RETHINKING MARITIME DELIMITATION AND PROMOTING JOINT DEVELOPMENT OF PETROLEUM: THE NIGERIA-SAOTOME AND PRINCIPE JOINT DEVELOPMENT MODEL

by

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A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF LAWS

in

The Faculty of Graduate Studies

THE UNIVERSITY OF BRITISH COLUMBIA
(Vancouver)

September 2011

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Abstract

In an era when maritime delimitation disputes abound because of the perceived and actual presence of valuable natural resources in the disputed boundaries, this thesis seeks to examine a particular alternative way of resolving maritime disputes called joint development. A good number of states are, expectedly, unable to resolve their maritime disputes say by a successful bilateral mutual agreement where natural resources capable of changing their economic fate are found to straddle such disputed area(s). Maritime disputes already abound with potential ones breeding. Resorting to third party dispute resolution is certainly better than aggression and intimidation, but may either be counterproductive or unpredictable with the state of international judicial precedents on the matter. Indeed, even after a bona fide judicial settlement, there is no guarantee of peace and security in such troubled waters. This is traceable to the winner-takes-all nature of a third party settlement of disputes- be it arbitration or adjudication. It is in recognition of this situation that this thesis seeks to promote joint development in the absence of a mutual delimitation and deemphasizes third party dispute resolution and outright delimitation for such situations. The thesis focuses on the nature and merits of joint development of straddling resources over outright judicial or arbitral delimitation with practical and existing scenarios. The presence of existing joint developments around the world and in particular the Nigeria-Sao-Tome Principe Joint Development effort, as a model of joint development, is elucidated in this work and the features that have made it work. This thesis is concluded by a discourse of what the writer considers to be the gains of joint development which third party dispute resolution and outright delimitation do not offer in straddling or disputed resources development and management.
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Acknowledgments

For holding forth while I am away in pursuit of our dreams, I thank my wife, Ogonna Chinedu-Eze. Your love and support have remained immeasurable. My love goes to Chisomaga and Esomchukwu- the incredible duo, and to Chinecherem- (Oyiri Nnaya), for enduring the pain of missing their Daddy in his academic frolic. For the Grandmas whose prayers have been the fulcrum of my sustenance and progress in my endeavours, I appreciate you all.

My colleagues at work are also fondly remembered and appreciated. The company secretary and legal adviser, Fidelity Bank Plc, Mrs. Chijioke Ugochukwu whose encouragement and active role in securing an official study leave for my programme cannot be easily forgotten, deserves at least a mention here. My colleagues in the legal services division and at Abuja regional office of the Fidelity family, I remember you all for the community we shared. My Abuja family- my cousin, Nsibidi- how so fondly I miss you all! And for all my relations and friends who have endured my absence all the while, I thank you all.

My special appreciation also goes to my supervisor in the LL.M programme at UBC Law, Professor Ian Townsend-Gault for his useful contributions, comments and assessment of my thesis and my entire research. In you I find a professor I never had all my entire academic life. Working under your guidance was as pleasurable as it was insightful. With you I learnt the law of the sea and ocean resources the way it was never explained before and your expertise in the field sure rubbed off on me. I enjoyed working with you and look forward to future and better exchanges.
To all my LL.M instructors and colleagues, your useful feedbacks during the seminars were brilliant critiques of my work and most useful. And my wonderful friends in Vancouver- Paco, Chile, Sunny and Sotonye who made me comfortable in the city while the programme lasted, I owe you all.
Dedication

To the love of my life, Ogonna! And
to the love we share and cherish.

To Chisom, Esom & Chec he- God’s
choicest blessings to our lives...
CHAPTER 1

Introduction

The Law of the Sea has been and promises to remain one of the most controversial areas of international law. Dating back to the seventeenth century when the concept of *Mare Liberum*<sup>1</sup> was advanced by the Dutch jurist, Hugo Grotius in 1609 to justify the concept of the sea as subject to no States’ sovereign jurisdiction. The opposing school of *Mare Clausum*<sup>2</sup> was shortly thereafter propounded by the English jurist, John Selden in 1635, thereby sparking debates over States’ jurisdiction to the sea and its limit. Till date, the debate has raged on and the subject matter active but more on the control of the natural resources of the sea. From time, it came to be accepted, as state practice developed, that coastal States have jurisdiction over the natural resources of the sea adjoining their coast and then the issue became the limit of the exercise of such jurisdiction over the adjacent sea in spatial terms. The ‘cannon shot’ rule propounded by Cornelius van Bynkershoek also played its role in defining the limit of States’ jurisdiction over the resources adjacent to their coast at its own time. That is not to say that state practice is entirely uniform in this respect in contemporary times. This goes to show how the problems associated with maritime boundary delimitation are probably as old as the law of the sea itself.

In comparative modern times, dating back to the Truman Proclamation of 1945, and even before, States have always sought to extend the limit of their maritime jurisdiction where permissible in

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<sup>1</sup> Latin for “Open Sea” This was formulated to defend and justify the seizing and looting of the Portuguese merchant ship *Santa Catarina* by the Dutch East Indian Company in 1603 by Hugo de Groot (Hugo Grotius).
<sup>2</sup> Latin for “Closed Sea”
international law. The Convention on the Continental Shelf 1958 tried to resolve the problem by setting a limit dependent on length and exploitability of the natural resources within the maritime boundary. This did not achieve much before technological development affected some of the critical provisions relating to maritime zone- ‘exploitability’, thereby made a clear definition of the maritime zone and its limit difficult. Then eventually came the negotiations of the United Nations Convention for the Law of the Sea.\textsuperscript{3} Serious efforts were put into the Conference leading up to UNCLOS, 1982 for an effective regime of maritime zones and in the end maritime zones were recognized as the internal waters, territorial sea, contiguous zone, exclusive economic zone (EEZ), the continental shelf (and the extended continental shelf) the high sea and the Area- each with seemingly clear limits. All these maritime zones have their implications in maritime boundary delimitation depending on the area in issue. Unfortunately, long after the coming into force of UNCLOS, 1982, and notwithstanding all the copious efforts it made in the delineation of maritime zones and their limits, maritime boundaries disputes are far from settled except in very few circumstances. They abound, especially where natural resources are in contention. While this may be blamed on state practice that is incompatible with international law, some of the provisions of UNCLOS, 1982 did not anticipate some of the current developments in science and technology, understandably so. Moreover, law, municipal or international, cannot provide for all events hence its progressive development.

The issue of boundaries, particularly maritime boundaries that entail control of natural resources has always generated tension and controversy in international law and politics since the

\textsuperscript{3}[Hereinafter referred to as UNCLOS, 1982] The Convention was adopted in 1982 in Montego Bay, Jamaica and came into force on November 16, 1994, one year after the sixtieth state, Guyana, ratified the treaty. This is also referred to in the abbreviated form as LOSC in much of the law of the sea literature. In this work therefore, UNCLOS, 1982 is used to refer to LOSC, being the Convention as distinct from the Conference leading up to it.
celebrated North Sea Continental Shelf Cases,\(^4\) which was to be the first case on maritime boundary delimitation before the International Court of Justice\(^5\). Prior to then, there appears to be a previous case of maritime delimitation though resolved by international arbitration.\(^6\) Since the North Sea Continental Shelf Cases, a lot of other cases on maritime boundary delimitation have been before the ICJ and other international tribunals on a number of occasions. While the jurisprudence of the ICJ and the tribunals is not crystal clear on the matter, the tests of equity and proportionality, amongst others, have been employed by the ICJ depending on the circumstances. In others, it appears difficult to identify the exact legal principle used in arriving at the decision, like for instance the Gulf of Maine Case\(^7\) between Canada and United States of America.

The examination of the raison d’être behind the judgments of the ICJ or other international dispute resolution bodies is not within the scope of this research, rather this thesis focuses on the promotion of an alternative to third party dispute resolution or even outright boundary delimitation by way of joint development of natural resources in disputed or potentially disputed maritime boundaries, especially where the natural resource(s) straddle(s) the disputed or agreed boundary line or an area with overlapping sovereign contentions by the coterminous coastal States.

