without the Exclusive Economic Zone or in Zones of Overlapping Claims*, by Professor Dr. Rainer Lagoni (Cairo Conference 1992), pp. 1～32; René-Jean DUPUY and Daniel VIGNES, *A Handbook on the New Law of the Sea*, Vol. 1, Dordrecht/Boston/Lancaster: Martinus Nijhoff Publishers, 1991, pp. 275～307.

③ The United Nations Convention on the Law of the Sea, made in Montego Bay, on December 10th, 1982, published at 1833 UNTS 3.

④ Article 76 of UNCLOS. *See* ICJ Reports (1984), pp. 261～266, pp. 312～317, pp. 339～344 and (1981), p. 88, 127; E. D. BROWN, *Sea-bed Energy and Minerals: the International Legal Regime. The Continental Shelf*, Vol. 1, Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1992, pp. 19～23; L. Dolliver M. NELSON, The roles of equity in the delimitation of maritime boundaries, *American Journal of International Law*, Vol. 84, No. 4, 1990, p. 846; Shigeru ODA, *The Law of the Sea in Our Time-I. New Developments* 1966－1975, 3 Publications in Ocean Development, Leyden: A. W. Sijthoff, 1977, p. 254.

States, despite the law of the sea convention preferring the use of equitable principles over the median line regarding the delimitation of the continental shelf and the EEZ. ①

There is a significant difference concerning the rights of third States in the continental shelf and in the EEZ, notwithstanding the substantive integration of both regimes in terms of States' rights in the seabed and subsoil. Even before the EEZ regime had been introduced by UNCLOS, it had become evident that it would be necessary to secure the compatibility between coastal States' sovereignty claims of the seabed and the rights of third States regarding the development of other resources found therein, such as fishing. ②

In fact, although both regimes include the seabed and subsoil and regard sovereign rights for the functional purpose of exploring and exploiting natural resources, only in the continental shelf is there exclusivity. ③ While in the EEZ coastal States must have due regard for the rights and duties of other States and act with respect for such rights, duties and freedoms, in the continental shelf only coastal States are entitled to exercise the inherent and exclusive sovereign right of exploring and exploiting the non-living marine natural resources and the sedentary species found therein, safe for coastal States' explicit consent that other States undertake similar operations. This means that, if a coastal State chooses not to explore and exploit the non-living marine natural resources and the sedentary species found in the continental shelf, no other State may do

---

① Articles 74 and 83 of UNCLOS. *See* ICJ Reports (1985), pp. 41～43, pp. 56～57.

② Cecil J. B. HURST, Whose is the bed of the Sea? *British Yearbook of International Law*, Vol. 4, 1923－24, p. 43.

③ Articles 56(1), 57 and 76(1) of UNCLOS. *See* Francisco ORREGO VICUÑA, La zone économique exclusive dans la législation et la pratique des États, in *Droit de La Mer* (v. 2) (coord.) Jean COMBACAU /Pierre－Marie DUPUY ed., Paris: Pedone, 1990, pp. 44～45; *The Exclusive Economic Zone. Regime and Legal Nature under International Law*, Cambridge/New York/Port Chester/Melbourne/Sydney: Cambridge University Press, 1989, p. 71; Barbara KWIATKOWSKA, *The 200 Mile Exclusive Economic Zone in the New Law of the Sea*, 2 Publications on Ocean Development, Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1989, pp. 91～92; David Joseph ATTARD, *The Exclusive Economic Zone in International Law*, Oxford: Clarendon Press, 1987, pp. 192～210; Julio César LUPINACCI, The legal status of the exclusive economic zone in the 1982 Convention on the Law of the Sea, in Francisco ORREGO VICUÑA ed., *The Exclusive Economic Zone. A Latin American Perspective*, 1 Foreign Relations of the Third World, Boulder Colorado: Westview Press, 1984, pp. 105～111; Hugo CAMINOS, The regime of fisheries on the exclusive economic zone, in Francisco ORREGO VICUÑA ed., *The Exclusive Economic Zone. A Latin American Perspective*, 1 Foreign Relations of the Third World, Boulder Colorado: Westview Press, 1984, pp. 151～155.

so without the latter's consent. ①

However, coastal States' rights in the continental shelf do not have an absolute character, in the sense that they do not know any limits. UNCLOS clearly foresees that the rights of the coastal States over the continental shelf do not affect the legal status of the superjacent waters and air space above those waters, as well as the rights and freedoms of other States, such as the right to lay submarine cables and pipelines, the freedom of navigation or the activities regarding international cooperation and promotion of marine scientific research. ②

The EEZ assures the compatibility between these two regimes referring that in the seabed and subsoil coastal States shall act in conformity with the continental shelf regime without implying a merger of the two maritime spaces and simply complementing the delimitation between them. ③

In respect of the delimitation of boundaries in the continental shelf, UNCLOS includes rules applicable to the delimitation between States with adjacent boundaries extending 200nm or with opposite boundaries in the case of enclosed and semi-closed seas where claims of 200nm overlap, as well as to the delimitation of archipelagic States or when claims overlap with the Area, without prejudice of States' right not to enter into delimitation agreements. ④

It is mostly when sovereignty claims overlap and States fail to reach an agreement on delimitation that interim measures, such as joint development agreements, exert particular relevance as a pragmatic solution, in particular when the development of mineral resources hangs in the balance. ⑤ Should a hydrocarbon deposit straddle a boundary line between States and become exploitable from either side of that line, States may adopt a form of cooperative development of common offshore hydrocarbon deposits. Nonetheless, coastal

---

① Articles 55, 56 77(2) (4) and 81 of UNCLOS.

② Articles 58, 78, 79 and 87(1) (a) and Part XIII of UNCLOS.

③ Article 56 (3) UNCLOS. *See* David Joseph ATTARD, *The Exclusive Economic Zone in International Law*, Oxford: Clarendon Press, 1987, p. 139.

④ Article 48, 76 (10), 83 and 134 (4) and article 9 of Annex II of UNCLOS.

⑤ Sun Pyo KIM, *Maritime Delimitation and Interim Arrangements in North East Asia*, Hague/London/New York: Martinus Nijhoff Publishers, 2004, p. 12; Rodman R. BUNDY, State practice in maritime delimitation, in Gerald H. BLAKE, ed., *World Boundaries. Maritime Boundaries* (v. 5), London/New York: Routledge, 1994, pp. 36 ~ 40; Mark J. VALENCIA, Joint jurisdiction and development in southeast Asia seas: factors and candidate areas, in Mark J. VALENCIA, ed., *Geology and Hydrocarbon Potential of the South China Sea and Possibilities of Joint Development*, New York/Oxford/Toronto/Sydney/Paris/Frankfurt: Pergamon Press, 1985, p. 575.

States are prevented from engaging in any conduct that could have an impact on a common hydrocarbon deposit should these States fail to agree on delimitation or a cooperative regime. ①

States' activities have to be undertaken so as not to represent an attempt or a *de facto* appropriation of the respective maritime area and must have due regard for the rights of third States. In fact, should two States agree on the joint development of offshore hydrocarbon deposits found in a maritime area also claimed by a third State, this agreement may not be implemented without the consent or participation of the latter, being the relevant States subject to international liability for damages caused. ②

Furthermore, the delineation of a joint development zone under a joint development agreement of offshore hydrocarbon deposits does not replace the delimitation of maritime boundaries, nor does a joint development zone constitute a provisional delimitation of maritime boundaries. The two subjects, joint development of marine natural resources and maritime delimitation, should not be confused, nor ought the correlation between these two to be considered as choosing one over the other. The assumption that delimitation is a precedent or a precondition for the development of common marine natural resources may prove to be precipitous, since it may very well happen that both coexist or even that States eventually agree on the delimitation of maritime boundaries when a joint development regime has been successfully implemented, given that States do not have to address the complex and strenuous issue of management of common resources, thus facilitating the settlement on the delimitation of maritime boundaries. In these cases, maritime boundaries disputes eventually cease to exist or become dormant as States look towards legal interim measures that allow for the development of marine resources.

In light of articles 74(3) and 83(3) of UNCLOS, any interim measure im-

---

① Article 83(3) UNCLOS *in fine*.

② ICJ Reports 1997, p. 178, 152. *See* Betsy Baker Röben, Civil liability as a control mechanism for environmental protection at the international level, in Fred L. Morrison/Rüdiger Wolfrum ed., *International, Regional and National Environmental Law*, The Hague/London/Boston: Kluwer Law International, 2000, p. 836; Rüdiger WOLFRUM, Means of ensuring compliance with and enforcement of international environmental law, 272; The Hague/London/New York: Martinus Nijhoff Publishers, 1998, pp. 81～82; International Law Association, *Report of the International Committee on the Principles Applicable to Living Resources Occurring Both within and without the Exclusive Economic Zone or in Zones of Overlapping Claims*, by Professor Dr. Rainer Lagoni (Cairo Conference 1992), p. 24.

plemented by States shall have a practical nature and shall be without prejudice of final delimitation, which necessarily implies that final delimitation will always depend on the voluntary agreement between States, regardless of the interim measure adopted pending the delimitation of maritime boundaries. Furthermore, third States are entitled to exercise the freedom of the high seas in the joint development zone as established in Part Ⅶ of UNCLOS, despite States' control and management of these areas.

B. The Concept of Joint Development of Offshore Hydrocarbon Deposits

Joint development agreements of offshore hydrocarbon deposits are the result of States' creative and pragmatic legal approach towards hurdling the obstacles of maritime boundary delimitation procedures and development of common resources, even though such creativity and pragmatism in seeking a legal solution for the complex problems associated with the development of common offshore hydrocarbon deposits is often the result of an economic drive, rather than a legal one. In effect, States cooperation is the outcome of the correlation between economic interests and the need for a better and more efficient development of natural resources.

The number of joint development agreements of offshore hydrocarbon deposits has been small in respect of existing deadlock disputes on maritime boundary delimitation and in particular when considering that only few agreements have been implemented since the signing of the first agreement more than fifty years ago between Bahrain and Saudi Arabia,[①] despite the fact that this concept was also considered in respect of the common development of onshore resources.[②]

This may be due to the lack of awareness of the legal characteristics of joint development agreements of offshore hydrocarbon deposits and of the ad-

---

① Bahrain-Saudi Arabia Frontier Agreement, made on February 22nd, 1958, published at UNTS 1733 (1993), pp. 3～13.

② Agreement between the Government of the Czechoslovak Republic and the Austrian Federal Government concerning the Principles of Geological Co-operation between the Czechoslovak Republic and the Republic of Austria, made in Prague, on January 23rd, 1960, published at 495 UNTS 7241 (1964), pp. 112～122. Agreement between the Government of the Czechoslovak Republic and the Austrian Federal Government Concerning the Working of Common Deposits of Natural Gas and Petroleum, made in Prague, on January 23rd, 1960, published at 495 UNTS 7242 (1964), pp. 134～140.

vantages of these regimes to forward a legal solution that could ultimately alter the geopolitical context of a certain region. In some circumstances, States have refused, rejected or ignored attempts by other States to settle such disputes due to political, social and economic differences, or even to the absence of diplomatic relations which prevented the necessary reliability and predisposition to settle these disputes at a bilateral, regional or multilateral level. ① On other occasions, States decided on different and sometimes radical solutions, including the military occupation of rocks and islands in order to reinforce the respective claims on the disputed and surrounding maritime area, thus securing the unlawful granting of development rights of the marine natural resources found

① Douglas M. JOHNSTON and Mark J. VALENCIA, *Pacific Ocean Boundary Problems. Status and Solutions*, Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1991, pp. 24～26.

therein, such as what has happened regarding the Spratly Islands. ①

Joint development agreements of offshore hydrocarbon deposits may also include the exploration and exploitation of living resources. Indeed, the concept of joint development was firstly applied to international fisheries management and was later used in the common development of offshore hydrocarbon deposits.

