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**THE INTERNATIONAL CASES CONCERNING JOINT
DEVELOPMENT AGREEMENTS
(The Case of Saadia Arabia-Bahrain, Japan-South Korea, Thailand-Malaysia)**

Abstract

This article is dedicated to analysing the joint development agreements resolving or temporarily suspending maritime boundary disputes cases between Japan-South Korea, Saadia Arabia-Bahrain, and Thailand-Malaysia. Regardless of whether any delimitation line exists or not, international law allows the parties to agree on delimitation by consulting on the most appropriate conditions or jointly operate on the disputed zone, field or maritime border. If the cross-border dispute on hydrocarbon resources exists, the conclusion of a unitization agreement is not ruled out by the international practice as much. This article identifies the features of the joint development agreements, divides them into the three models recognized internationally, analyzes the main characteristics of each model of the joint development agreements through historical important precedents. Furthermore, the research lets daylight into the essential statements that regulate the fiscal regime, share proportion issues, the sovereign right, and the right to use subsoil and the seabed, within the agreements.

Key words: *maritime boundary disputes, joint development agreements, unitization agreements, delimitation, joint development zone, international cases, demarcation of the continental shelf, seabed, disputes on petroleum reservoir, oil fields, production share agreements*

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**Birgə inkişaf sazişləri ilə bağlı beynəlxalq işlər
(Səudiyyə Ərəbistanı-Bəhreyn, Yaponiya-Cənubi Koreya, Tayland-Malayziya nümunəsi)**

Xülasə

Bu məqalə Yaponiya-Cənubi Koreya, Səudiyyə Ərəbistan-Bəhreyn və Tayland-Malayziya arasında dəniz sərhədi mübahisələrini həll edən və ya müvəqqəti dayandıran birgə inkişaf sazişlərinin təhlilinə həsr edilmişdir. Hər hansı delimitasiya xəttinin olub-olmamasından asılı olmayaraq, beynəlxalq hüquq tərəflərə ən münasib şərtlərlə məsləhətləşmələr aparmaqla delimitasiya haqqında razılığa gəlməyə və ya mübahisəli zona, sahə və ya dəniz sərhədində birgə fəaliyyət göstərməyə imkan verir. Əgər karbohidrogen ehtiyatları ilə bağlı transsərhəd mübahisəsi varsa, birləşdirmə sazişinin bağlanması beynəlxalq təcrübədə o qədər də istisna edilmir. Bu məqalə birgə inkişaf sazişlərinin xüsusiyyətlərini müəyyən edir, onları beynəlxalq səviyyədə tanınan üç modelə ayırır, tarixi mühüm presedentlər vasitəsilə birgə inkişaf sazişlərinin hər bir modelinin əsas xüsusiyyətlərini təhlil edir. Bundan əlavə, tədqiqat müqavilələr çərçivəsində fiskal rejimi, pay nisbəti məsələlərini, suveren hüququ, yerin təkindən və dənizin dibindən istifadə hüququnu tənzimləyən əsas ifadələrə aydınlıq gətirir.

Açar sözlər: *dəniz sərhədi mübahisələri, birgə inkişaf sazişləri, vahidləşdirmə sazişləri, delimitasiya, birgə işlənmə zonası, beynəlxalq işlər, kontinental şelf, dəniz dibinin demarkasiyası, neft anbarı, neft yataqları üzrə mübahisələr, hasilatın pay bölgüsü sazişləri*

Introduction

Maritime border disputes generally derived from the not-delimited zones, the claims of the coastal states disagreeing with the delimitation defined before, the hydrocarbon or other natural resources located in the disputed areas, or overlapped each other, etc. International law does not regulate the direct solution of the settlement of the disputes, unlike the appropriate provisions of UNCLOS (Article 123) (The United Nations Convention on the Law of Sea, 1982: 123) and the other Conventions advising the cooperation of the parties and come to an agreement. However, international practice on this matter shows that there are mainly three ways to resolve the maritime border disputes and disputes on the natural resources located within the disputed areas. Those are 1) the delimitation of the maritime borders by the parties through a bilateral or multilateral agreement, 2) conclusion of Joint development agreements and establishing joint developing zone between the parties, 3) coming into an agreement on unitization of a deposit (reservoir) (2).