Understandably, it is not in every case that maritime boundary will be successfully delimitated. If Parties can agree to peacefully delimit their boundaries without much ado, beautiful! But how many of these delimitation disputes involving straddling natural resources have been resolved

\(^5\) Hereinafter referred to as the ICJ.
\(^6\) See Maritime Boundary Delimitation Arbitration (Grisbardana) between Norway and Sweden, October 23, 1909, Reports of International Arbitral Awards, Vol. XI, pp.147-166.
\(^7\) ICJ Reports of Judgments, 1984, pp. 245-390
very peacefully and within a reasonable time? At most other times, indeed many, delimitation negotiations are deadlocked. This is much more complicated in instances (which is actually the focus of this thesis) where valuable natural resources have been discovered or suspected to exist as was the situation in the Case Concerning the Land and Maritime Boundary between Nigeria and Cameroon (Equatorial Guinea Intervening, not as Party) (Merits),

popularly known in Nigeria as the Bakassi Case. The disputed Bakassi Peninsular was popular, not only for the Nigerian tribal settlement, but also for its suspected massive oil and gas deposits. Unfortunately, it is no longer part of Nigeria, needless to mention the bad blood generated by the decision, likewise similar circumstance the world over.

Natural resources no doubt play an important role in the lives and economy of any nation which, in some cases, translate to international political and economic power as well. A good number of States depend solely on their natural resources for their sustenance and development. Admittedly, the importance of natural resources cannot be ignored in world politics, international law and economy. For some natural factors, a great deal of these resources is found in the sea within national jurisdiction for instance oil and gas, fisheries and other marine living resources as well as other undiscovered natural resources. By the very fugacious nature of oil and gas for instance, national maritime boundaries are not respected as they are at times found to straddle boundaries or areas of overlapping claims of States. Considering the importance of the resources in the lives of the citizens and the national economy in general, it is not difficult to appreciate the quantum of political tension that is generated when this situation exists. The result does not make

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8 ICJ Reports of Judgments, 2002, pp. 303-602
9 For instance Saudi Arabia, UAE, Kuwait, Iran, Iraq and a host of other Middle East countries and in Africa countries like Libya, Angola, Gabon, Nigeria and so on. Nigeria’s major foreign exchange earners are oil and gas which account for over 90 per cent of her revenue and GDP.
for orderly or peaceful development of the resources, sustainable development and security of
the ocean. Ready examples are the South China Sea and the Caribbean Sea.

In a nutshell, this thesis therefore is engendered by the factors mentioned above and does not
recommend maritime delimitation by third party dispute resolution, rather it seeks to promote the
joint development of straddling natural resources, with particular reference and interest in oil and
gas for the benefit of the States involved. Thus, except where otherwise stated or implied, natural
resources will mean oil and gas. Needless to mention that in appropriate circumstances,
references will also be made to living natural resources like fisheries as the concept can also
apply to them in a different variant. The concept of joint development, as a product of state
practice and customary international law, is further reinforced by conventional international law.
Articles 74 (3) and 83 (3) of UNCLOS, 1982 ingenuously accommodate joint development
between States that are unable to agree on maritime boundary delimitation. This way, tension is
defused and permanent delimitation postponed for a long period for the next generation to worry
about. But thankfully, such resources are capable of depletion over such time thereby making
any further conflict over the area unattractive. In this work, the nature, status, beauty and success
of this unique system of dispute resolution and resources management will be critically analysed,
using the most successful specimen joint developments as roadmaps. In the end it will be
recommended for States to adopt in view of its numerous merits.

This thesis is therefore dedicated towards preaching the gospel of joint development while
discouraging outright dispute resolution with a winner-takes-all attitude that does not promote
smooth international relations and good neighbourliness amongst States.
1.1 Aims and Objectives

This work principally focuses on joint development of natural resources by neighbouring coastal states within the framework of international law as contained in UNCLOS, 1982. The aims of the research are therefore as follows:

i. To review and analyse the role and relevance of maritime boundaries in international law and in joint development in particular.

ii. To highlight the importance of delimitation in international law and relations.

iii. To review critically the existing international framework for delimitation of maritime boundaries and show how unpredictable they are and how states may lose out of their natural resources when third party dispute resolution is resorted to.

iv. To review the existing framework for joint development of marine resources and show, by existing evidence, that state practice is tilting towards joint development.

v. To study the nature and current status of joint development in international law

vi. To review and ascertain whether a binding obligation is imposed on states to jointly develop straddling natural resources in international law.
vii. To discuss existing and previous joint developments, analyse their importance and lessons to be learnt from them.

viii. To provide a detailed example of a successful joint development venture in the Gulf of Guinea as evidence of the workability of joint development.

ix. To prove that joint development is the best form of maritime boundary dispute resolution for the promotion of world peace and security and sustainable management of ocean resources.

x. To encourage further participation of costal states and recommend it to the troubled ocean boundaries of the world.

xi. To provide a policy framework or a guide that will assist states interested in joint development of their straddling natural resources.

xii. To stimulate further research and arguments on the topic for better understanding and application.

1.2 Research Questions

a. Are existing works on this subject matter adequate and accurate?
b. Why is precise (maritime) delimitation so important in international Law?

c. Are there clear rule for maritime delimitation in international law either from conventional international law or from international judicial decisions?

d. Are the provisions of the UNCLOS, 1982 adequate to deal with the situation of straddling natural resources either in defined maritime boundaries or undefined maritime boundaries?

e. Are there alternatives to outright delimitation in international law that achieves the same results or even better results than outright delimitation?

f. What is the legal status of such alternative and how well recognized is the said alternative in international law?

g. Has the alternative been tried out before and how successful has it been?

h. Has the Nigeria-Sao Tome and Principe Joint Development lived up to its billing as successful model of joint development?

i. Does the alternative possess compelling merits in international law and politics?
1.3 Approach

This research is one focused on international law and particularly on an issue in marine resources law as an area of the law of the sea. The basic document of reference will be UNCLOS, 1982 with constant reference to Articles 74 and 83 and particularly paragraph 3. The reason is not far-fetched as it remains the conventional source of authority for a joint development in the exclusive economic zone and the continental shelf. Where necessary, the travaux préparatoires on the articles will also be of assistance. The Convention on the Continental Shelf, 1958 will also be consulted for comparison and historical reasons while the Vienna Convention on Law on of Treaties, 1969 will come in handy in interpreting the delimitation agreements of states and their obligations. Where necessary, state practices and soft law will be used and where appropriate, references will made to municipal law for purposes of analogy.

Review and references will also be made to standard international law textbooks and most particularly to the ones dealing directly on law of the sea or law of the sea issues like delimitation agreements and joint development agreements. The seminal and current articles and other works of eminent international laws jurists on the subject will be most helpful. While some ideas in the seminal works are still very relevant, some have been overtaken by recent events, state practices and superior arguments. Publications of institutes with specialties in marine or ocean law and affairs will be extensively consulted.

The internet generally and particularly the websites of the United Nations (especially on treaties and ocean affairs), and other international organizations and agencies like the International ICJ,
International Seabed Authority\textsuperscript{10}, International Tribunal for the Law of the Sea\textsuperscript{11} and so on, will be visited for resources and current information.

Resources permitting, the writer would also want to attend conferences, workshops, seminars and symposia relevant to the research and the experience garnered in the participation will invaluably add to the depth of this thesis, enrich and broaden its perspective. Interviews, where necessary and available may also form a necessary approach to this research.

Some Nigerian-Gulf of Guinea bias may be noticed in this work especially with reference to Chapter Four of the thesis with more reference to the activities in that region on this subject area, admittedly not just because of the nationality of the writer but such references are objectively apposite and arguably one of the most successful examples in the subject area under research.

Finally, the research will be generally approach by a legal analysis of existing conventions, soft law, bilateral agreements, state practices and existing literature with a view to tilting international focus on joint development, especially for the myriad unresolved maritime boundaries with or potentially with straddling goods. A critical analysis of existing literature especially in the area of joint development will be undertaken considering that some of the seminal works in the area came prior to the advancement and prevalence of the practice of joint development. In all, the objective is to highlight the merits of joint development that make it preferable to third party delimitation decisions and outright delimitation in a situation of

\textsuperscript{10} Hereinafter referred to as ISA.