The concept of joint development is applicable in the continental shelf and or in the EEZ. In fact, the disputes regarding overlapping EEZs and continental

---

① Jon M. VAN DYKE, Disputes over islands and maritime boundaries in East Asia, in Seoung-Yong HONG and Jon VAN DYKE ed., *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Martinus Nijhoff Publishers, 2009, pp. 62～75; Alex G. Oude ELFERNIK, The Islands in the South China Sea: how does their presence limit the extent of the high seas and the Area and the maritime zones of the mainland coasts? *Ocean Development and International Law*, Vol. 32, No. 2, 2001, pp. 169～191; Monique CHEMILLER-GENDREAU, *Sovereignty over the Parcel and Spratly Islands*, The Hague/London/Boston: Kluwer Law International, 2000, pp. 141～143; ZOU Keyuan, The Chinese traditional maritime boundary line in the South China Sea and its legal consequences for the resolution of the dispute over the Spratly Islands, *The International Journal of Marine and Coastal Law*, Vol. 14, No. 1, 1999, pp. 27～55; Mark J. VALENCIA and Jon M. VAN DYKE, Comprehensive solutions to the South China Sea disputes: some options, in Gerald BLAKE, Martin PRATT, Clive SCHOFIELD and Janet Allison BROWN ed., *Boundaries and Energy: Problems and Prospects*. International Boundary Studies Series, London/The Hague/Boston: Kluwer Law International, 1998; Christopher C. JOYNER, The Spratly Islands dispute: rethinking the interplay of law, diplomacy, and geopolitics in the South China Sea, *The International Journal of Marine and Coastal Law*, Vol. 13, No. 2, 1998, pp. 193～236; Lian A. MITO, The Timor of Gap treaty as a model for joint development in the Spratly islands, *American University International Law Review*, Vol. 13, No. 3, 1998, p. 752; Daniel J. DZUREK, The Spratly Islands dispute: who's on first?, *Maritime Boundaries*, Vol. 2, No. 1, 1996, pp. 1～67; Brian K. MURPHY, Dangerous ground: the Spratly islands and international law, *Ocean and Coastal Law Journal*, 1994, pp. 187～212; Jon M. VAN DYKE and Dale L. BENNETT, Islands and the delimitation of the Ocean Space in the South China Sea, *Ocean Yearbook*, Vol. 10, 1993, pp. 54～89; Ted MCDORMAN, The South China Sea islands dispute in the 1990s-a new multilateral process and continuing friction, *The International Journal of Marine and Coastal Law*, Vol. 8, No. 2, May 1993, pp. 272～276; S. p. JAGOTA, Maritime boundary and joint development zones: emerging trends, *Ocean Yearbook*, Vol. 10, 1993, pp. 126～127; Hungdah CHIU and Choon-Ho PARK, Legal status of the Parcel and Spratly Islands, *Ocean Development and International Law Journal*, Vol. 3, No. 1, 1975, pp. 1～28; Mark J. VALENCIA, National marine interests in Southeast Asia, in George KENT/Mark J. VALENCIA ed., *Marine Policy in Southeast Asia*, Berkeley/Los Angeles/London: University of California Press, 1985, pp. 33～57; Jeanette GREENFIELD, China and the Law of the Sea, in James CRAWFORD and Donald R. ROTHWELL ed., *The Law of the Sea in the Asian Pacific Region*, Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1995, pp. 21～40.

shelves do not necessarily imply the delimitation of maritime boundaries, since States may decide to establish a joint development regime for the purpose of exploring and exploiting the respective marine natural resources. States may choose to develop both living and non-living marine natural resources in one or more joint development zones established under a certain legal framework, permitting States to simultaneously develop straddling hydrocarbon deposits and implementing a common policy of fish stocks management.

The legal characteristics of each joint development regime are unique, making it very difficult to pin-down or to reach a consensus regarding its key legal provisions or even the definition of the concept of joint development agreements of offshore hydrocarbon deposits.

Joint development agreements have been considered to represent an alternative to maritime boundary delimitation, allowing States to take part in a joint endeavour for the exploration and exploitation of hydrocarbon deposits, while equally sharing the resources found in a specific maritime area where States' sovereignty claims overlap. ① However, this perception of joint development agreements fails to include those agreements implemented after final maritime boundary delimitation or when States' claims do not overlap. Moreover, there is no rule-of-thumb when it comes to establishing revenue or cost sharing schemes, since States are free to define the content of joint development regimes in accordance with their interests and with the pragmatic nature of these regimes. ②

Another view of joint development agreements is that which considers that there is a convergence of sovereignty rights of two States towards the common development of non-living marine natural resources found in areas subject to

---

① William T. ONORATO, Promoting foreign investment through international petroleum joint development regimes, *ICSID Review*, Vol. 1, No. 1, 1986, pp. 81～88; ZOU Keyuan, The Chinese traditional maritime boundary line in the South China Sea and its legal consequences for the resolution of the dispute over the Spratly Islands, *The International Journal of Marine and Coastal Law*, Vol. 14, No. 1, 1999, p. 157.

② Mark J. VALENCIA, Joint jurisdiction and development in southeast Asia seas: factors and candidate areas, in Mark J. VALENCIA, ed., *Geology and Hydrocarbon Potential of the South China Sea and Possibilities of Joint Development*, New York/Oxford/Toronto/Sydney/Paris/Frankfurt: Pergamon Press, 1985, p. 576.

national jurisdiction.[①] This perception fundamentally considers that in a joint development agreement intervening States are only summoned to exercise sovereign rights and that the scope of such joint development effort only considers the exploitation of non-living marine natural resources.[②] However, the preemptive dismissal of common development of living marine natural resources from the concept of joint development agreements of offshore hydrocarbon deposits may prove not to be a clear representation of State practice regarding the internationalization of marine natural resources.[③] Moreover, this conception of joint development agreements of offshore hydrocarbon deposits inevitably establishes a correlation between the latter and States' sovereignty rights which is contrary to the legal context of such cooperative efforts.

It may seem perplexing that under the concept of joint development of offshore hydrocarbon deposits, one would also include the development of living marine natural resources. However, practice has confirmed that States tend to take advantage of achieving an understanding on the difficult subject of development of common offshore hydrocarbon deposits, to also include provisions that address other relevant matters concerning sharing of control over a certain maritime area.[④] Moreover, States may expand their cooperation in order to include issues such as safety of navigation, marine scientific research or the protection of the marine environment. In fact, the reality of joint development a-

---

① 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, p. 683; Douglas M. JOHNSTON and Mark J. VALENCIA, *Pacific Ocean Boundary Problems. Status and Solutions*, Shigeru ODA ed., Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1991, p. 36. Ian TOWNSEND-GAULT and William G. STORMONT, Offshore petroleum joint development arrangements: functional instrument? Compromise? Obligation? In Gerald H. BLAKE, William J. HILDESLEY, Martin A. PRATT, Rebecca J. RIDLEY and Clive H. SCHOFIELD ed., *The Peaceful Management of Transboundary Resources*, London/Dordrecht/Boston: Graham & Trotman/Martinus Nijhoff, 1995, p. 51.

② David ONG, The legal status of the 1989 Australia-Indonesia Timor Gap Treaty following the end of Indonesian rule in East Timor, *Netherlands Yearbook of International Law*, Vol. 31, 2000, p. 121.

③ On the internationalization of marine natural resources, see Vasco BECKER-WEINBERG, The internationalization of marine natural resources in UNCLOS, in Rainer Lagoni, Peter Ehlers and Marian Paschke ed., *Recent Developments in the Law of the Sea*, Berlin/Munster/Vienna/Zurich/London: LIT Verlag, 2010, pp. 9～54.

④ Treaty between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and Other Resources in Respect of Areas of the Exclusive Economic Zone of the Two States, made in Abuja, on February 21st, 2001, at www. nigeriasaotomejda. com, 5 March 2011.

greements demonstrates that they may also include the exercise of other rights which are not included in the sphere of States' sovereignty, despite the fact that some of these agreements fail to specify the nature of the rights that States accept to exercise in the joint development zone, enhancing even further the functional and pragmatic essence of these agreements *vis-à-vis* the exercise of sovereignty rights. ①

Although it is a fact that joint development agreements have only been implemented at a bilateral level, there have been attempts to establish multilateral joint development regimes, including within the frame of regional efforts towards the settlement of disputes on the delimitation of maritime boundaries. ②

Therefore, in a broader sense joint development agreements could be defined as arrangements implemented by two or more States for the purpose of exploration and exploitation of the natural resources found in the marine soil and subsoil. However, in view of current State practice a stricter legal characterization of joint development agreements of offshore hydrocarbon deposits would define the latter as self-regulating conventional instruments subject to international law, signed between two or more States holders of legal title, although independent of such rights as claimed by the intervening States, concerning the maritime areas where natural resources may be found, foreseeing essentially and without limitation the exploration and or exploitation activities and common management of the hydrocarbon deposits found in the seabed and marine subsoil, as well as the undertaking of all activities deemed necessary or relevant by the intervening States, without foregoing the rights and freedoms of third States granted under international law.

---

① Hazel FOX, Paul MCDADE, Derek Rankin REID, Anastasia STRATI and Peter HUEY ed., *Joint Development of Offshore Oil and Gas: A Model Agreement for States for Joint Development with Explanatory Commentary*, London: The British Institute of International and Comparative Law, 1989, pp. 49～50.

② On the unsuccessful French proposal for a joint development regime with Spain and Italy as an alternative to maritime boundary delimitation, see Umberto LEANZA, The delimitation of the continental shelf of the Mediterranean Sea, *The International Journal of Marine and Coastal Law*, Vol. 8, No. 3, 1993, p. 388. Also see, Agreement between the Government of the Republic of Indonesia, the Government of Malaysia and the Government of the Kingdom of Thailand Relating to the Delimitation of the Continental Shelf Boundaries in the Northern Part of the Strait of Malacca, published at National Legislative Series, UN Doc. No. ST/LEG/SER. B/18, p. 429 (1976). This agreement provides that a hydrocarbon deposit that should straddle a boundary line will only be developed after consultation between the three States.

Nonetheless, this definition may prove to be inadequate when faced with the continuously evolving State practice and States' discretionary powers to negotiate and enter into international agreements.

Ⅱ. State Practice in the Asia-Pacific Region

A. Timor Sea

The distance between the coasts of East Timor and Australia is approximately 250nm, allowing for the occurrence of overlapping continental shelves between the two countries in the Timor Sea. ① Australia always defended the existence of two continental shelves based on the natural prolongation of its submerged land mass until the Timor Trough, at a distance of 150nm from its northern coast. ② Whereas East Timor has considered this position unacceptable, as did Portugal and Indonesia before, although in different historical periods.

In reference to a ruling of the ICJ in similar cases, East Timor considers that the delimitation in the Timor Sea should be made in accordance with a median line and that the geological characteristics of the Timor Trough should not be considered when confronted with other seabed depressions, given that these

---

① Nuno MARQUES ANTUNES, *Towards the Conceptualisation of Maritime Delimitation-Legal and Technical Aspects of Political Process*, Leiven/Boston: Martinus Nijhoff Publishers, 2003, p. 358; Henry BURMESTER, Australia and the Law of the Sea, in James CRAWFORD and Donald R. ROTHWELL ed., *The Law of the Sea in the Asian Pacific Region*, Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1994, pp. 51～64.