1. The Joint Development Agreements

Joint development agreements are concluded to jointly develop a specific zone or a natural reservoir located on the seabed or continental shelf by the countries (usually two countries) and share the revenues in order to agree on proportions of each country (Joint Development Agreements: Legal Structure and Key Issues Professor Peter Cameron and Professor Richard Nowinski, 7). Joint development agreements are a temporary solution when the delimitation of the seabed/continental shelf cannot be identified and cannot be reached any agreement by the parties. The countries can conclude the joint development agreements either when the delimitation boundary exists or not. Mainly, three models of the joint development agreements are exerted (Cross-Border Unitization and Joint Development Agreements, 415).

2. Single-State Model

Single-State Model, in which the shares are divided equally, but only one state administrates the joint development zone or the disputed/ overlapping oil-gas field, and the other states observe the development and managing the zone/field. The most known example of the single state model is the Bahrain-Saadia Arabia boundary agreement concluded on 22nd February 1958. By the mutual agreement of the leaders of the botch countries, the hexagonal area of the overlapped claims was entirely ascribed to Saadia Arabia. At this moment, Saadia Arabia had become the factual owner of this area. The hexagonal area, including the islands, began to be under the jurisdiction of Saadia Arabia; in return for this, the revenues should be portioned out equally, one-half of the revenues for each party. In the Agreement, the location of the six-point is defined with the longitudes and the latitudes. The exploration and exploitation rights are granted to Saadia Arabia because the right to use seabed and subsoil are entirely attributed to Saadia Arabia through this Agreement (Bahrain-Saudi Arabia boundary agreement, 1958). Unlike the other joint development agreements, this boundary agreement was concluded, although a delimitation line based on the median line principle existed, for the reason of regulating the overlapped oil-gas fields (The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation Masahiro Miyoshi, 27).

3. Two states/joint venture model

Two states/joint venture model, in which the joint development zone is regulated by the concessionaries or the companies appointed by each party. In this type, each country has the right to explore and exploit the natural reservoir in terms of the concluded Agreement. "The Agreement between Japan and the Republic of Korea (South Korea) concerning joint development of the southern part of the continental shelf adjacent to the two countries" as an example of joint venture model is still the core primary agreement among the joint development agreements (The joint development of offshore oil and gas in relation to maritime boundary delimitation Masahiro Miyoshi, 27) The Agreement was concluded on 30th January, 1974 and first of all, addressed to promote the friendly relations between the two countries, further jointly exploration and exploitation of the petroleum resources situated in the south of the continental shelf adjacent to both countries. This Agreement

defines the establishment of the Joint development zone that is an area bounded with the straight lines as prescribed with the longitudes and latitudes in Article II.1. (The Joint Development Zone between Nigeria and Sao Tome and Principe, 2009-2010: 65). As the main feature of the 'joint venture model of joint venture agreements, the Agreement stipulates that the joint development zone should be divided into subzones in which the concessionaries of both countries carry out the exploration and exploitation activity. By the terms of this Agreement, the 'concessionaire' is described as the person granted by either country according to its laws to explore and exploit the natural resources in the joint development zone, as well the concept 'concessionaries of both countries' implies one concessionaire from one country on the one hand, and one concessionaire from the other country on the other hand who are jointly implementing exploration and exploitation in the same joint development zone. If a country appoints more than one concessionaire for one field, in this case, only one concessionaire shall represent the country, and the others will have undivided interests. According to the Agreement, one of the concessionaries of a state should be appointed as the operator of the field relevant to the Agreement concluded between the two countries' concessionaries. The operator controls all operations under the operating Agreement, employs all the personnel, pays and discharges all the expenses arising out of the operations and obtains the equipment and necessary facilities to carry out the operations. The operator should be assigned within the three months after the concessionaries were authorized. From the date of being authorized with the exploration right, the concessionaries start the activity within six months and with the condition of not suspending the activities later than six months. The revenues coming from the extracted resources are entitled fifty-fifty to each concessionaire of the countries. Moreover, as one of the main provisions of the Agreement it can be shown as an example that establishing a 'Joint Commission' to ensure the connection by holding meetings and adopting respective decisions in these meetings between Japan and the Republic of Korea. The Joint Commission consists of two national sectors, and each sector has two members appointed by the States (The Joint Development Zone between Nigeria and Sao Tome and Principe, 2009-2010: 65).