\textsuperscript{11} Hereinafter referred to as ITLOS.
straddling resources. No particular school of legal scholarship is promoted, advocated or preferred here, at least not consciously for an objective analysis of the legal issues involved.

1.4 Thesis Outline

Chapter 1 deals with the basic and preliminary research issues, starting with an introduction of the subject matter of the thesis. The introduction progressively recalls the history of the law of the sea and earliest controversies. It also points out that controversy in law of the sea issues are not new and how maritime delimitation has also turned out to become one of the controversial issues in the law of the sea. However, there are perceived better alternative to delimitation by third party dispute resolution. The chapter also contains the preliminary issues of aims and objectives of the research, the research question, approach and finally this thesis outline.

Chapter 2 deals with a proper introduction to the research topic and has the heading, “Maritime Jurisdictions, Need and Methods of Delimitation”. The choice of beginning the research from this consideration may not be too obvious, but the reason is that these are the maritime zones that potentially require delimitation and thus generate issues and challenges in the law of the sea. Delimitation occurs within the maritime jurisdictions enumerated (though not all of them) but the writer believes it is necessary to bring out all the maritime zones, explain them briefly and concentrate on the ones that generate the most boundary delimitation conflicts in the law of the sea. After the discussion on the nature of maritime zones and how they generate conflicts in delimitation, the need to delimit international boundaries in international law will be examined. Needles to say that boundaries are not there for nothing in international law- whether land or maritime and they need to be clear. After that, the available means of delimitation known in
international law will be examined. At the end of this chapter, the writer intends to show that the rules for maritime delimitation in international law are generally unclear and that even if they are clear, they do not offer the best dispute resolution platform for states in the resolution on maritime boundaries in circumstances where there are exploitable natural resources overlapping such boundaries or where the boundaries are heatedly disputed, undelimited and natural resources exist therein.

Chapter 3 is subtitled “Defining the Concept of Joint Development” and really delves into the concept with a view to providing a detailed analysis of joint development as a concept, and without any pretences about exhaustiveness, analyses the arguments that have been canvassed on the subject. It starts by defining the concept and identifying its true nature and character in international law. It also tries to distinguish between joint development and other somewhat related concepts in the oil and gas industry and other extractive industries generally like unitization, joint venture and pooling. This will be done by discussing the characteristics of each of the concepts, how they operate and how they differ from joint development. This work recognizes that joint development took its existence from somewhere. In a separate subheading, the chapter will also discuss the legal framework for joint development as known in international law. All the identified sources of authority for the existence and growth of joint development like state practice, soft law, customarily international law, judicial decisions, conventional international law and municipal law will be discussed in details to the extent that lend existence and support to joint development and its current status in international law. Recognizing that certain conditions encouragement coastal states to jointly develop straddling natural resources, a full subheading is dedicated towards identifying and analysing these fillips which are socio-
cultural, political or economic in nature. Finally this chapter examines whether there is an obligation in international law for states to jointly develop their straddling natural resources. Put differently, whether the international legal framework examined in this chapter create a binding duty on a state to join hands with another in the development of their straddling natural resources.

Chapter 4 is a progressive one. It examines previous and other joint development efforts around the world and their significance. Some were successful while some are not as such. It categorises the examined joint development into two by first examining the ones that not only jointly develop but also delimits the maritime boundary or whose boundary has been delimited prior to the conclusion of the joint development effort but which has natural resources straddling the delineated maritime boundaries hence the joint development. Two of such agreements were examined- the United Kingdom and Norway Agreements of 1976 and 2005 Framework Agreement and the Bahrain and Saudi Arabia Agreement of 1958. The other species of joint development examined is the one that shelves boundary delimitation in the arrangement (as contemplated by UNCLOS, 1982) and the following agreements in this category were examined: Bahrain and Saudi Arabia Agreement of 1958 and the Australia-Timor Leste Timor Sea Treaty, 2002 and the subsequent amendments and unitization treaties made pursuant thereto. Another type of joint development that is considered is the one that relates to living natural resources (fisheries and marine biology) which are the Iceland-Norway Fishery Treaty and the Senegal-Guinea Bissau Agreement. Each of them has its significance that the chapter is dedicated to highlighting.
On a heartwarming note, Chapter 5 presents us with an arguably the most successful joint development effort of current times- the Nigeria-Sao Tome Joint Development. The detailed provisions of the joint development is laid out, discussed and compared against the general principles of modern joint development in an effort to explain why it has been successful in achieving its objective so far. Unfortunately, from a Nigerian perspective, the chapter closes with a poser on whether there could have been a joint development between Nigeria and Cameroon over the Bakassi Peninsular prior to the judgment of the ICJ delivering the luscious oilfields and good people of the peninsular to Cameroon. No doubt it may be crying over spilt milk, but it is worth learning from as the chapter daydreams about a lost opportunity of perhaps another successful joint development regime in the Gulf of Guinea.

The Concluding Chapter, on a closing note, endeavours to establish the thesis that maritime disputes do not really have to end up in a third party resolution to achieve an acceptable result. This it does by highlighting the myriad gains of joint development over outright delimitation by a third party dispute resolution some of which are the maintenance of peace, security and good neighbourliness between or amongst coterminal costal states and sustainable development of the ocean resources.

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12 Hereinafter referred to Nigeria-STP JD.
13 Case Concerning Land and Maritime Boundary between Nigeria and Cameroon (Equatorial Guinea Intervening) (Merits) (10 October 2002) (supra note 9).
CHAPTER 2

Maritime Jurisdictions, Need and Methods of Delimitation

2.1 Maritime Jurisdictions and their Limits

UNCLOS, 1982, at least theoretically, did a good job of delimiting maritime zones from where the earlier Conventions stopped. The jurisdictional zones are so clear in the text of the UNCLOS, 1982 documents that one will be surprised by the different interpretations that States make of them and available inconsistent state practices. However, to a large extent, maritime jurisdictions are settled.

The study of the zones is important to the subject under study to the extent that maritime delimitation expectedly occurs within the zones and natural resources are also embedded therein. While some like the internal waters cannot, at least theoretically, be subject to any form of delimitation, delimitation exercise or potential delimitation exercise occurs in basically the rest of the maritime zones. Considering that joint development is the subject matter of this thesis and is being advocated in place of outright delimitation and third party settlement, such joint development, in the context of this study and in international law of the sea, can only occur in the maritime zones. I therefore consider it imperative to study their nature and importance, at least in the introductory part of this work. In this part of the chapter therefore, all the various legal regimes governing the maritime zones and the legal nature of the zones themselves, will be discussed briefly for a proper introduction.
2.1.1 Internal Waters

Article 8 (1) UNCLOS, 1982 technically defines what the internal waters of a State includes by stating that waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State. So that in essence, it offers a description not necessarily a definition. These are bodies of water or watercourses enclosed by land territories like rivers, lakes and so on. They may also be referred to as inland waterways in some jurisdictions. In some circumstances, rivers and lakes straddle maritime jurisdictions of States thereby making co-operation in their legitimate uses or uses of their resources inevitable, but this is not the type of co-operation focused on by this work. States exercise full sovereignty over the area that falls within its internal waters. Indeed it is considered part of the land territory of a State and not even the right of innocent passage can apply to this area. Mouths of river flowing into the sea, bays and ports are all generally within the internal waters of a coastal State. For bays, States have been able to establish sovereignty over them as forming part of their internal waters and drawn a straight baseline across their mouths, their size and length notwithstanding. For instance the Hudson Bay, Hudson Strait and Ungava Bay, perhaps on the grounds of historic title as recognized by international law. Generally therefore, the rule of delimitation of the internal waters is the low water mark, subject to the rule of straight baselines as contained in Article 7 UNCLOS, 1982. From the foregoing, it is evident that the internal waters of a State can hardly

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15 UNCLOS, 1982, Article 18 (1) (a)
16 UNCLOS, 1982, Articles 9, 10 and 11, respectively.
generate any arguments about delimitation and joint development in the strict sense of the term. The regime for archipelagic States and their coastline is different and are contained in Part IV UNCLOS, 1982, and may well be beyond the scope of this work.