② Nuno MARQUES ANTUNES, Spatial allocation of continental shelf rights in the Timor Sea: Reflections on maritime delimitation and joint development, in *Estudos em Direito Internacional Público*, ed., Coimbra: Almedina, 2004, pp. 274 ～ 275, 277; Victor PRESCOTT, National rights to hydrocarbon resources of the continental margin beyond 200 nautical miles, in Gerald BLAKE, Martin PRATT, Clive SCHOFIELD and Janet Allison BROWN ed., *Boundaries and Energy: Problems and Prospects*, London/The Hague/Boston: Kluwer Law International, 1998, pp. 71～72; Malcom EVANS, *Relevant Circumstances and Maritime Delimitation*, Oxford: Clarendon Press, 1989, pp. 99～118; John Robert Victor PRESCOTT, *Australia's Maritime Boundaries*, Canberra: Department of International Relations/The Australian National University Canberra, 1985, pp. 115～117; *The Political Geography of the Oceans. Problems in Modern Geography*, London/Vancouver: David & Charles Newton Abbot, 1975, pp. 191～192; C. COOK, Filling the gap-delimiting the Australia-Indonesia maritime boundary, *Australian Yearbook of International Law*, Vol. 10, 1981－1983, pp. 170～171.

depressions do not represent a break or fault of the continental shelf. ① In addition, the adoption of the natural prolongation criteria would not forego the consideration of other criteria, such as equity and the fairness of delimitation which are not present in Australia's position. ② In fact, should the latter be allowed to succeed, the larger part of the known hydrocarbon deposits laying in the seabed and subsoil of the Timor Sea would be in the Australian continental shelf, whereas the applicability of the median line would place East Timor in a very advantageous position since most known hydrocarbon deposits are located closer to the Timorese coast. ③ In this case, Australia would most probably petition the readjustment of the median line should the issue of delimitation of maritime boundaries be submitted to the appreciation of the ICJ, which would al-

---

① ICJ Reports (1982), p. 18, pp. 54～58, p. 64, and (1985), p. 13, pp. 34～35. *See* Masahiro MIYOSHI, Some thoughts on maritime boundary delimitation, in Seoung-Yong HONG and Jon VAN DYKE ed., *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Leiden/Boston: Martinus Nijhoff Publishers, 2009, pp. 108～113; Laurent LUCCHINI, La délimitation des frontières maritimes dans la jurisprudence internationale: vue d'ensemble, in Rainer LAGONI and Daniel VIGNES, ed., *Maritime Délimitation*, Leiden/Boston: Martinus Nijhoff Publishers, 2006, pp. 4～5; David ONG, The legal status of the 1989 Australia-Indonesia Timor Gap Treaty following the end of Indonesian rule in East Timor, *Netherlands Yearbook of International Law*, Vol. 31, 2000, p. 79; William T. ONORATO and Mark J. VALENCIA, The new Timor Gap Treaty: legal and political implications, *ICSID Review*, Vol. 28, 2000, p. 62; Mark J. VALENCI and Masahiro MIYOSHI, Southeast Asia seas: joint development of hydrocarbons in overlapping claim areas, *Ocean Development and International Law Journal*, Vol. 16, No. 3, 1986, p. 228; E. D. BROWN, The Tunisia-Libya continental shelf case, *Marine Policy/International Journal Ocean Affairs*, Vol. 7, No. 3, 1983, pp. 145～148.

② ICJ Reports (1985), pp. 40～41.

③ Stuart KAYE, Negotiation and dispute resolution: a case study in international boundary making—the Australia-Indonesia boundary, in Alex G. Oude ELFERINK and Donald R. ROTHWELL ed., *Oceans Management in the 21st Century: Institutional Frameworks and Responses*, Leiden/Boston: Martinus Nijhoff Publishers, 2004, pp. 146～147; William T. ONORATO and Mark J. VALENCIA, International cooperation for petroleum development: the Timor Gap Treaty, *ICSID Review*, Vol. 5, No. 1, 1990, pp. 2～3; Jonathan I. CHARNEY, International maritime boundaries for the continental shelf: the relevance of natural prolongation, in Nisuke ANDO, Edward MCWHINNEY and Rüdiger WOLFRUM ed., *Liber Amicorum Judge Shigeru Oda* (Vol. 2), The Hague/London/New York: Kluwer Law International, 2002, p. 1029; Mark J. VALENCIA and Masahiro MIYOSHI, Southeast Asia seas: joint development of hydrocarbons in overlapping claim areas, *Ocean Development and International Law Journal*, Vol. 16, No. 3, 1986, p. 230.

most certainly provoke the intervention of Indonesia. ①

Australia, Indonesia and East Timor have on different occasions engaged in bilateral negotiations on the delimitation of maritime boundaries in the Timor Sea, having Australia and Indonesia signed two delimitation agreements despite other pending maritime disputes. ② One agreement in respect of the delimitation of maritime boundaries between Papua New Guinea and Indonesia, ③ and a second agreement regarding the delimitation of maritime boundaries in the Arafura Sea, which envisaged essentially settling States' sovereignty on the exploration and exploitation of the natural resources of the seabed and subsoil. ④

Both agreements included natural resources clauses according to which should any hydrocarbon deposit extend across a boundary line and consequently be recoverable wholly or in part from the either side of that line, both countries would seek to reach an agreement on the manner in which these resources should be most effectively exploited, as well as an equitable regime of allocation

---

① ICJ Reports (1990/1992), (1985), pp. 41～43, pp. 56～57 and (1981), p. 21. *See* David ONG, The legal status of the 1989 Australia-Indonesia Timor Gap Treaty following the end of Indonesian rule in East Timor, *Netherlands Yearbook of International Law*, Vol. 31, 2000, p. 117; Nuno MARQUES ANTUNES, *Towards the Conceptualisation of Maritime Delimitation-Legal and Technical Aspects of Political Process*, Leiven/Boston: Martinus Nijhoff Publishers, 2003, p. 379.

② Indonesia and Australia have a boundary dispute since 1953 regarding the continental between the two countries in the Sahul Shelf.

③ Agreement between Australia and Indonesia Concerning Certain Boundaries between Papua New Guinea and Indonesia, made in Jakarta, on February 12th, 1973, published at 975 UNTS 4 (1975).

④ Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries, made in Canberra, on May 18th, 1971, and entered into force on November 7th, 1969, published at 974 UNTS 307 (1975). Also see Treaty between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the area between the Two Countries, including the area known as Torres Strait, and Related Matters, made in Sydney, on December 18th, 1978, at www. un. org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS－PNG1978TS. PDF, 1 February 2011; Treaty between the Government of Australia and the Government of the Republic of Indonesia Establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries, made in Perth, on March 14th, 1997, at www. un. org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS－IDN1997EEZ. pdf, 1 February 2011; Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, Supplementary to the Agreement of 18 May 1971, made in Jakarta, on October 9th, 1972, published at 974 UNTS 319 (1957).

of benefits arising from said exploitation. ①

The agreement that established the boundaries between Papua New Guinea and Indonesia did not include the continental shelf of East Timor, since at that time this territory was still under Portuguese rule. ② Only with the Indonesian invasion and occupation of East Timor on December 7th, 1975, did this territory begin to be *de facto* controlled by Indonesia. ③

These two countries further agreed on a cooperative regime regarding their mutual interest in the rational management, conservation and optimum utilisation of the living resources of the sea. ④

After almost two decades of unsuccessful negotiations, Australia and Indonesia agreed to defer the divisive issue of maritime boundary delimitation and to jointly develop the natural resources of the Timor Sea under the legal frame-

---

① Articles 6 and 7.

② Article 2 of the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia establishing certain seabed boundaries, made in Canberra, on May 18th, 1971. Also see Portuguese Law 7/75, July 17th, 1975.

③ Resolutions (UN Security Council) 384, December 22nd, 1975, 389, April 22nd, 1976, 1236, May 7th, 1999, 1246, June 11th, 1999, 1262, August 27th, 1999, 1264, September 15th, 1999, and 1272, October 25th, 1999. Also see Indonesian Law 7, July 17th, 1976, which recognizes the integration of East Timor in the State of Indonesia. This law was revoked on October 20th, 1999 by an Act of the Indonesian Popular Assembly.

④ Agreement between the Government of Australia and the Government of the Republic of Indonesia relating to cooperation in fisheries, made in Jakarta, on April 22nd, 1992, published at 1170 UNTS (1994), pp. 288～294. Memorandum of Understanding between the Government of Australia concerning the Implementation of a Provisional Fisheries Surveillance and Enforcement Arrangement, made in Jakarta, on October 29th, 1981, and entered into force on February 1st, 1982, published at Kriangsak KITTICHAISAREE, *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia*, Oxford/New York: Oxford University Press, 1987, p. 198. Memorandum of Understanding between the Government of Australia and the Government of the Republic of Indonesia Regarding the Operations of Indonesian Traditional Fishermen in Areas of the Australian Exclusive Fishing Zone and Continental Shelf, made in Jakarta, on November 7th, 1974, and entered into force on February 28th, 1975, at http://epress.anu.edu.au/apem/boats/mobile_devices/apb.html, 1 February 2011.

work of the Timor Gap Treaty:[①]

The Timor Gap Treaty was the first wide-ranging joint development regime of offshore hydrocarbon deposits implemented by States and has been an example for other countries, such as the joint development regime existing between Sao Tome and Principe and Nigeria. It is an intricate and comprehensive legal regime and includes several legal provisions that go beyond what may be characterized as the essential legal content of joint development agreements of offshore hydrocarbon deposits, namely, the creation of a joint development zone and of an entity responsible for the management of the natural resources found therein and for granting the respective exploration rights, as well as the creation of a complete autonomous legal regime applicable to the development of resources.

The execution of this agreement sought to satisfy Australia's growing energy needs, as well as to legitimize the fact that it was, similar to Portugal until the Indonesian occupation, granting exploration licenses of blocks in the Timor Sea without being able to do so under international law. The Timor Gap Treaty created the necessary normative regime that allowed for the continuation of

---

① Article 33(1) of the Timor Gap Treaty signed between Australia and Indonesia on December 11th, 1989, at www. austlii. edu. au, 1 February 2011. On the Timor Gap Treaty, see Masahiro MIYOSHI, The joint development of offshore oil and gas in relation to maritime boundary delimitation, 2－5 *Maritime Briefing / International Boundaries Research Unit*, Vol. 2, No. 5, 1999, pp. 17～21; Keith SUTER, Timor Gap treaty: The continuing controversy, *Marine Policy: the International Journal of Ocean Affairs*, Vol. 17, No. 4, July 1993, pp. 294～302; Francis M. AUBURN and Vivian L. FORBES, The Timor Gap treaty and the Law of the Sea Convention, *Ocean Yearbook*, Vol. 10, 1993, pp. 40～53; Henry BURMESTER, The zone of co-operation between Australia and Indonesia: a preliminary outline with particular reference to applicable law, in Hazel FOX ed., *Joint Development of Offshore Oil and Gas, Volume Ⅱ. The Institute's Revised Model Agreement. Conference Papers, The Australia / Indonesia Zone of Co-operation Treaty* 1989, London: The British Institute of International and Comparative Law, 1990, pp. 128～139; Ernst WILLHEIM, Australia-Indonesia sea-bed boundary negotiations: proposals for a joint development zone in the "Timor Gap", *Natural Resource Journal*, Vol. 29, 1989, pp. 821～842; Mochtar KUSUMA-ATMADJA, Joint development of oil and as by neighboring countries, in The Law of the Sea Institute, University of Hawaii, Mochtar KUSUMA-ATMADJA, Thomas A. MENSAH and Bernard H. OXMAN ed., *Sustainable Development and Preservation of the Oceans: The Challenges of UNCLOS and Agenda* 21, 1983, pp. 592～609; John Robert Victor PRESCOTT, *Australia's Maritime Boundaries*, Canberra: Department of International Relations, The Australian National University, 1985, p. 117; Douglas M. JOHNSTON and Mark J. VALENCIA, *Pacific Ocean Boundary Problems. Status and Solutions*, Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1991, pp. 70～74.

exploration operations and the consolidation of operators' acquired rights. ①

On February 22nd, 1991, following the execution of the Timor Gap Treaty, Portugal initiated, although unsuccessfully, a procedure in the ICJ against Australia supported on the latter's liability before Portugal and the people of East Timor for the violation of the rights and duties of Portugal in the territory of East Timor, as well as the right of self-determination of the Timorese people. ②

With the end of the Indonesian occupation, the territory of East Timor was governed by UNTAET. ③ The latter succeeded to UNAMET which was responsible for organizing the popular consultation of October 19th, 1999 that started the legal independence procedure of East Timor. ④ UNTAET's judicial, political and legislative attributions included the responsibility for entering into international agreements in representation of the interests and economic viability of the future State of East Timor. ⑤

UNTAET and Australia began negotiations in view of adapting the Timor Gap Treaty to the new *status quo*, *i. e.* an independent East Timor, rinsing the Treaty of any potential illegitimacy in light of the internationally recognized right of self-determination of the East Timorese people and its sovereignty over

---

① Nuno MARQUES ANTUNES, *Towards the Conceptualisation of Maritime Delimitation-Legal and Technical Aspects of Political Process*, Leiven/Boston: Martinus Nijhoff Publishers, 2003, pp. 393～396; William T. ONORATO and Mark J. VALENCIA, The new Timor Gap Treaty: legal and political implications, *ICSID Review*, Vol. 28, 2000, p. 61; Douglas M. JOHNSTON and Mark J. VALENCIA, *Pacific Ocean Boundary Problems. Status and Solutions*, Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1991, pp. 2～3.