Prior to this Agreement, the delimitation agreement approving the application of the median line principle for the area through the southern part of the Sea of Japan and Tsushima/Korea Strait was concluded between the parties, but the rule of drawing the median line cannot be settled; thus, Japan put forth the median /equidistance principle while Korea insisted on the natural prolongation doctrine should be applied to the extension of own continental shelf beyond the median line. So that, as a temporary solution way, the joint development agreement was signed between the parties, but not with each party having claims in the East China Sea. Hereby, after the conclusion of the Joint Development Agreement, due to extending the southern part of the Joint development zone to the continental shelf of China, the tensions among the countries began to arise other claims on the demarcation of the exclusive economic zone from the baselines of Japan, and China coasts issue occurred. Either China or Japan contented 200 nautical mile Exclusive Economic Zone from the own baselines, but considering the width of the East China Sea, the claims span at 360 nautical miles; therefore, neither state can have 200 nautical mile EEZ, due to lack of the length of the area. Unfortunately, any agreement cannot be reached by the parties; even in 1995, Japan objected to any drilling and exploration in this area by virtue of being a disputed zone regarding the EEZ claims (Japan and Republic of Korea Agreement concerning joint development of the southern part of the continental shelf adjacent to the two countries, 1974). In this way, it is seen that the joint development agreements concluded before the delimitation of the disputed zone as a temporary solution may be met with the counteractions.

4. Joint Authority Model

Joint authority model and one of the earliest examples, the Thailand-Malaysia case, is characterized by the conclusion of the Memorandum of Understanding ('MoU') in 1979 due to could not be reaching to any agreement until this MoU. By the MoU, the parties established a joint development zone in the Gulf of Thailand (9). In the same year, the parties achieved to come into an agreement on the delimitation of territorial sea and the continental shelf to the west degree Joint development zone. The MoU stipulated a Joint Authority and was granted the rights to explore and exploit the natural reservoirs in the JDZ on behalf of the parties. Moreover, in respect of the jurisdiction of the countries, the Joint

development zone was divided into north and south part, in which accordingly Thailand and Malaysia applied their criminal jurisdiction. Still, this division line was not a dividing line separating the sovereign rights of the countries (10).

Additionally, the MoU's terms made some difficulties regarding the petroleum fiscal regime. For instance, Malaysia had used to conclude the petroleum agreements in order to Production Share Agreements, and Thailand had a concessionary practice, so had applied tax and royalty system in their contracts. To resolve this disorderliness and the fiscal regime to be applied, a Joint Authority reestablished in 1990 through the Agreement on the Constitution and Other Matters Relating to the Establishment of the Malaysia-Thailand Joint Authority (11). In the Agreement the competences of a Joint Authority are clarified as "The Joint Authority shall have a juristic personality and such capacities as shall be provided for in the Acts of Parliament to be enacted by the Government of Malaysia and the Government of the Kingdom of Thailand, respectively, for the establishment of the Joint Authority, hereinafter referred to as "the Acts" (Joint Development Zones Between Countries by Peter Reid, 12). By this Agreement, the production sharing system was defined for the area of the joint development zone. The period of the PSA cannot be more than thirty-five years. The royalty consisted of ten per cent of gross production and is payable to the Joint Authority to transfer the equal portions for each party, the profit share should be between the contractor and the Joint Authority in an equal proportion, and the cost recovery limit shall be fifty per cent of gross production (Joint Development in the South China Sea, 92).

Conclusion

Evaluating and analyzing the joint development agreements, it comes into sight that joint development agreements carry provisional character when the delimitation boundary is not defined between the states. It is true that joint development agreements are generally concluded just for the absence of any boundary agreement and to suspend the issue for a while; however, this agreement can only suspend the dispute between two signatory states (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, 1990).

So that, if any other countries surround the joint development zone (the North Sea Continental Shelf case), or the defined continental shelf between two signatory states, or the states whose territory is crossed by the joint development zone (East China Sea claim between South Korea-Japan and China) alleged either the nullity of the agreement due to realizing without the consent of the other countries or the interception of the operations implemented within the joint development zone, in this case, the tensions might be increased so that the disputes can be remained deadlocked for years. Also, joint development agreements may prevent and eliminate the dispute when the agreement is reached in a way that does not overlap with the claims of the other parties. Finally, the best bet is the conclusion of a joint developing agreement after the demarcation of the boundary lines between the parties or by the countries surrounding the zone (14).

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