2.1.2 Territorial Sea

UNCLOS, 1982 provides that the sovereignty of a coastal State extends beyond its land territory and internal waters up to an adjacent belt of the sea called the territorial sea. The sovereignty extends towards the airspace, the subsoil and the seabed, though subject to certain rules of international law. Such limiting rules of international law include, most importantly, the right of innocent passage and overflight and are contained and defined in UNCLOS, 1982 and other international instruments. For the purpose of ascertaining the territorial sea, the straight baseline measured from the low watermark remains the default rule. But where certain special circumstances exist, like the presence of delta or other naturally destabilizing coastline conditions; where the coastline is deeply cut into or indented or where there is a presence of fringe islands along the coast; where there is a low tide elevations and so on, Article 7, UNCLOS, 1982 provides for departure from the default rule so that the baseline should be measured from the furthest seaward extent of the low water mark. The ICJ had in the well-known Anglo Norwegian Fisheries Case, decided on the basis of customary international law, accepted the legitimacy of Norway choosing to fix its baseline from the outermost part of the land territory in recognition of the special circumstances of the Norwegian coast which is extremely indented, coupled with the presence of fringe islands. To that extent, what Article 7,

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18 Article 2 UNCLOS, 1982 generally  
19 Articles 17, 18, 19 and following, UNCLOS, 1982  
20 Article 5 UNCLOS, 1982  
21 ICJ Reports of Judgment, 1951, 116 at p. 128
UNCLOS, 1982 did is to codify the ICJ decision in the case and elevate it from mere state practice to conventional international law. Hence once the baseline is established, international law is now settled, regardless of what States claim or practice, that the territorial sea of a State shall be established to a limit of 12 nautical miles from the baseline established in accordance with the default rule or the special circumstances rules.\(^{22}\)

Most important to this work is the circumstance where the territorial sea of a costal State overlaps with that of another State either in the adjacent or in the opposite direction and the applicable rules of delimitation. UNCLOS, 1982 anticipates this and provides that where the coasts of two States are adjacent or opposite each other, “...neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.”\(^{23}\)

This position has been further confirmed a rule of customary international law in the *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain).*\(^{24}\) The only exceptions to this rule are those already recognized by international law.\(^{25}\) It therefore stands to reason that where natural resources straddles certain overlapping territorial seas, whether or not their boundaries have been delimited, the situation is ripe for joint development of such overlapping zones. The territorial sea is therefore one of the maritime zones in international law where it is possible to set up a joint development mechanism that will be discussed in a later

\(^{22}\) UNCLOS, 1982, Article 3  
\(^{23}\) UNCLOS, 1982, Article 15  
\(^{24}\) ICJ Reports of Judgment 2001, p. 40, paras 175-176  
\(^{25}\) UNCLOS, 1982, Article 7; See also the *Anglo Norwegian Fisheries Case, supra* note 8.
chapter. Another maritime zone capable of generating joint development zones or maritime cooperation in general is the EEZ.

2.1.3 The Contiguous Zone

The contiguous zone is certainly incapable of engendering joint development in the strict sense, however, it is one of the special zones created by the Convention on the Territorial Sea and the Contiguous Zone, 1958 and preserved by UNCLOS, 1982.26 Within this zone, coastal States may exercise necessary control for the purpose preventing infringement on their customs, fiscal, immigration or sanitary laws within the territorial sea or land territory and also for the purpose of punishing infringement on the said laws. The zone may not extend beyond 24 nautical miles. The essence of this zone therefore is limited to enforcement of laws and is not a zone known for the development of natural resources. However the EEZ and continental shelf cover and extend well beyond this area.

2.1.4 Exclusive Economic Zone

This is a special regime created by UNCLOS, 1982 beyond and adjacent to the territorial sea within which costal States may exercise certain natural resources rights subject to the limitations of UNCLOS, 1982.27 This regime was originally created for fisheries interests of costal States.28 Prior to UNCLOS, 1982, coastal States fixed their exclusive fisheries zones arbitrarily so that the non coastal States were restricted only to the high sea or their own internal waters. This practice

26 Section 4, Article 33
27 Part V generally, and particularly article 55.
of exclusive fisheries zone gained recognition in the *Fisheries Jurisdiction Case (United Kingdom v. Iceland) (Merits)*\(^{29}\) and even further recognition in the *Jan Mayen Case (Denmark v. Norway)*.\(^{30}\) Coastal States therefore can exercise sovereign rights (not sovereignty) only for the purpose of exploiting, conserving and managing living resources of the economic zone. 200 nautical miles is the limit of this zone of the water column.\(^{31}\) The rights therein also extend to the establishment and use of artificial islands, installations and structures likewise marine environmental protection and scientific research. These rights are however exercisable with due regard to the rights of other States in the peaceful uses of the sea generally regarded as freedom of the sea.\(^{32}\)

With particular reference to the living resources, coastal States shall have a duty for the purposes of conservation and utilization of such resources, of course by making laws to regulate the uses of such resources.

Article 63 UNCLOS, 1982 is very instructive on co-operation of States for the management of the fishery resources where certain fish stock or associated species occurs within the EEZ of two or more States. It provides that the States involved should seek to co-operate either directly or through a regional or sub-regional organization on the measures to ensure coordinated and sustainable management and uses of those species. To that extent this provision is very relevant to this work as it relates to the framework for either bilateral agreements or resolutions on fisheries management of regional or sub-regional organizations.

The EEZ is therefore very fertile in generating joint development agreement particularly for living resources of the sea and relevant to this research. The rule for delimitation of the EEZ and

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\(^{29}\) *ICJ Reports of Judgment* 1974, 3 at paras 52-62.  
\(^{30}\) *ICJ Reports of Judgment* 1993, 38 at 59, paras 61-62  
\(^{31}\) UNCLOS 1982, Article 57  
\(^{32}\) UNCLOS 1982, Article 56 generally
the continental shelf are basically similar thus it will be much more convenient to discuss them together in the study of the continental shelf which is next.

### 2.1.5 The Continental Shelf

The Truman Proclamation of 1945 has been recognized for its role in the development of the concept of continental shelf. Having proclaimed the US has sovereign rights over the natural resources of the subsoil and the seabed of the continental shelf adjacent to its coast, other coastal States that have been silently nursing similar ambition followed suit, each declaring various limits of their continental shelves. It will be recalled that the *Convention on the Continental Shelf* 1958 in Article 1 defined the continental shelf as “the seabed and subsoil of the submarine area adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of exploitation of the natural resources of said areas.”

This definition was to be challenged by the technological ability of oil and gas companies to produce petroleum from hundreds of nautical miles offshore. To that end, the definitional criteria of the continental shelf were doomed to fail as there was absolute uncertainty as to the actual limits of the coastal State’s continental shelf before the extant convention.

UNCLOS, 1982 to some appreciable extent solved the issue of the limit of the continental shelf. It provides that the area comprises the seabed and subsoil of the submarine areas that extend beyond a coastal State’s territorial sea throughout the natural prolongation of its land territory to

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33 Emphasis added.
the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.  

The continental shelf is a special geological expression creating certain rights in international law for coastal States. As noted by the ICJ in the *North Sea Continental Shelf* case, the right does not depend on effective control or occupation (as in land territories generally), but on the geographical criterion of the existence of the continental shelf of a coastal State. Therefore the right to the continental shelf of a coastal State does not depend on occupation and in whatever circumstance, a coastal State cannot be stopped from claiming its continental shelf except as may be contained in UNCLOS, 1982. Hence, coastal States may exercise sovereign rights over the area for the purpose of exploring it and exploiting its natural resources of whatever category. They can also construct artificial islands and installations which must be respected by all vessels navigating through the continental shelf and regulate/authorize the drilling of the continental shelf for minerals. It is noteworthy that the rights of the coastal States are also subject to the rights of others States to the sea and freedoms of the sea recognized by and contained in UNCLOS, 1982. The Convention avoided the use of the word “sovereignty” in providing for the

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35 UNCLOS, 1982, Article 76 (1)
36 *Supra*, at p. 31
37 The only exception may be the where a State intends to claim an extended continental shelf and fails to do so within the timeframe of 10 years from May 1999 when the Commission on the Limits of the Continental Shelf adopted its rules of procedure and guidelines for the claim to extended continental shelf. In the case of a non State Party to UNCLOS, 1982, 10 years from when it ratified the Convention. However this applies to only the extended continental shelf and does not affect the right to the undisputed 200 nautical miles continental shelf.
38 Article 77 UNCLOS, 1982. (4) provides that the natural resources referred to for the purpose of exploitation of the continental shelf consists of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.
39 UNCLOS, 1982, Articles 80 and 81
rights of the coastal State. This means that coastal States have no sovereignty over the area to the extent of appropriation or annexation.