② ICJ Reports (1995) 92. *See* Pierre-Marie DUPUY, A general stocktaking of the connections between the multilateral dimension of obligations and codification of the law of responsibility, *European Journal of International Law*, Vol. 13, No. 5, 2002, p. 1056; Christine M. CHINKIN, East Timor moves into the World Court, *European Journal of International Law*, 1993, Vol. 4, No. 2, pp. 208～218; Maria Clara MAFFEI, The case of East Timor before the International Court of Justice-some tentative comments, *European Journal of International Law*, Vol. 4, No. 2, 1993, p. 225, p. 227, p. 231; Stuart KAYE, Negotiation and dispute resolution: a case study in international boundary making-the Australia-Indonesia boundary, in Alex G. Oude ELFERINK and Donald R. ROTHWELL ed., *Oceans Management in the 21st Century: Institutional Frameworks and Responses*, Leiden/Boston: Martinus Nijhoff Publishers, 2004, pp. 2～3.

③ United Nations Transitional Administration in East Timor, Resolution (UN Security Council) 1272, October 25th, 1999.

④ United Nations Mission in East Timor, Resolution (UN Security Council) 1246, June 11th, 1999.

⑤ Secretary-General Report S/1999/1024, 35, October 4th, 1999.

the country's natural resources. ① These negotiations lead to the Exchange of Notes and subsequent signing on February 10th, 2000 of the Memorandum of Understanding ("MoU") concerning the revised Timor Gap Treaty. ②

The maintenance of the joint development model of the Timor Gap Treaty implied keeping in force the relevant Indonesia legislation and the decisions and directives issued by the Ministerial Council and the Joint Authority created under the Timor Gap Treaty, as well as to safeguard the rights acquired by operators under product sharing contracts entered into between the latter and said Joint Authority. As a result, UNTAET undertook all rights and obligations of Indonesia under the Timor Gap Treaty, with the exception of all those contrary to the interests of the people of East Timor. ③ These were either revoked or adapted when beneficial, such as the obligations regarding training and granting preference to the contracting of East Timorese nationals. Australia also had to adapt all national legislation contrary to the new arrangement. ④

On July 5th, 2001, UNTAET and Australia signed a second MoU which reaffirmed the joint development model initially adopted, but no longer under the auspices of the Timor Gap Treaty, rather instead of its revised version agreed on the MoU signed on February 10th, 2000, and from then onward referred to as the Timor Sea Treaty. ⑤

---

① On the principle of peoples' permanent sovereignty over natural resources, see Vasco BECKER-WEINBERG, A nacionalização do petróleo e o princípio do aproveitamento conjunto entre Estados, *Estudos de Direito Internacional e Relações Internacionais*, Lisbon: AAFDL, 2008, pp. 373～398.

② Published at David ONG, The legal status of the 1989 Australia-Indonesia Timor Gap Treaty following the end of Indonesian rule in East Timor, *Netherlands Yearbook of International Law*, Vol. 31, 2000, p. 106.

③ Article 165 of the Constitution of the Democratic Republic of East Timor.

④ Petroleum (Timor Sea Treaty) / (Consequential Amendments) / Act 2003 n. 10/2003. The Petroleum (Submerged Lands) Act 1967 and the Continental Shelf (Living Natural Resources) / Amendment Act 1978.

⑤ Timor Sea Treaty, at www. un. org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS－TLS2002TST. PDF, 1 February 2011. Memorandum of Understanding between the Government of the Democratic Republic of East Timor and the Government of Australia Concerning an International Unitization Agreement for the Greater Sunrise field, made in Dili, on May 20th, 2002, at www. un. org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS－TLS2002SUN. PDF, 1 February 2011. Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste Concerning Arrangements for Exploration and Exploitation of Petroleum in an Area of the Timor Sea between Australia And East Timor, Dili, 20 May 2002, at www. un. org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS－TLS2002EX. PDF, 1 February 2011.

B. Northeast China Sea

The Northeast China Sea is a region with significant precedents of cooperation on the protection of the marine environment, navigation and fishing. ① However, the existence of hydrocarbon deposits has proven to be a conflicting issue between the relevant States, in particular regarding the delimitation of maritime boundaries. ②

The strong hydrocarbon potential of the East China Sea became generally known with the publication in 1968 of a report prepared by a group of scientists from Japan, South Korea, Taiwan and the US and sponsored by the UN Com-

---

① Fishery Agreement between the Governments of the People's Republic of China and the Republic of Korea, made on August 3rd, 2000. Sino-Japanese Agreement on Fishery, made in November 11th, 1997, entered into force on June 1st, 2000. Agreement between the Government of the Republic of Korea and the Government of the Russian Federation on Co-operation in the Field of the Environment, made in Moscow, on June 2nd, 1994. Agreement between the Government of the Republic of Korea and the Government of Japan on Co-operation in the Field of Environmental Protection, made in Seoul, on June 29th, 1993. Agreement on Environmental Co-operation between the Government of the Republic of Korea and the Government of the People's Republic of China, made in Beijing, October 28th, 1993. Agreement on Fishing between Japan and South Korea, made in Tokyo, on June 22nd, 1965. Also see Joint Statement on Sustainable Development among the People's Republic of China, Japan and the Republic of Korea and Joint Statement on the Tenth Anniversary of Trilateral Cooperation among the People's Republic of China, Japan and the Republic of Korea, both made in Beijing, on October 10th, 2009. Action Plan for Promoting Trilateral Cooperation among the People's Republic of China, Japan and the Republic of Korea, made in December 13th, 2008. The 2005—2006 Progress Report of the Trilateral Cooperation among the People's Republic of China, Japan and the Republic of Korea, adopted by the Three-Party Committee, made in Cebu, on January 12th, 2007. The Action Strategy on Trilateral Cooperation among the People's Republic of China, Japan and the Republic of Korea, made on November 27th, 2004. Joint Declaration on the Promotion of Tripartite Cooperation among the People's Republic of China, Japan and the Republic of Korea, made in Bali, on October 7th, 2003.

② On cooperation in the Northeast and Southeast Asian seas, see Mark J. VALENCIA, Relevance of lessons learned to Northeast Asia, in Mark J. VALENCIA, *Maritime Regime Building. Lessons Learned and Their Relevance for Northeast Asia*, Hague/Boston/London: Martinus Nijhoff Publioshers, 2001, p. 145; Yoshio OTANI, Les problèmes actuels de la mer du Japon et la coopération future, in *La Méditerranée et le Droit de la Mer à l'aube du 21e siècle/The Mediterranean and the Law of the Sea at the dawn of the 21st century* (dir.) Giuseppe CATALDI, Actes du colloque inaugural de la Association Internationale du Droit de la Mer (Naples, 22 et 23 Mars 2001) ed. Bruylant (Brussels: 2002), p. 313; ZOU Keyuan, The establishment of a marine legal system in China, *The International Journal of Marine and Coastal Law*, Vol. 13, No. 1, 1998, pp. 44～45.

mission for Asia and the Far East. In the year following the publication of the aforementioned report, Japan, South Korea and Taiwan claimed sovereignty over greater part of the continental shelf where hydrocarbon deposits were thought to be found and swiftly entered into operating agreements with oil companies in view of its development. In fact, already in 1968 South Korea had proceeded with the division of an area of the East China Sea also claimed by Japan in seven blocks, granting its exploitation to four companies. In return, Japan also granted exploitation rights on areas where both States' sovereignty claims overlapped.

In 1970, in the absence of an agreement on the delimitation of maritime boundaries in the continental shelf, the three States or regions attempted to enter into a joint development agreement of offshore hydrocarbon deposits and defer the maritime delimitation dispute. ①

---

① ZOU Keyuan, The Chinese traditional maritime boundary line in the South China Sea and its legal consequences for the resolution of the dispute over the Spratly Islands, *The International Journal of Marine and Coastal Law*, Vol. 14, No. 1, 1999, pp. 161～168; Hong NONG and Wu SHICUN, The energy security of China and oil and gas exploitation in the South China Sea, in Myron H. NORDQUIST, John Norton MOORE and Kuen-chen FU ed., *Recent Developments in the Law of the Sean and China*, Leiden/Boston: Martinus Nijhoff Publishers, 2006, p. 145; Jon M. VAN DYKE, The Republic of Korea's maritime boundaries, *The International Journal of Marine and Coastal Law*, Vol. 18, No. 4, 2003, pp. 509～540; Mark J. VALENCIA, Regional maritime regime building: prospects in northeast and southeast Asia, *Ocean Development and International Law Journal*, Vol. 31, No. 3, 2000, pp. 223～247; Relevance of lessons learned to Northeast Asia, in Mark J. VALENCIA ed., *Maritime Regime Building: Lessons Learned and Their Relevance for Northeast Asia*, The Hague/Boston/London: Martinus Nijhoff Publioshers, 2001, p. 143; Mark J. VALENCIA and Jon M. VAN DYKE, Comprehensive solutions to the South China Sea disputes: some options, Gerald BLAKE, Martin PRATT, Clive SCHOFIELD and Janet Allison BROWN ed., *Boundaries and Energy: Problems and Prospects*. London/The Hague/Boston: Kluwer Law International, 1998, pp. 85～115; Jonathan CHARNEY, Central East Asian maritime boundaries and the Law of the Sea, *American Journal of International Law*, Vol. 89, No. 4, 1995, pp. 746～748; Zhiguo GAO, The South China Sea: from conflict to cooperation? *Ocean Development and International Law Journal*, Vol. 25, No. 3, 1994, p. 352; Masahiro MIYOSHI, The Japan/South Korea joint development agreement 1974, in Hazel FOX ed., *Joint Development of Offshore Oil and Gas. Volume Ⅱ. The Institute's Revised Model Agreement. Conference Papers. The Australia/Indonesia Zone of Co-operation Treaty* 1989, London: The British Institute of International and Comparative Law, 1990, pp. 89～97; Choon-ho PARK, Joint development of mineral resources in disputed waters: the case of Japan and South Korea in the East China Sea, in Mark J. VALENCIA ed., *The South China Sea. Hydrocarbon Potential & Possibilities of Joint Development*, Oxford/New York /Toronto/Sydney/Paris/Frankfurt: Pergamon Press, 1981, p. 1335.