It is on the basis of these rights in the continental shelf that coastal States have been able to authorize the oil and gas multinational companies through a regime of oil mining or prospecting licences or leases, to conduct oil and gas activities on the continental shelf of the coastal States. Where these zones internationally overlap, there is cause for delimitation and where resources straddle maritime boundaries of opposite or adjacent continental shelves of States, joint development is recommended, which is what this research is advocating. Thus the continental shelf is basically the most fertile area for joint development amongst States of overlapping boundaries of straddling minerals. In the forthcoming subchapter, it will be necessary to look at the provisions of UNCLOS, 1982 on delimitation in greater details. Having established that the continental shelf is relevant to our study of joint development, I will proceed to examine the extended continental shelf.

2.1.6 Extended Continental Shelf

UNCLOS, 1982 in its definition of the continental shelf defines it as the natural prolongation of the coastal States land territory to a distance of at least 200 nautical miles from the baseline from which the territorial sea is measured. There are instances where the natural prolongation extends well beyond the 200 nautical miles and in such circumstances, if the conditions in Article 76 (4) are met, a coastal State may be able to claim a continental shelf beyond the 200-nautical mile limit. That part beyond the normal 200-nautical mile limit is regarded as the extended continental shelf. Provided however that no matter whatever is claimed by a coastal State and the
methodology used, the length of the continental shelf and the extended continental shelf shall not extend beyond 350 nautical miles into the sea measured from the territorial sea baseline or 100 nautical miles from the 2,500 metre isobaths, whichever is further. According to some writers, up to 54 States may be able to claim an extended continental shelf beyond 200 nautical miles. In this circumstance, coastal States are obligated to make payments or contributions in kind in respect of any resources exploited from that area to the ISA in accordance with the provisions of Article 82 UNCLOS, 1982. In order to prevent abuse of this process and to properly ascertain genuineness of claims, UNCLOS, 1982 created a body called the Commission on the Limits of the Continental Shelf under Annex II to look into the claims of States to an extended continental shelf and declare its opinion. Where the CLCS so ascertains and confirms, the decision, with respect to their findings, shall be final and binding.

For the purpose of this research, the extended continental is quite relevant to the extent that coastal States can engage in joint development where exploitable natural resources straddle their opposite or adjacent extended continental shelves. This is one scenario. Another scenario is where there are straddling natural resources between a continental shelf (within 200 nautical miles) and a legitimate extended continental shelf of another State probably confirmed by the CLCS or a claimed continental shelf which the opposite or adjacent State considers to be binding.

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40 UNCLOS 1982, Article 76 (5); Robert W Smith and George Taft in Peter J Cook and Chris M Carleton eds., supra at fn 3.
41 Smith, Robert W. and Taft, George in Cook, Peter J. and Carleton Chris M, eds., supra at 3.
42 Hereinafter referred to as the CLCS.
on it. In each of these circumstances, an economic/political relationship of joint development can be nurtured into existence.

2.1.7 The High Sea

This is an area beyond the jurisdiction of any particular State- an area of res communis for all States of the world in which no State can exercise sovereignty. Technically, the high sea starts from where the EEZ of a State terminates. States enjoy multiple freedoms in this area like navigation, overflight, fishing, scientific research, construction of artificial islands and laying pipelines and submarine cables amongst others, subject to the provisions of UNCLOS, 1982 on the exercise of these freedoms. In this area, the concept of flag State take preeminence as vessels, including of course fishing vessels on the high sea, according to the decision in the Lotus case,\(^{44}\) are only subject to the jurisdiction of the flag State. This is now subject to the few exceptions identified by UNCLOS, 1982. All States- coastal or landlocked enjoy the rights of fishing on the high sea. Certainly, this area does not come within the scope of our study but deserves mention as an important area of the sea.

2.1.8 The Area

This is another zone of res communis subject to the jurisdiction of no individual State but technically held in trust by the ISA for the benefit of all nations as a common heritage of mankind, to be explored, exploited and managed in accordance with the conditions laid down by

\(^{44}\) PCIJ Series A, No. 10, 1927, p. 25
Part XI of UNCLOS, 1982. The genesis of this zone is the Arvid Pardo’s statement urging the United Nations to declare the deep seabed and ocean floor and all the resources therein as the “common heritage of mankind.” This was not quite popular with the developed nations but the General Assembly Resolution containing a declaration of principles applicable to the deep seabed and its resources was adopted without dissent.\textsuperscript{45} The Area comprises the ocean floor, deep sea bed and all the resources therein beyond the continental shelf and the extended continental shelf of States. The procedure for the exploitation of the Area is as contained in Part XI UNCLOS, 1982 as amended by the \textit{Agreement Relating to the Implementation of Part XI of the UNCLOS, 1982}\textsuperscript{46} which has altered basically the very important provisions of the original UNCLOS, 1982 on the management and exploitation of the Area.

For the purpose of our study, the Area will not be considered as falling within the scope of the contemplated joint development.\textsuperscript{47} But the importance of bringing out the Area in this work as the largest area of natural resources exploitation in the ocean cannot be ignored; neither can its importance in advances international law of the sea be easily dismissed.

In concluding this part, it is important to recall that the major reason for discussing this segment of the research is to analyse the existing maritime zones with a view to identifying the ones that are capable of generating a joint development within the contemplation of this work. The


\textsuperscript{46} Hereinafter referred to as “the 1994 Agreement”.

\textsuperscript{47} The writer however believes that it is quite possible, from the mandate of the ISA and the provisions of UNCLOS, 1982, for the ISA to engage in joint development in certain circumstances, for instance if a State with an extended continental shelf honestly invites the ISA for a joint development of natural resources straddling the States extended continental shelf and the Area or a situation where the ISA takes the initiative and the State with an extended continental shelf obliges; or a situation where the ISA considers that there are straddling resources between the area being developed through the Enterprise of the ISA and that allocated to another operator. Here in the later case a joint venture may occur, but in the former a joint development might ensue.
identified zones are the territorial sea, EEZ, continental shelf and the extended continental shelf and subsequent discussions on the subject of delimitation or joint development shall be as it applies to them.

2.2 The Importance of Clear Boundary: Why Delimit?

The importance of boundary in international law cannot be ignored. In the past and even in recent times, boundary delimitation has been a major source of war amongst nations. The 1962 war between China and India arose from the different interpretations of the McMahon Line as defined in the Treaty over the eastern Himalayas and the 1980 war between Iran and Iraq was sparked by the quest to control the Shatt al Arab. More recently, the constant wars between Ethiopia and Eritrea in the Horn of Africa up till 2007 were all about their colonial boundaries. The Scramble and Partition for the African Continent by European nations in the late 19th Century which resulting in the Berlin Conference of 1884-1885 underscores the importance of boundary in international relations and law from the colonial perspective, and the colonial boundaries have continued to have influences on recent delimitation of territorial boundaries till date.

In this part of the work, the importance of delimitation of boundary in international law is examined and situated within the context of maritime boundary. In all, there are several reasons why States need boundaries, not just boundaries but clear ones to the extent possible in their

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49 See for instance *Case Concerning the Land and Maritime Boundary between Nigeria and Cameroon (Equatorial Guinea Intervening) (Merits)*, supra.
peculiar circumstances. Such boundaries may either be at least symbolic or actual. Some reasons for maritime boundary delimitation are discussed hereinafter.