This attempt met with the objection of China based on its sovereignty claim over part of the continental shelf to be included in said joint development agreement, which in turn lead to the US undertaking efforts to protect the rights of its oil companies who had signed operating agreements with Japan, South Korea and Taiwan. As a result, Taiwan eventually withdrew from this trilateral model of joint development regime, allowing Japan and South Korea to negotiate a bilateral joint development agreement. ①

In 1974, Japan and South Korea signed two agreements that ended the maritime dispute on the delimitation of the continental shelf between the two countries in the East China Sea, after nearly three years of consultations and more than twenty years of disagreement regarding the relevance of the bay of Okinawa for the purpose of delimitation. ② South Korea perceived that the Japanese continental shelf in the East China Sea should end in the bay and that part of the latter's boundaries should be delimitated between South Korea and China. Whereas Japan considered that delimitation should be made according to the principle of equidistance foreseen in the 1958 Geneva Convention on the Continental Shelf, instead of considering the bay of Okinawa a decisive feature for the purpose of delimitation. ③

The two agreements were the result of States' achievement in differentiating between the delimitation of maritime boundaries and the development of marine natural resources, permitting reaching an agreement on the delimitation of maritime boundaries where States' claims did not overlap and to implement a joint development regime of offshore hydrocarbon deposits found in areas

---

① Paul C. YUAN, China's offshore oil development policy and legislation: an overall analysis, *The International Journal of Estuary and Coastal Law*, Vol. 3, No. 2, 1988, pp. 101～137.

② Seo-Hang LEE, Korea's claims to maritime jurisdiction, *Korean Journal of Comparative Law*, Vol. 18 1990, p. 70; Choon-hPARK, *East Asia and the Law of the Sea*, 4th ed, Seoul: Seoul National University Press, 1988, pp. 131～132.

③ Convention on the Continental Shelf, made in Geneva, on April 29th, 1958, published at 499 UNTS (1964), p. 311.

where claims did overlap, despite China's objection to such a cooperative effort. ① In addition, States agreed not to consider the island of Takeshima in the Sea of Japan for the purpose of delimitation of maritime boundaries as initially claimed by both countries, as well as that the continental shelf delimitation agreement would not affect the legal status of the superjacent waters and air space. ② This agreement also included a natural resources clause according to which States would endeavour to reach an agreement regarding the development of a hydrocarbon deposits that extended across a boundary line or in the absence of an agreement, an arbitrator appointed at the request of either State shall determine the most effective way to develop said hydrocarbon deposit. ③

The implementation of the joint development of offshore hydrocarbon deposits agreement was delayed due to Japan's need to adapt its domestic legislation to the obligations established in the agreement, as well as States' concern for the preservation of traditional fishing in the joint development zone and the fact that the latter is located in an area prone to the occurrence of hurricanes and cyclones. ④

The joint development of offshore hydrocarbon deposits agreement signed between Japan and South Korea created a joint development zone in the southern part of the continental shelf of both countries, immediately after the respec-

---

① Agreement between Japan and the Republic of Korea Concerning the Establishment of Boundary in the Northern Part of the Continental Shelf Adjacent to the Two Countries, made in Seoul, on February 5th, 1974, published at 1225 UNTS (1981), pp. 104～105. Agreement between Japan and the Republic of Korea Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries, made in Seoul, on January 30th, 1974, published at 1225 UNTS (1981), pp. 114～126. *See* Masahiro MIYOSHI, The Japan-South Korea agreement on joint development of the continental shelf, in Mark J. VALENCIA ed., *Geology and Hydrocarbon of the South China Sea and Possibilities of Joint Development, Proceedings of the Second EAPI/CCOP Workshop. East-West Center, Honolulu, Hawaii*, 22－26 *August* 1983, New York/Oxford/Toronto/Sydney/Paris/ Frankfurt: Pergamon Press, 1985, pp. 551～552.

② Article 3 of the 1974 Maritime Delimitation Agreement between Japan and the Republic of Korea.

③ Article 2 of the 1974 Maritime Delimitation Agreement between Japan and the Republic of Korea.

④ South Korea ratified the agreement on December 1974, while Japan only in June 1978. The joint development agreement entered into force on June 22nd, 1978 and the first development operation took place only in May 1979. *See* Masahiro MIYOSHI, The Japan/South Korea joint development agreement 1974, in Hazel FOX ed., *Joint Development of Offshore Oil and Gas. Volume* Ⅱ. *The Institute's Revised Model Agreement. Conference Papers. The Australia/Indonesia Zone of Co-operation Treaty* 1989, London: The British Institute of International and Comparative Law, 1990, pp. 545, 549～550.

tive delimitation line in the Korean Strait.

The joint development zone may be divided into subzones for the purpose of exploration and exploitation activities by Japanese and South Korean concessionaires duly authorized by the States. The concessionaires shall in turn enter into operating agreements, subject to States' approval, for the purpose of jointly undertaking such activities, being entitled to an equal share of the natural resources extracted in the joint development zone and sharing in equal proportions the respective expenses. In this case, the applicable law shall be that of the country of the relevant concessionaire, being these resources considered as extracted in the continental shelf of that State, such as for the purpose of taxation.

A relevant detail of such operating agreements is that concessionaires shall have to agree on a mechanism for the settlement of disputes, as well as adjust said exploration and exploitation activities with fisheries interests. In this case, it would have been preferable that States had agreed on a mandatory mechanism in order to assure that such disputes would not be enduring and consequentially have an impact on exploration and exploitation activities.

The agreement established a direct relation between States and the concessionaires authorized by the latter, being subject to the domestic law applicable in that State. This is exemplified in the possibility of one State canceling the rights of exploration or exploitation of concessionaires in accordance with its laws and regulations and after consultations with the other State. For the purpose of dealing with all operational aspects of the respective exploration and exploitation activities, the concessionaries shall designate an operator under the respective operating agreement.

The Japan-Republic of Korea Joint Commission created under the joint development agreement serves merely as a consultation body between the two countries on matters concerning the implementation of this agreement. This body has the obligation of meeting once a year and its recommendations are not binding for the States.

Japan and South Korea failed to provide a common regime applicable to the protection of the marine environment, merely establishing that both States shall agree on measures to be taken to prevent collisions at sea and to prevent and remove pollution of the sea resulting from activities relating to the exploration and exploitation activities in the joint development zone. The only common measures are those referred to in the Exchange of Notes following the signing of the joint development of offshore hydrocarbon deposits agreement.

This agreement also includes a natural resources clause which foresees that concessionaires shall seek to reach an agreement through consultation and subject to States approval, on the most effective means to develop a hydrocarbon deposit that may extend across the lines of the joint development zone. In the event that concessionaires fail to reach an agreement, both States shall present a joint proposal following the necessary consultations.

In what concerns other States of Northeast Asia, there is also report that China and North Korea have agreed on implementing a regime of joint development of offshore hydrocarbon deposits in the Yellow Sea. Additionally, China and Japan have yet to agree on a concept of joint development of offshore hydrocarbon deposits in the East China Sea, despite long acceptance by both countries that only such a cooperative effort may offer a way forward in light of the existing dispute on maritime delimitation. ①

In 1997, China and Japan signed a new agreement on cooperative fishing applicable to the EEZs of both countries, whereby each State shall issue permits and allow the fishing vessels of the other State to carry out fishing activities in the respective EEZ. According to this agreement, both countries shall undertake consultations within the Japan-China Joint Fisheries Committee created by the fisheries agreement, in order to determine the operational conditions for the purpose of issuance of said permits. This agreement further established that each State shall adopt and inform the other State of the conservation measures applicable in the respective EEZ. States shall additionally cooperate in scientific research on fisheries and conservation of marine living resources, as well as in providing assistance and protection to the extent possible in the event that a national or fishing vessel of one State should suffer maritime casualties in the EEZ of the other State.

This agreement also establishes a provisional measures zone regarding parts of the EEZs where States' claims overlap and where there is no accord on

---

① GAO Jianjun, A note on the 2008 cooperation consensus between China and Japan in the East China Sea, in *Ocean Development and International Law Journal*, Vol. 40. 2009, pp. 291～296; ZOU Keyuan, Implementing the United Nations Convention on the Law of the Sea in East Asia: issues and trends, *Singapore Year Book of International Law*, Vol. 9, 2005, p. 6; DENG Xiaoping, Speech at the third plenary session of the Central Advisory Commission of the Communist Party of China, October 22, 1984, in 3 *Selected Works of DENG Xiaoping*, Beijing: Foreign Languages Press, 1984. Also see Communiqué by the Ministry of Foreign Affairs of the People's Republic of China "China's Path of Peaceful Development and Its View of Regional Security", Speech by Ambassador Zhang Junsai, at www. fmprc. gov. cn/eng/wjb/zwjg/zwbd/t520658. htm, 1 March 2011.

final maritime delimitation. [①] In this case, being the agreement only enforceable between China and Japan, South Korean nationals and fishing vessels that also carry out fishing activities in this area will not be subject to the regime established under the fisheries agreement, raising concerns on the utilization of living resources.

The following year, South Korea and Japan signed a second agreement on fisheries applicable to the EEZ of both countries, excluding the maritime areas which are still to be delimitated and that partly overlap with the 1974 joint development zone.

This fisheries agreement also created the Korea-Japan Joint Fisheries Committee for the purpose of recommending to the States the species allowed for harvesting, quotas of catch, areas of fishing and other conditions applicable to nationals and fishing vessels of one State in the EEZ of the other State. States shall further cooperate on the conservation of marine living resources. [②]

Also, in the same year, China and South Korea signed a new fisheries agreement applicable to EEZs of both countries in the Yellow Sea, also including provisional measures zones and transitional zones. This fisheries agreement establishes that nationals and fishing vessel of one State would carry out fishing activities in the EEZ of the other State in accordance with the permits issued by the latter and the recommendations made by the China-South Korea Joint Fisheries Committee created by this agreement. [③]

C. Gulf of Thailand

In 1979, Thailand and Malaysia signed a MoU establishing a joint authority for the purpose of developing the resources of the seabed of the continental

---

① On cooperative fishing agreements between China and Japan, see Park Hee KWON, *The Law of the Sea and Northeast Asia*, The Hague/London/Boston: Kluwer Law International, 2000, pp. 51～57. An unofficial translation of the text of the agreement is published at pp. 208～213.

② On cooperative fishing agreement between South Korea and Japan, see Park Hee KWON, *The Law of the Sea and Northeast Asia*, The Hague/London/Boston: Kluwer Law International, 2000, pp. 57～66. An unofficial translation of the text of the agreement is published at pp. 215～223.

③ On cooperative fishing between China and South Korea, see Park Hee KWON, *The Law of the Sea and Northeast Asia*, The Hague/London/Boston: Kluwer Law International, 2000, pp. 66～72.

shelf of the Gulf of Thailand where these States' sovereignty claims overlapped. ① Simultaneously, both countries were engaged in negotiations regarding the delimitation of the continental shelf where the joint development area had been located under the aforementioned MoU, following the guidelines approved in the Agreed Minutes of the Malaysia-Thailand Official's Meeting on Delimitation of the Continental Shelf Boundary between Malaysia and Thailand in the Gulf of Thailand and in the South China Sea, that took place between February 27th and March 1st, 1978. ②

That same year, the two States signed a second MoU identifying the points to be considered for the purpose of delimitating the continental shelf boundary between the two countries in the Gulf of Thailand, while further undertaking to

---

① Memorandum of Understanding between the Kingdom of Thailand and Malaysia in the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-bed in a defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, made in Chiang Mai, on February 21st, 1979, published at Phiphat TANGSUBKUL, *ASEAN and the Law of the Sea*, Singapore: Institute of Southeast Asian Studies, 1982, pp. 130～133. *See* Clive SCHOFIELD and May TAN-MULLINS, Maritime claims, conflicts and cooperation in the Gulf of Thailand, *Ocean Yearbook*, Vol. 22, 2008, pp. 75～116; David ONG, Thailand/Malaysia. Joint development agreement 1990, *International Journal of Estuary and Coastal Law*, Vol. 6, No. 1, 1991, pp. 61～63; Ian TOWNSEND-GAULT, The Malaysia/Thailand Joint Development Arrangement, in Hazel FOX ed., *Joint Development of Offshore Oil and Gas. Volume Ⅱ. The Institute's Revised Model Agreement. Conference Papers. The Australia/Indonesia Zone of Co-operation Treaty* 1989, London: The British Institute of International and Comparative Law, 1990, pp. 102～107. The joint development area established under this MoU has been duly considered when establishing the maritime boundaries between Thailand and Vietnam. *See* 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, made in Bangkok, on August 9th, 1997, published at Jonathan I. CHARNEY and Robert W. SMITH, The American Society of International Law ed., *International Maritime Boundaries* (Vol. 4), The Hague/London/New York: Martinus Nijhoff Publishers, 2002, pp. 2692～2694.