2.2.1 Symbol of Statehood and Sovereignty

A State exercises full sovereignty over an area within its territory—whether land or sea. The ability of a State to make and enforce laws within a certain geographical area is the fulcrum of its sovereignty over the said area. A State cannot therefore make laws or exercise any form of control over an area that is not clearly within its territory. In international law, for a State to be so recognized and determined a sovereign, it must possess a territorial location within which it exercises its sovereign functions. A State whose territories are largely unsettled can hardly be recognized under international law as a general rule that admits of peculiar exceptions.50

The Montevideo Convention on the Rights and Duties of States51 has in Article 1 identified ‘a defined territory’ as one of the major qualifications for statehood in international law. However, this criterion is not absolute. The fact that there are disputed boundaries all over the world does not detract from the status of statehood which the disputant States enjoy. The ICJ in the North Sea Continental Shelf case52 noted that there is no rule that the land frontiers (and invariably maritime frontiers) of a State must be fully delimited.53 A most familiar example is the State of Israel whose boundaries with the Palestinians are yet to be fully delimited. While this created some measure of uncertainty in the recognition of Israel, the international community has moved

50 For instance the recognition of the State of Israel before the delineation of all its major borders with the neighbouring States. This requirement by no means assumes that all the territories of a State must be fully and clearly delineated before it can be recognized as a State in international law.
51 Signed at Montevideo on 26 December, 1933 and entered into force on 26 December, 1934.
52 Supra
53 Supra at p. 3 para 46
past that argument a long time ago. In the famous *Adolph Eichmann Case*,\(^{54}\) one of the cosmetic arguments raised in defence of Eichmann was that Israel was not a State in international law because it did not have a territory, a government and so on and hence could not have been in existence at the time the war crimes were committed. While this was technically true, other overwhelming considerations rightly prevailed.

However, that does not detract from the fact that a defined territory, at least from a theoretical perspective, remains one of the major ingredients of statehood and sovereign status of a State in international law, and the clearer the boundary -whether sea or land- the better for harmonious international relations amongst States.

### 2.2.2 State Responsibility

Responsibility is the necessary corollary of obligation and this is not an exception in international law. Every breach by a subject of international law of its obligation entails international responsibility. State responsibility in international law does not distinguish between criminal and tortuous cases.\(^{55}\) A State may not be responsible for an alleged act which falls outside its territory. For instance where the issue is on abuses of human rights or the violation of environmental protection obligation under international law, a State cannot be held responsible for those acts which occur outside its territorial control, except such act or omission is committed or omitted by the national of the State in which case the jurisdiction is not based on the territorial control of the State but on personal jurisdiction over the national. Hence, for the purpose of

\(^{54}\) 36 ILR 5

\(^{55}\) See the *Rainbow Warrior (France/New Zealand)*, 1990 20 RIAA 217, para. 75
determining state responsibility in international law under several circumstances, territorial control plays some major role.

2.2.3 Exercise of Jurisdiction

Jurisdiction is the power of a State under international law to regulate or impact upon people, property or circumstances and thus reflects the basic idea of State sovereignty, equality of State and non-interference in the municipal affairs of a State. The exercise of jurisdiction by a State can be achieved through the exercise of the executive, legislative and judicial powers of the State. This concept is two-folds in international law. It could mean international or municipal jurisdiction. From the nature of sovereignty of States, a State is supreme within its territorial boundaries as other States do not, generally speaking, have the right to interfere with the municipal affairs of a sovereign State. This is certainly determined by the territorial limits of such a State. For instance a State’s laws apply only within its territory or to its nationals and cannot be enforced outside the territorial frontiers of the State. In the Anglo Norwegian Fisheries Case, the ICJ noted that the act of territorial delimitation is necessarily a unilateral act because a coastal State can do that under international law but the validity of the act itself with regard to other States depends on international law.

For the purpose of our study, the focus is certainly on territorial jurisdiction, not other forms of expression of jurisdiction of a State in international law. The nature of territorial jurisdiction was

56 Malcolm D. Shaw, Supra at p. 645
57 Supra at p. 132
examined in *The SS Lotus Case*\(^{58}\) where the court was of the view that there was no rule of international law restricting Turkey from exercising jurisdiction over a French vessel for an act committed over the high sea. UNCLOS, 1982 has basically changed the outcome of this decision especially as it affects the uses of the ocean to the extent that only flag States can exercise jurisdiction over a vessel on the high sea.\(^{59}\) Article 2 guarantees coastal States’ sovereignty over the territorial sea, subject to international law. This means that the territorial sea of a State is within the territory of the State and most States have embedded this in their Constitutions. The EEZ and the continental shelf and the extended continental shelf are areas where the States, though cannot exercise sovereignty, exercise sovereign rights for the purpose of exploiting the living and non-living resources therein. Territory therefore defines jurisdiction in international law in no small measure.

### 2.2.4 Conservation and Environmental Protection\(^{60}\)

UNCLOS, 1982 imposes environmental obligations on States for the conservation of living resources and general environmental protection likewise other international Conventions. Articles 60, 62 UNCLOS, 1982 and following make provisions for the effective utilisation of the *living resources* of the sea and the conservation and management of the certain fish stock like the highly migratory, anadromous, catadromous species and so on. Based on this framework, the *Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Species* and the *Agreement for the Protection of the Living Resources of the High Seas and the Environment of the Area, especially the Living Resources and the Environment in the Area of the South China Sea* will be discussed in much greater detail in Chapters 4 and 5 especially how joint development can be used to achieve the environmental objective of protecting the sea and its resources from pollution and damage that could take a toll on the marine ecosystem. It is well discussed in the subchapters dealing with the environmental, health and safety provisions of the Australia-Timor-Leste joint development and the Nigeria-STP joint development as well. However, because it is relevant here, it equally merits a brief mention while further details are consigned to the aforementioned chapters.

\(^{58}\) PCIJ Series A, No. 10, 1927  
\(^{59}\) UNCLOS, 1982, Article 92  
\(^{60}\) The environmental regime for the protection of the sea and for offshore oil and gas activities will be discussed in much greater details in Chapters 4 and 5 especially how joint development can be used to achieve the environmental objective of protecting the sea and its resources from pollution and damage that could take a toll on the marine ecosystem. It is well discussed in the subchapters dealing with the environmental, health and safety provisions of the Australia-Timor-Leste joint development and the Nigeria-STP joint development as well. However, because it is relevant here, it equally merits a brief mention while further details are consigned to the aforementioned chapters.
Migratory Fish Stocks is being negotiated to put in place an implementation regime for the protection of those species of fish stocks of the sea. Efforts at the various regional levels are also ongoing on this issue. On the exploitation of the non living resources like oil and gas for instance, it provides for mutatis mutandis application of Article 60 to artificial islands, installations and structures on the continental shelf and for proper decommissioning when installations are disused and so on. These are duties imposed by the UNCLOS, 1982 on coastal States with respect to the exploitation of living and non living natural resources. There are also multifarious Conventions against pollution from ships, dumping and the general wellbeing of the sea and its resources. These duties cannot be effectively carried out when there is an irresoluble boundary dispute within such areas. In such circumstances, it becomes nobody’s duty in international law to enforce or maintain all those environmental protection laws within such disputed territories. Nationals and non nationals will expectedly have a field day polluting the sea without restriction or exploiting the living resources without restriction. The enforcement of the law on marine environmental protection as enjoined by Article 73 UNCLOS, 1982 will be lacking. Foreigners may even decide to help themselves to the resources without being impeded as it were- hence the literal meaning of fishing in troubled waters.

The whole essence of studying these environmental provisions is to identify the fact States cannot reasonably perform these obligations imposed by the UNCLOS, 1982 and other Conventions with respect to the ocean if it is not determined either by delimitation or joint development that a certain area is within their territorial jurisdiction at least for the purpose of

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the exploitation of the natural resources contained therein. Where such area is disputed like in the
South China Sea, fishing will be unregulated, uncoordinated and there will be likely abuses in
the exploitation of the resources as the disputant States or their nationals will try to outdo each
other in the scramble for the exploitation of such resources. Indeed unconventional fishing
methods may be applied in some of the ocean areas since no State takes responsibility to enforce
the laws in the undelimited or disputed area of jurisdiction. This is also true of exploitation of the
non living resources in an area without an agreed or clear boundary. This area will be revisited
later, but underscores the need for boundary delimitation in ensuring environmental protection of
the sea and conservation of the resources.