② R. HALLER-TROST, *The Contested Maritime and Territorial Boundaries of Malaysia. An International Law Perspective*, London/The Hague/Boston: Kluwer Law International, 1998, pp. 350～359; Ted MCDORMAN, Malaysia-Vietnam, in Jonathan I. CHARNEY and Lewis M. ALEXANDER, The American Society of International Law ed., *International Maritime Boundaries* (Vol. 3), Report Number 5－19, The Hague/Boston/London: Martinus Nijhoff Publishers, 2004, pp. 2335～2344.

continue negotiations towards final delimitation. ① This second MoU also included a natural resources clause establishing that both States shall cooperate to seek an agreement on the efficient development of hydrocarbon deposits that may straddle a boundary line, even-handedly partaking in all incurred expenses and benefits. ②

The MoU that established the Joint Authority predicts that in the event that States achieve an agreement on the delimitation of the continental shelf of the Gulf of Thailand before the end of its term, this entity would be extinct and its gains and assets, as well as its losses and debts, equally shared by both countries. In the event that States should fail to agree on delimitation, the joint development regime would be automatically renewed for the same period of time, as no reference establishing otherwise is included in the MoU. ③

Additionally, this MoU established that States may eventually agree to renegotiate and enter into a new joint development agreement should the common development of resources reveal to be more cost-effective, rather than each State carrying out neighbouring offshore development activities, in particular when considering the likelihood that hydrocarbon deposits may straddle a boundary line. ④

Nonetheless, States failed to agree on the extent of the autonomy of the Joint Authority partly due to the inexperience of Thailand in implementing a joint development regime and the difficulty that both countries had in harmonizing the relevant domestic oil legislation, as well as on how exploration rights should be granted to operators in the joint development zone. ⑤ Thailand pro-

---

① Articles 1 and 3 of the 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, made in Kuala Lumpur, on October 24th, 1979, at www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-MYS1979CS.PDF, 1 March 2011.

② Article 4 of the 1979 MoU between Thailand and Malaysia on the Delimitation of the Continental Shelf Boundary.

③ Article 6 (2) of the 1979 MoU between Thailand and Malaysia in the Establishment of a Joint Authority.

④ Article 6 (1) of the 1979 MoU between Thailand and Malaysia in the Establishment of a Joint Authority.

⑤ D. H. ARIFFIN, The Malaysian philosophy of joint development, in Mark J. VALENCIA ed., *Geology and Hydrocarbon of the South China Sea and Possibilities of Joint Development, Proceedings of the Second EAPI/CCOP Workshop, East-West Center, Honolulu, Hawaii, August 22nd to 26th*, 1983, New York/Oxford/Toronto/Sydney/Paris/Frankfort: Pergamon Press, 1985, p. 534.

posed applying the classic model of concession for that purpose, whereas Malaysia considered product sharing contracts to be more suitable in light of its acquired experience in offshore oil development. ①

These countries would only reach an agreement on this matter in 1990 with the implementation of a second joint development regime for the purpose of activating and regulating in detail the powers of the Joint Authority, whereby States chose to limit the powers and autonomy of this entity as granted under the first MoU, giving the latter a representative rather than an executive role. ② In fact, while initially the Joint Authority had the necessary powers to execute the actions necessary to maximize the revenue of the joint development zone, the second MoU States sought only to grant the Joint Authority the power to control the exploration and exploitation activities of non-living natural resources in the joint development zone, perhaps as a result of States' concern with the excessive executive character of the Joint Authority. ③

Thailand and Malaysia further agreed in this second MoU to use product sharing contracts for the purpose of granting operators exploration and exploitation rights in the joint development zone, as well as to introduce tax and fiscal regulations. ④

In 1992, Malaysia and Vietnam signed a MoU that established a straightforward joint development arrangement of offshore hydrocarbon deposits found in the Defined Area of continental shelf of the Gulf of Thailand appropriately i-

---

① David ONG, The 1979 and 1990 Malaysia-Thailand joint development agreements: a model for international legal co-operation in common offshore petroleum deposits? *The International Journal of Marine and Coastal Law*, Vol. 14, No. 2, May 1999, pp. 228～230; Zhiguo GAO, *International Petroleum Contracts. Current Trends and New Directions*, London: Grahm&Trotman/Martinus Nijhoff, 1994, pp. 23～57.

② Agreement between the Government of Malaysia and the Government of the Kingdom of Thailand on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority, made in Kuala Lumpur, on May 30th, 1990, published at Jonathan I. CHARNEY and Lewis M. ALEXANDER, The American Society of International Law ed., *International Maritime Boundaries* (Vol. 1), Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1993, pp. 1111～1123.

③ Article 3(2) of the 1979 MoU between Thailand and Malaysia in the Establishment of a Joint Authority.

④ Articles 8, 9 to 12, 16, 17 of the 1979 MoU between Thailand and Malaysia in the Establishment of a Joint Authority.

dentified in the MoU. ① According to this MoU, both States agreed that the respective national oil companies would cooperate in undertaking exploration and exploitation activities in the Defined Area, being all costs incurred and benefits derived equally borne and shared between both countries. Moreover, the aforementioned MoU further established that should a petroleum field be located partly in the Defined Area and partly in the continental shelf of Malaysia or Vietnam, these States would arrive at mutually acceptable terms and conditions for the development of such resources. ②

In 2001, Cambodia and Thailand signed a MoU regarding the maritime area where States' claims overlap in the continental shelf of the Gulf of Thailand, ③ whereby both countries agreed to conclude an agreement for the joint development of offshore hydrocarbon deposits found therein and on the delimitation of the territorial sea, continental shelf and the EEZ in a maritime area identified in the MoU. ④ These States further agreed to create a Joint Technical Committee for the purpose of preparing the joint development regime to be implemented, as well as to settle the delimitation of said maritime boundaries. ⑤

Lastly, it should also be mentioned that Cambodia and Vietnam signed an agreement on the creation of joint historic waters by means of which both States agreed that the exploitation of natural resources found in the joint development historical waters zone would be decided by common agreement. ⑥

---

① Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of Petroleum in a Defined Area of the Continental Shelf Involving the Two Countries, made in Kuala Lumpur, June 5th, 1992, published at Jonathan I. CHARNEY and Lewis M. ALEXANDER ed., The American Society of International Law, *International Maritime Boundaries* (Vol. 3), The Hague/Boston/London: Martinus Nijhoff Publishers, 2004, pp. 2341～2344.

② Articles 2, 3 and 8(d) (e) of the MoU between Malaysia and Vietnam.

③ Memorandum of Understanding between the Royal Government of Cambodia and the Royal Thai Government regarding the Area of Their Overlapping Maritime Claims to the Continental Shelf, made in Phnom Penh, on June 18th, 2001, published at David A. COLSON and Robert W. SMITH, The American Society of International Law ed., *International Maritime Boundaries* (Vol. 5), Leiden/Boston: Martinus Nijhoff Publishers, 2005, pp. 3745～3746.

④ 1 and 2 of the MoU between Cambodia and Thailand.

⑤ 3 of the MoU between Cambodia and Thailand.

⑥ Agreement on Historic Waters of Vietnam and Kampuchea, made in Ho Chi Minh City, on July 7th, 1982, published at Jonathan I. CHARNEY and Lewis M. ALEXANDER, The American Society of International Law ed., *International Maritime Boundaries* (Vol. 3), The Hague/Boston/London: Martinus Nijhoff Publishers, 2004, pp. 2364～2365.

Ⅲ. Prerequisites and Principles of Joint Development Agreements of Offshore Hydrocarbon Deposits

In the three regions previously referred it is possible to identify the circumstances that led States to adopt and implement a legal model of common development of offshore hydrocarbon deposits. The recognition of these situations is extremely relevant for the purpose of understanding the nature of States' rights in the joint development zone, especially in the case of overlapping claims, as well as identifying the legal nature of the concept of joint development of offshore hydrocarbon deposits and its implications under international law.

The different disputes regarding delimitation of maritime boundaries in the Asia-Pacific region mostly concern overlapping claims based on geomorphological and geological aspects, in addition to territorial disputes regarding islands and other features upon which claimant coastal States upheld their sovereign rights over the respective maritime area. In fact, States opted for the implementation of joint development regimes in the case of the aforementioned regions as a means to surpass a deadlock situation caused by the existence of opposing maritime claims and territorial disputes, in particular when considering that the settlement of these disputes by negotiation and eventually by an agreement or the intervention of a third party, would ultimately lead to a long-lasting procedure incompatible, at least, with States energy ambitions. Moreover, the relevant Sates needed to establish a legal framework consistent with the fact that operating rights had been unlawfully granted, without coastal States being entitled to do so under international law.

The inherent and exclusive character of the continental shelf is the result of the recognition that the "*land dominates the sea*"[①] and that there is a clear association between the sovereign right of a State to exploit and explore the resources of the continental shelf as that of a State in land, as long as a coastal State's claim is unopposed or consistent with other States' claims in view of the distance criteria applicable to the delimitation of the continental shelf. In the event that there are overlapping claims resulting, for example, from opposite or adjacent continental shelves, States may not explore the subsoil and submarine

① ICJ Reports (1978) 37, 86.

areas, nor grant drilling rights for that matter. ①

When considering the different circumstances that led States to enter into joint development agreements of offshore hydrocarbon deposits, a necessary conclusion is that States cooperated in this common endeavor for the reason that there was a need for cooperation rather than an obligation, nor had States been compelled by a third party to do so. Moreover, States negotiated and agreed on the content of such agreements according to their discretionary powers and not to a hypothetical duty to enter into provisional agreements resulting from a particular interpretation of articles 74(3) and 83 (3) of UNCLOS.

The existence of precedents of cooperation between States that implemented joint development agreements should not be considered a relevant factor for the purpose of establishing an obligation of cooperation manifested in the form of a joint development agreement, nor for that matter to determine the success of the latter. There are situations where joint development agreements were successfully implemented without there having been any cooperative precedent, as well as other situations where having existed such precedents, namely regarding the management of living marine natural resources, States failed to implement a joint development agreement of offshore hydrocarbon deposits.

However, the existence of cooperation between two or more countries or within a regional framework as UNCLOS envisages in many of its provisions, necessarily provides the setting for States to interact and willingly establish the legal regimes that may eventually defer a dispute on the delimitation of maritime boundaries. ② Nonetheless, there is no such obligation regarding the development of common non-living marine natural resources and in particular in the event of disputes on the delimitation of maritime boundaries. ③ In fact, a number of joint development agreements have been implemented regardless of pending maritime boundaries or of the fact that States were simultaneously attempting to settle the dispute on the delimitation of maritime boundaries while undertaking offshore development activities under the umbrella of a joint de-

---

① Article 81 of UNCLOS.

② Articles 63(3), 64(1), 65, 66(2)(4), 69(3), 74(3), 83(3), 100, 117, 118, 119, 123, 194(1), 197, 200, 242, 266, 270 and 273 of UNCLOS.

③ ICJ Reports 1982, Judge Evensen's Dissenting Opinion, 320～321. *See* Vasco BECKER-WEINBERG, The internationalization of marine natural resources in UNCLOS, in Rainer Lagoni, Peter Ehlers and Marian Paschke ed., *Recent Developments in the Law of the Sea*, Berlin/Munster/Vienna/Zurich/London: LIT Verlag, 2010, pp. 29～40.

velopment regime. ①

The detachment between joint development of offshore hydrocarbon deposits and maritime delimitation is also evidenced in the fact that the latter does not envisage the obligation for States to enter into joint development agreements in the event of straddling hydrocarbon deposits, nor have States entered into such agreements in respect of a natural resources clause included in a maritime delimitation agreement.

Similar to any other international agreement concluded between States, under a joint development agreement of offshore hydrocarbon deposits States are required to act in accordance with general treaty law, in the fulfillment of the applicable principles of international law, such as the principles of *pacta sunt servanda*, cooperation and *bona fide*. International doctrine and jurisprudence have generally accepted that in this case, the principle of cooperation translates in two neighbouring coastal States sharing information on the existence of common resources, including the obligation to inform on the intent to develop a certain resource when such development activities may affect the interests of the other State. ② Accordingly, the principle of cooperation is not the legal source of a States' obligation to adopt and implement a regime of joint development of a common hydrocarbon deposit, without foregoing States' duty to negotiate and to peacefully settle their disputes. ③ In fact, although UNCLOS does not foresee a *pactum de contrahendo*, it does nonetheless envisage a *pactum de negotiando*, the scope of which may be summarized as follows: States are bound to negotiate in good faith even when an agreement has not been

---

① In a different view, see Zhiguo GAO, The legal concept and aspects of joint development in international law, in *Ocean Yearbook*, Vol. 13, 1998, pp. 112～113; Legal aspects of joint development in international law, in Mochtar KUSUMA-ATMADJA, Thomas A. MENSAH and Bernard H. OXMAN, ed. *Sustainable Development and Preservation of the Oceans: The Challenges of UNCLOS and Agenda* 21, The Law of the Sea Institute, University of Hawaii, 1983, p. 633.

② Mark J. Valencia, Regional maritime regime building: prospects in northeast and southeast Asia, *Ocean Development and International Law*, Vol. 31, No. 3, 2000, p. 224; Rodman R. Bundy, Natural resource development (oil and gas) and boundary disputes, in Gerald H. Blake, William J. Hildesley, Martin A. Pratt, Rebecca J. Ridley and Clive H. Schofield ed., *The Peaceful Management of Transboundary Resources*, London/Dordrecht/Boston: Graham & Trotman, 1995, pp. 36, 39; ICJ Reports 1974, pp. 35～36.

③ Articles 279 and 299 UNCLOS. *See* ICJ Reports 1974, p. 33, 74 and 75, pp. 35～36.

reached. ①

In what concerns the principle of *bona fide*, States are bound to act and negotiate in good faith in order to achieve an acceptable result, engaging in meaningful and lawful negotiations under international law, without being subject to executing an agreement. ②

States are further bound to an obligation of mutual restraint which implies that States may not practice or abstain from practicing any act that may be susceptible of damaging or making any solution or the means selected to achieve such a solution unviable. ③ As a result, States may not continue or engage in the development of a common hydrocarbon deposits during negotiations without the consent of all relevant States.

One other aspect to consider regarding the applicability of the principle of *bona fide* is the right of every State to be informed on the existence and location of resources that might be susceptible of being found in an area subject to the latter' sovereignty or jurisdiction or where claims overlap, naturally without prejudice of sensible information. ④ The principle reason for this *ratio* is self-evident. If such obligation was not to exist, it would be disadvantageous

---

① Articles 63(1), 74(3), 83(3), 117, 118 and 123 of UNCLOS. *See* Rainer Lagoni, Report of the International Committee on the EEZ, in International Law Association ed., *Report of the Sixty-Fifth Conference: Cairo* (1992), p. 5.

② Article 2(2) of the Charter of the United Nations. Articles 74(3) and 83(3) of UNCLOS. *See*, ICJ Reports 1982, Judge Gros' Dissenting Opinion, 3 and 4; *ICJ Reports* 1974, pp. 35～36 and 1969, 48 and 85; *ICJ Reports* 1969, 48 and Judge Jessup' Separate Opinion, 80. Also see Peter D. Cameron, The rules of engagement: developing cross-border petroleum deposits in the North Sea and the Caribbean, *International and Comparative Law Quarterly*, Vol. 55, 2006, p. 567; Jon M. Van Dyke, Sharing Ocean Resources: In a Time or Scarcity and Selfishness, in Harry N. Scheiber ed., *Law of the Sea: The Common Heritage and Emerging Challenges*, The Hague/London/Boston 2000, pp. 26～35; E. D. Brown, *The International Law of the Sea*, *V*. 1 *Introductory Manual*, Aldershot/Brookfield USA/Singapore/Sydney: Dartmouth Publishing Company, 1994, pp. 158～159; René-Jean DUPUY and Daniel VIGNES, *A Handbook on the New Law of the Sea*, Vol. 1, Dordrecht/Boston/Lancaster: Martinus Nijhoff Publishers, 1991, pp. 477～486; Rainer Lagoni, Interim measures pending maritime delimitation agreements, *American Journal of International Law*, Vol. 78, No. 2, 1984, pp. 355～358; also see International Law Association, *Report of the International Committee on the Principles Applicable to Living Resources Occurring Both within and without the Exclusive Economic Zone or in Zones of Overlapping Claims*, by Professor Dr. Rainer Lagoni (Cairo Conference 1992), p. 29.

③ Juraj Andrassy, Les relations internationales de voisinage, 79 *Recueil des Cours* (1951—II), p. 110.

④ Article 302 of UNCLOS. *See* Rainer Lagoni, Oil and gas deposits across national frontiers, *American Journal of International Law*, Vol. 73, No. 1, 1979, p. 237.

for the State unaware of the said information and cause negotiations to have an inequitable outcome.

Ⅳ. Prospects for Joint Development Agreements of Offshore Hydrocarbon Deposits in the Asia-Pacific Region

International law does not provide enforceable solutions regarding the development of common hydrocarbon deposits nor does it direct in a particular outcome, referring instead to a general obligation of cooperation in the terms previously described. Consequently, it will always depend on States intervention at a bilateral, multilateral or regional level to seek and agree on a legal solution that will allow for the lawful development of the marine riches of the seabed and subsoil of the Asia-Pacific region, having in the background that it is preferable to seek a sensible and pragmatic outcome that may ultimately provide for reasonable prosperity, instead of upholding divisive positions and perpetuating deadlock situations in view of unrealistic exclusive takings.

Considering that the delimitation of the greater part of maritime boundaries in the Asia-Pacific region is a difficult and perhaps an unattainable task, joint development agreements of offshore hydrocarbon deposits may provide the necessary legal framework by means of which States may benefit from the development of hydrocarbon deposits, without prejudice to the respective sovereignty claims while upholding States' respect for the independence and territorial integrity of all States in this region. ①

ASEAN could provide the necessary embodiment of such regional efforts for a growing awareness in Southeast Asia of the benefits resulting from joint development regimes of offshore hydrocarbon deposits, as well as establishing a

---

① On the difficulties facing maritime delimitation in the South China Sea and in particular regarding the delimitation of boundaries between South Pacific States and between East Asian States, see Steven Kuan-Tsyh YU, The law of EEZ/Shelf boundary delimitation: the practice of States in the South China Sea, in Chinese Society of International Law ed., *Proceedings of the International Law Association (ILA) First Asian-Pacific Regional Conference*, 1996, pp. 45～48; Donald R. ROTHWELL, The law of the sea in the Asian-Pacific region: an overview of trends and developments, in Chinese Society of International Law ed., *Proceedings of the International Law Association (ILA) First Asian-Pacific Regional Conference*, 1996, p. 58. Both these Authors recognize the innovative character of joint development agreements regarding maritime delimitation disputes. Also see Victor PRESCOTT and Clive SCHOFIELD, Undelimited maritime boundaries of the Asian Rim in the Pacific Ocean, *Maritime Boundaries*, Vol. 3, No. 1, 2001, pp. 1～68.

high-level interaction between States which could be further enhanced with the adherence of East Timor to this organization, thus increasing the number of States with experience and understanding of the advantages represented by this form of internationalization of non-living marine natural resources. In fact, the establishment of an ASEAN joint development cooperation committee or an intergovernmental organization on the development of common offshore hydrocarbon deposits could result in the encouragement of the exercise of self-restraint and consequently bring stability to the region regarding the development of these resources,① in the same way as the Southeast Asian Fisheries Development Center established in December 1967 encourages sustainable fisheries development in the Asia-Pacific region.②

At a bilateral level, efforts between China and Vietnam in the Gulf of Tonkin③ and between the former and the Philippines in the South China Sea④ to introduce a joint development regime should be rightfully acknowledged as

---

① The ASEAN Charter; The Declaration on the Conduct of Parties in the South China Sea, made on November 4th, 2002. The Philippines Proposal dated August 16th, 1999 of the ASEAN-China Code of Conduct in the South China Sea. The Joint Statement of the Meeting of Heads of State/Government of the Member States of ASEAN and the President of the People's Republic of China, made on December 16th, 1997. The Joint Declaration by the Republic of the Philippines-Peoples Republic of China Consultations on the South China Sea and on Other Areas of Cooperation and the Joint Declaration on the Fourth Annual Bilateral Consultations between the Socialist Republic of Vietnam and the Republic of Philippines, both made on August 10th, 1995. The ASEAN Declaration on the South China Sea, made on July 22nd, 1992. The Manila Declaration on the South China Sea, made on July 1992. The Principles of Bandung of 1991. The Treaty of Amity and Cooperation in Southeast Asia, made on February 24th, 1976. The Declaration of Bangkok, made on August 8th, 1967.

② On the Southeast Asian Fisheries Development Center, at www. seafdec. org, 1 February 2011.

③ Statement by the Ministry of Foreign Affairs of the People's Republic of China "Chinese Premier Meets with His Vietnamese Counterpart", made on April 17th, 2009, at www. fmprc. gov. cn/eng/wjb/zzjg/yzs/gjlb/2792/2794/t558266. htm, 1 March 2011. China-Viet Nam Joint Statement, made on October 25th, 2008, at www. fmprc. gov. cn/eng/wjdt/2649/t520438. htm, 1 March 2011. Joint Communiqué between the People's Republic of China and the Socialist Republic of Vietnam, made on October 8th, 2004, at www. fmprc. gov. cn/eng/wjdt/2649/t163759. htm, 1 March 2011.

④ "*China will uphold the principle of shelving disputes and seeking joint development, continue to step up cooperation in the South China Sea with the Philippines and other pertinent parties*" in *Communiqué by the Ministry of Foreign Affairs of the People's Republic of China "Ambassador Liu Jianchao pays Courtesy call on Philippine Foreign Affairs Secretary Romulo"*, made on March 13th, 2009, at www. fmprc. gov. cn/eng/wjb/zwjg/zwbd/t542281. htm, 1 March 2011.

representative of China's acceptance of the adoption of interim measures pending maritime delimitation.