### 2.2.5 Title to Resources

Where there is no agreement on delimitation, or where the delimitation agreement is not
workable, title to resources will also be difficult to establish especially where the resources are in
the sea. Generally, States under international law and even under UNCLOS 1982 have the right
to exploit natural resources within their territorial jurisdiction or their maritime zones as
determined by UNCLOS, 1982. In the exercise of these rights, States usually grant oil
prospecting licences or oil mining leases, depending on the nomenclature of the State regulations
relating to oil and gas activities or mineral exploration and exploitation. Where such rights are
granted, it is deemed that it is the State that granted such rights that is the international actor, not
necessarily the oil company holding its licence. Depending on the level of development of the
State or its policy, States may also engage in offshore oil and gas activities directly using their
(State’s) oil and gas enterprises. The most important concept here is nemo dat quod non habet.
Where a State, without title to offshore resources, grants licences or leases to oil companies to
exploit the natural resources, the oil company faces the risk of losing its investments if a contending State is able to establish its legitimate rights over the disputed area or a superior title.

Security of title to the licences or leases is a very important feature of oil and gas upstream business moreso offshore areas. These oil and companies most probably raise money from international financial institutions to engage in their business and those institutions will be most reluctant to part with their funds where the nature of title is unsecured or suspect in any way. These oil production companies in turn are unlikely to invest in the development activities where title is disputed, likely or suspected to be in dispute. Therefore, boundary delimitation determines whether a State has title to the resources it is inviting the oil and gas companies to explore for and exploit. Conversely, a State’s title to resources cannot be assured and guaranteed where the delimitation exercise is unclear or disputed and there is no joint development understanding between the contending States.

2.2.6 Maritime Security and Safety

Article 24 UNCLOS, 1982 imposes duties on the coastal States not to hamper the innocent passage of foreign vessels through its territorial sea except as may be limitedly derogated from under UNCLOS, 1982. Most importantly, a coastal State shall give appropriate and adequate publicity to any danger to navigation of which it has knowledge, within its territorial sea. Article 44 UNCLOS, 1982 also imposes equivalent duties on States bordering on straits used for international navigation. Article 22 UNCLOS, 1982 also provides for the provision of sea lanes and traffic separation schemes in the territorial sea and other safeguards that will enhance navigation and safety at sea especially on the territorial sea, hence the coastal State may, where
necessary, having regard to the safety of navigation, require foreign vessels exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of vessels. The same obligation is also expected where the EEZ is used for navigation. In circumstances where these navigational areas are in dispute, whose obligation does it become to provide all these? The question is difficult considering that in the event of default, State responsibility may not be attachable to any of the contending States. This is certainly one of the ways that maritime delimitation disputes can impose grave danger to international navigation and maritime security. Pirates may even be on the rampage in such places knowing that no State is likely to patrol the disputed sea area(s) or police the area effectively.

### 2.3 Methods of Maritime Delimitation

Chapter VI of the *United Nations Charter*, 1945 is specific on peaceful settlement of disputes as the only means of settlement of international disputes, though this is usually forgotten by writers. However this means form the fulcrum of this part of the work. There are different methods of maritime delimitation in international law. Some States have their maritime boundaries delimited through conquest, colonial title and so on, but the method in this research will be looking at the modern pacific ways through which contemporary States have been able to have the maritime territories delimited in keeping the *UN Charter*. UNCLOS, 1982 is the reference point, but what it does is to provide the reference or framework which States can adopt

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62 Article 33 (1) of Chapter VI provides that “…parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” Article 2 (3) of the Charter also provides that all members of the UN shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
in delimiting their ocean boundaries which will be examined later in this work. The methods here are basically voluntary bilateral or multilateral acts –agreement and joint development and acts of third parties- arbitration and court decision. Joint development, because of its importance as the subject matter of this study, will be dealt with in the next chapter while the rest will be discussed in this segment.

2.3.1 Agreement

Agreements generally in international law are governed by the *Vienna Convention on Law of Treaties*, 1969- whether bilateral or multilateral. Agreement remains the best method of delimitation and settlement of disputes either at the international level or even at the domestic level.

Specifically, Article 83 (1) UNCLOS, 1982 provides:

> The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

It further assures in (4) of that same Article 84 that “where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.” It was certainly on the basis

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63 With the equivalent provisions for the EEZ under Article 74 UNCLOS, 1982.
of the Anglo-German Demarcation Agreements of 11 March and 12 April 1913, Yaoundé Declarations I & II and the Maroua Declaration contracted by and on behalf of the two countries, respectively, that the ICJ decided the Cameroon v. Nigeria Case. Likewise, a host of other delimitation disputes have been decided on the basis of Agreement(s) between the State parties.

In territorial delimitation matters, agreement is a very peaceful way of resolving the controversies, usually preceded by series of negotiations and political horse-trading. Agreements in this context, especially in the context of international boundaries are expectedly in writing. However, the caveat here is that the presence of multifarious maritime delimitation agreements does not mean the absence of maritime delimitation disputes. Moreso, the problem is not solved where there are interpretational challenges or where natural resources are found to straddle the delimited maritime boundaries. In the latter case, the problem of exploitation conflict will be sure to occur notwithstanding the earlier delimitation- hence the concept of joint development. However agreement as it is used in this research, is whereby the States with the disputed boundaries decide, in writing, to demarcate their boundaries based on the geographical and other circumstances negotiated, acceptable and agreeable to them.

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64 Anglo-German Demarcation Agreements of 11 March and 12 April 1913 (referred to in Cameroon v. Nigeria) [Hereinbefore and after referred to as the Anglo-German Demarcation Agreements], available at <http://www.icj-cij.org/docket/files/94/13803.pdf>. These treaties were negotiated and contracted by the two colonial masters (with virtually no knowledge of the peoples and no respect their traditional boundaries) but nonetheless respected on the international law principle of uti possidetis.

65 Yaoundé Declaration I (August 14 1970) and Yaoundé Declaration II (April 4 1971) [Hereinbefore and after jointly referred to as the Yaoundé Declarations I & II] and available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CMR-NGA1975MD.PDF>. These treaties were negotiated by the two countries as sovereign States, having regained their political independence from their respective colonial governments in the early 1960s.

66 The Maroua Declaration (1 June 1975) (meeting held at Maroua from May 30 to June 1, 1975) available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CMR-NGA1975MD.PDF>. This later treaty was negotiated by the two countries as sovereign States, having regained their political independence from their respective colonial governments in the early 1960s.

67 Supra, just as in the cases of a host of other maritime disputes settled by the ICJ or Arbitral Tribunal wherein parties had earlier delimited their maritime boundaries by a bilateral boundary agreement.

For instance, on September 15, 2010 Russia and Norway were able to sign an agreement on their agreed maritime boundary line over the Barents Sea and the Arctic Ocean in Murmansk making it arguably the newest delimitation agreement in the world, (at the time of writing) and putting aside their acrimonious boundary disputes of over 40 years.\footnote{Sourced from <http://www.barentsobserver.com/norway-and-russia-sign-maritime-delimitation-agreement.4819173-16149.html> last visited October 23, 2010.}
Figure 2.1: The Map of the Agreed Maritime Boundary between Norway and Russia over the Arctic Ocean and the Barents Sea on September 15, 2010

Figure 2.1 has been removed owing to possible copyright infringement. It is the hypothetical maritime boundary agreed between Norway and Russia over the Arctic Ocean and the Barents Sea on September 15, 2010. The brown mark therein shows the entire disputed sea boundary while the dotted red and the blue lines indicate the preferred maritime boundary line of Norway and Russia, respectively. The dark line in between the red and blue lines in the diagram, indicate the agreed maritime boundaries between the two countries. Originally sourced online from: <http://www.bbc.co.uk/news/business-11299024> (last visited December 20 2011).
Figure 2.2: Barents Sea Delimitation Agreement signed in Murmansk, Russia on September 15, 2010

Figure 2.2 has been removed due to possible copyright infringement. It is a photograph of the signing ceremony of the State official and heads of Government of Russia and Norway on the delimitation of the Arctic Ocean and Barents Sea between the two countries. It was originally obtained from:

2.3.2 Arbitration

Article 83 (2) UNCLOS, 1982 provides that “if no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.” Part IV UNCLOS, 1982 deals with dispute resolution generally—either by conciliation, arbitration or by judicial process of settlement of disputes. For the purpose of this work, attention will be focused on arbitration and judicial dispute resolution. Though the Jan Mayen dispute between Iceland and Norway was referred to a conciliation commission comprising the two States (which recommended joint development to resolve their maritime disputes), I am not yet aware of any maritime dispute conclusively resolved by conciliation as envisaged by Part XV UNCLOS, 1982 or any other conciliation mechanism. In other word, state practice in that respect remains scanty, and though conciliation is well recognized, it has not been widely used and will not be dealt with in greater details in this work.