In what regards the Northeast Asia region, cooperation should not be expected to increase in the Yellow Sea due to recent military escalation in the Korean peninsula, despite recent efforts by China and South Korea on maritime delimitation. ① Nonetheless, States in the East China Sea have made significant progress in the past years by recognizing the benefits and necessity of regional cooperation. ② In addition, China and Japan have reached an understanding on a possible joint development regime to be implemented in the East China Sea. ③

The main goal should not be to compel or forcibly crystallize an emerging State practice susceptible of constituting the necessary legal customary rule for the enforcement of a joint development obligation of common offshore hydrocarbon deposits, but instead to underline the benefits resulting from implementing such a legal regime. In fact, there is no evidence at a regional or universal level that such obligation has materialized or is emergent based on current State practice. This is also the case of the Asia-Pacific region.

On this subject, some scholars have considered the probable materialization of a regional customary rule in regions with precedents of cooperative regimes between States bordering enclosed or semi-enclosed seas that could offer a good composition for the applicability of a joint development model, providing

---

① China-ROK Joint Communiqué, made on September 17th, 2008, at www. fmprc. gov. cn/eng/wjdt/2649/ t513632. htm, 1 March 2011. China-ROK Joint Statement, made on May 26th, 2008, at www. fmprc. gov. cn/eng/wjdt/2649/t469103. htm, 1 March 2011. Also see Mark J. VALENCIA, Conclusions and the way forward, *Marine Policy: International Journal Ocean Affairs*, Vol. 29, No. 2, 2005, pp. 185～187; Conclusions, regime building and the way forward, *Marine Policy: International Journal Ocean Affairs*, Vol. 28, No. 1, 2004, pp. 89～96; Regime building in the East China Sea, *Ocean Development and International Law Journal*, Vol. 34, No. 1, 2003, p. 199; Yann-huei SONG and ZOU Keyuan, Maritime legislation of mainland China and Taiwan: developments, comparison, implications, and potential challenges for the United States, *Ocean Development and International Law Journal*, Vol. 31, No. 4, 2000, pp. 303～345.

② China-Japan Joint Statement on All-round Promotion of Strategic Relationship of Mutual Benefit May 22nd, 2008 at www. fmprc. gov. cn/eng/wjdt/2649/t458431. htm, 1 March 2011.

③ Communiqué by the Ministry of Foreign Affairs of the People's Republic of China, "China's Path of Peaceful Development and Its View of Regional Security", Speech by Ambassador Zhang Junsai, at www. fmprc. gov. cn/eng/wjb/zwjg/zwbd/t520658. htm, 1 March 2011. Also see GAO Jianjun, A note on the 2008 cooperation consensus between China and Japan in the East China Sea, in *Ocean Development and International Law Journal*, Vol. 40. 2009, pp. 291～294.

a solution for the predicament of delimitation of maritime boundaries and the development of non-living resources. These regions would include the North Sea, the Persian Gulf and the East and South China Seas. ①

The existence of such a regional custom applicable to enclosed or semi-enclosed seas where States' sovereignty claims overlap would have the advantage of overcoming the problem of compatibility between the principle of cooperation established in article 123 of UNCLOS and States' rights set out in article 56 of UNCLOS, without amending current law of the sea. However, the obligation of States to cooperate under article 123 of UNCLOS should not be understood as an obligation of result, in particular when considering coastal States' rights in the different maritime areas, rather instead an obligation of means in the specific case of States bordering enclosed or semi-enclosed seas. In fact, UNCLOS failed to regulate States' rights in enclosed and semi-enclosed seas, despite promoting cooperation between States in these maritime spaces. Therefore, unless States agree to grant such rights to a regional entity, article 123 of UNCLOS would represent an obstacle to regional cooperation. ② Moreover, article 123 of UNCLOS makes no reference to non-living marine natural resources.

Should such regional obligation exist it would be nearly impossible to identify the circumstances that ought to be considered in each case for the purpose of implementing a mandatory obligation of joint development agreement of offshore hydrocarbon deposits, as well as what would be the legal framework of such a joint development effort considering that there is no model of agreement that could be applicable indiscriminately.

In essence, States remain free to implement a bilateral or multilateral effort regarding the development of common hydrocarbon deposits, which may include establishing a joint development regime, or any other form of internationalization of marine natural resources, such as taking part in regional organizations and adopting rules of conduct regarding, for example, the exchange of information between the relevant States on the existence and location of common hydrocarbon deposits or adopting preventive and cooperative measures on

---

① David ONG, Joint development of common offshore oil and gas deposits: "mere" state practice or customary International Law? *American Journal of International Law*, Vol. 93, No. 4, 1999, p. 795, p. 804.

② VALENCIA, Regional maritime regime building: prospects in northeast and southeast Asia, *Ocean Development and International Law Journal*, Vol. 31, No. 3, 2000, p. 237.

transboundary pollution in conformity with international law. ①

Ⅴ. Provisions of Joint Development Agreements of Offshore Hydrocarbon Deposits

The joint development agreements of offshore hydrocarbon deposits that have been implemented in the Asia-Pacific region adopt different legal frameworks and include different legal provisions. This is not a characteristic only common to these agreements but also of other joint development agreements of offshore hydrocarbon deposits that have been executed in the past fifty years in different regions of the world.

The dissimilarity between the content of known joint development agreements of offshore hydrocarbon deposits is the result of the specific, lengthy and complex negotiations of each agreement due to the different concerns and expectations of the relevant States.

The most comprehensive joint development agreements of offshore hydrocarbon deposits are those that establish a legal regime which is fairly independent from States' direct intervention in the management of resources by creating an entity existing under international law to which these States grant the competence and autonomy established in the respective agreement for the purpose of managing the development of resources, including granting operators the necessary development rights, collecting revenues and taxes and settling disputes, amongst other attributions. In such cases, States establish the necessary mechanism of control of these entities activities, for example, by creating a committee or body hierarchically superior to the latter where States are represented for the purpose of appointing the members of the entity or approving its budget. ② Alternatively, States may choose to maintain an active role by resorting to the relevant national authorities or State-owned companies for the purpose of managing or developing the resources found in the joint development

---

① Resolutions UN (GA) 2996 (XXVII), 2997 (XXVII) and 2295 (XXVII), all dated December 15th, 1972, and specially Resolution UN (GA) 3129 (XXVIII), December 13th, 1973 regarding environmental cooperation on joint development of natural resources; UNEP Doc. GC. 6/CRP. 2 May 19th, 1978. See Charles Robson, Transboundary petroleum reservoirs: legal issues and solutions, in Gerald H. Blake, William J. Hildesley, Martin A. Pratt, Rebecca J. Ridley and Clive H. Schofield ed., *The Peaceful Management of Transboundary Resources*, London/Dordrecht/Boston: Trotman & Martinus Nijhoff, 1995, pp. 3～4.

② Timor Gap Treaty and Timor Sea Treaty.

zone created in the respective agreement. ①

There are different layers of legal interaction that may be established under the umbrella of a joint development agreement of offshore hydrocarbon deposits. These include the rights and obligations between States, among States and operators or entities created by the relevant States and operators, as well as the rights and obligations between different operators in the event that two or more operators might develop a common hydrocarbon deposit. This would be the case, for example, if two or more operators would be made to implement a unitization regime of a common hydrocarbon deposit in order to secure its efficient development. ②

The intricacy of the regime of a particular joint development agreement will depend on the level of trust between the intervening States and its acceptance of the matters to be included, as well as the latter's commitment to implement a relatively comprehensive legal regime that may regulate the use of a joint development zone by intervening and third States, such as concerning the prevention of pollution and protection of the marine environment or the delineation of the course for the laying of pipelines and submarine cables.

Traditionally, some legal provisions have been considered as representing the essential legal content of joint development agreements of offshore hydrocarbon deposits, despite the diversity of known joint development agreements of offshore hydrocarbon deposits and States' discretionary powers. These are the designation of a joint development zone, the identification of the natural resources to be developed, the establishment of a jurisdictional and legal framework applicable in the joint development zone and the terms and conditions under which the operations are to take place, including the regulation of the access to operations and the means chosen for the purpose of granting such operating

---

① MoU between Malaysia and Vietnam.

② Unitization may be characterized as a coordinated effort by two or more parties to develop a common hydrocarbon deposit as if it was one single unit, regardless of overlapping claims or of international boundaries that they cross, while preserving its geological characteristics combined with the purpose to retrieve as much of its content as possible.

rights. ①

Nonetheless, States have included other matters in recent joint development agreements of offshore hydrocarbon deposits due to the growing awareness of the potential represented by these regimes as a means to regulate the control and management of a joint development zone during a substantial period of time, such as the development of living marine natural resources, the implementation of health and safety and employment regulations, or the approval of a common tax regime applicable to the activities developed in the joint development zone.

Ⅳ. Conclusion

The entry into force of UNCLOS did not provide an answer or guidelines in respect of the development of offshore hydrocarbon deposits shared by two or more States or found in areas of overlapping sovereignty claims. UNCLOS merely foresees a reinforced obligation resulting from the principle of cooperation established under international law, which consists of States undertaking meaningful efforts towards reaching an understanding on maritime delimitation or interim measures whenever States fail to agree on the delimitation of maritime boundaries. However, this reinforced obligation does not imply that States shall cooperate on the conservation and management of non-living marine natural resources or enter into maritime delimitation agreements or implement interim measures, such as joint development agreements of offshore hydrocarbon deposits.

There is no correlation between joint development agreements of offshore hydrocarbon deposits and the delimitation of maritime boundaries, nor should the former be perceived as an alternative to the latter or a replacement of the same, given that these agreements have been implemented before, after and

---

① Rainer LAGONI, Festlandsockel und Ausschließliche Wirtschaftszone, in Wolfgang Graf VITZTHUM (colabs.) Gerhard HAFNER, Wolff Heintschel VON HEINEGG, Rainer LAGONI, Alexander PROELβ, Wolfgang Graf VITZTHUM and Rüdiger WOFRUM ed., *Handbuch des Seerechts*, Verlag Munich: C. H. Beck, 2006, p. 281; Hazel FOX, Paul MCDADE, Derek Rankin REID, Anastasia STRATI and Peter HUEY ed., *Joint Development of Offshore Oil and Gas. A Model Agreement for States for Joint Development with Explanatory Commentary*, London: The British Institute of International and Comparative Law, 1989, pp. 333～372; Nuno MARQUES ANTUNES, *Towards the Conceptualisation of Maritime Delimitation-Legal and Technical Aspects of Political Process*, Leiven/Boston: Martinus Nijhoff Publishers, 2003, pp. 292～293.

concurrently with the delimitation of maritime boundaries.

The purpose of joint development agreements of offshore hydrocarbon deposits is not to achieve the internationalization of maritime areas or alter the legal regime applicable to the spatial organization of the seas and oceans which ultimately defines the legal nature and content of States' rights and obligations in each maritime area. In fact, when entering into joint development agreements of offshore hydrocarbon deposits, States are mainly considering the respective national interests, instead of any collective or universal welfare consistent with a holistic approach to the development of non-living marine natural resources.

Nonetheless, the absence of a joint development obligation of offshore hydrocarbon deposits shared by two or more States or found in areas of overlapping sovereignty claims does not imply that States are not bound to certain obligations under international law regarding these resources. These obligations include principally the duty to inform the relevant States on shared offshore hydrocarbon deposits and not to practice or abstain from practicing any act that may be susceptible of damaging or making unattainable any solution concerning such resources or the means selected to achieve a particular solution.

The presence of offshore hydrocarbon deposits has been and continues to be an impediment to maritime delimitation in the Asia-Pacific region and an important source of conflict between the relevant States. The strengthening of regional efforts and the continuing awareness of the advantages of joint development agreements of offshore hydrocarbon deposits as a pragmatic and reliable legal option to overcome such deadlock situations could be the key to open an era of cooperation and ultimately provide an economic, political and social improvement of the Asia-Pacific region.

(Editors: HUANG Haiqi; CHEN Xiaoshuang)