State Parties have been able to resolve their boundary disputes by arbitration either by an arbitration agreement in accordance with an earlier agreement providing for arbitration in the event of dispute, or by submission to arbitration. Modern arbitration can be traced to the Jay Treaty of 1794 between the United States and Great Britain which provided for settlement of legal disputes by a mixed commission.\(^\text{70}\) The decision by arbitration in the Alabama Claims Arbitration\(^\text{71}\) further popularized this system of dispute resolution. The Hague Conventions,\(^\text{72}\) based on which the Permanent Court of Arbitration\(^\text{73}\) at The Hague was established further institutionalized arbitration as a means of settlement of international disputes. In modern times


\(^{71}\) (1872) Moore, *Arbitrations*, i. 653 where Great Britain was ordered to pay the United States $15,500,000.

\(^{72}\) *The Hague Conventions on the Pacific Settlement of International Disputes* of 1899 and 1907.

\(^{73}\) [Hereinafter referred to as “PCA”].
many multilateral arbitration bodies exist including the WTO International Centre for the Settlement of Investment Disputes\textsuperscript{74} and bodies set up for arbitration under the United Nations Commission on International Trade Rules Arbitration model law.\textsuperscript{75}

Specifically as it relates to maritime boundary delimitation, many of them are known to have been settled by international arbitration till date- dating back to 1909 when the \textit{Maritime Boundary Delimitation Arbitration (Grisbardana) (Norway/Sweden)}\textsuperscript{76} was decided by the PCA.\textsuperscript{77} UNCLOS, 1982 makes ample provisions for the settlement of law of the sea disputes (including but not limited to maritime disputes delimitation) by arbitration or any form of dispute resolution chosen by the parties.\textsuperscript{78}

\textbf{2.3.3 The Courts}

International courts, particularly the PCIJ and its successor ICJ established by the Statute of the International Court of Justice, respectively, had and have been playing major roles in the settlement of international disputes and under the relatively new UNCLOS 1982, the

\footnote{\textsuperscript{74} \textit{ICSID}.}
\footnote{\textsuperscript{75} \textit{UNCITRAL}.}
\footnote{\textsuperscript{77} Hereinafter referred to as PCIJ}
\footnote{\textsuperscript{78} See generally Part XV UNCLOS, 1982}
International Tribunal for the Law of the Sea. While ITLOS jurisdiction is with respect to law of the sea issues, the ICJ has unlimited jurisdiction in a whole range of legal issues between or amongst States including but not limited to maritime delimitation disputes, and the roles of this court and the ITLOS in the maintenance of world peace and security cannot be underestimated. These institutions have also been involved in maritime delimitation dispute resolution particularly the ICJ for understandable reasons of long history of successfully adjudicating between States. The ITLOS, however, is yet to settle any maritime delimitation dispute under UNCLOS, 1982, but nevertheless has the powers to do so.

2.4 Rules for Maritime Delimitation: Any Clarity?

A primary issue quite relevant to this research is the question posed above and in this part, the rules relating to maritime boundary delimitation as stated in UNCLOS, 1982 and as applied by the Courts and arbitral bodies will be examined with a view to determining whether any clarity of methodology has been achieved by the various decisions on the subject starting from the

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79 Established by the Statute of the ITLOS under Annex VI UNCLOS, 1982 and hereinafter referred to as the ITLOS.

territorial sea. It is expedient therefore to lift the exact provisions of UNCLOS, 1982 which provides for the delimitation of the territorial sea as follows:\textsuperscript{81}

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

For the territorial sea- whether adjacent or opposite, the ICJ in \textit{Nicaragua v. Honduras}\textsuperscript{82} had adopted the provision clearly and said that where no agreement has been reached, no State has the right to fix the boundary beyond the median line every point of which is equidistant from the nearest point on the baseline from which the territorial sea is measured. Where, however, peculiar geographical circumstances exist, making it impossible to establish a clear baseline, other alternative lines, for example bisector lines drawn by the States, may become relevant. In the \textit{Case Concerning the Maritime Delimitation and Territorial Questions between Qatar and Bahrain},\textsuperscript{83} however, the ICJ noted that median line will not apply where it is necessary to delimit the median line in a different way by reason of say historic title or other special circumstances.\textsuperscript{84}

\textsuperscript{81} Article 15, UNCLOS, 1982, borrowing the exact wordings of Article 12, the \textit{Convention on the Territorial Sea}, 1958.
\textsuperscript{82} \textit{ICJ Reports of Judgment}, 2007, paras 253 and 287, respectively. See also \textit{Case Concerning the Maritime Delimitation and Territorial Questions between Qatar and Bahrain, supra.}
\textsuperscript{83} \textit{ICJ Reports}, 2001
\textsuperscript{84} Pp. 40 and 94
The ICJ has also admitted that the methods of delimitation of the territorial sea are more clearly articulated than those adopted for other “more functional maritime areas.”

No doubt, the problem areas are the continental shelf and the EEZ. UNCLOS, 1982 provides for the continental shelf delimitation (which is in pari materia, mutatis mutandis with the EEZ provisions) as follows:

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

Since the rules for territorial sea delimitation appear clear enough and have not generated controversies and inconsistencies as much as the EEZ and the continental shelf rules, the focus of this segment of the work will be devoted to the continental shelf and the EEZ. Also, paragraph 3 of the articles will not be considered here but in the next chapter, and the entire chapters

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85 Nicaragua v. Honduras, supra at para 269.
86 Article 83 UNCLOS, 1982
following. A brief review of the decisions reached by the courts so far on the rules for maritime
delimitation of the EEZ and the continental shelf will be discussed, bearing in mind that some of
the contentious decisions were made based on Article 6 of the *Convention on the Continental
Shelf*, 1958.\(^87\) The fact remains, according to one writer, that “…these cases tend to be intensely
fact-specific and it is difficult to draw general legal principles from their holdings.”\(^88\) Another
prominent scholar concluded thus:

“In my opinion…no normative principle of international law has developed that
would warrant the specific location of any maritime boundary line...Due to the
unlimited geographic and other circumstances that influence the settlements, no
binding rule that would be sufficiently determinative to enable one to predict the
location of maritime boundary with any degree of precision is likely to evolve in
the near future…”\(^89\)

A conscious effort will be made, without any pretence about precision and exhaustiveness, to
summarise the relevant jurisprudence of the Courts in this matter. The ICJ was first formally

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\(^{87}\) 1. Where the same continental shelf is adjacent to the territories of two or more States whose
coasts are opposite each other, the boundary of the continental shelf appertaining to such States
shall be determined by agreement between them. In the absence of agreement, and unless another
boundary line is justified by special circumstances, the boundary is the median line, every point of
which is equidistant from the nearest points of the baselines from which the breadth of the
territorial sea of each State is measured.
2. Where the same continental shelf is adjacent to the territories of two adjacent States, the
boundary of the continental shelf shall be determined by agreement between them. In the absence
of agreement, and unless another boundary line is justified by special circumstances, the boundary
shall be determined by application of the principle of equidistance from the nearest points of the
baselines from which the breadth of the territorial sea of each State is measured.
3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance
with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to
charts and geographical features as they exist at a particular date, and reference should be made to
fixed permanent identifiable points on the land.


Statement though substantially true was made before the decisions in *Case Concerning the Land and Maritime
Boundary between Nigeria and Cameroon (Equatorial Guinea Intervening) (Merits)*, *supra* and *Maritime
Delimitation in the Black Sea* (Romania v. Ukraine), *supra*. 
faced with the difficult issue of maritime delimitation in the *North Sea Continental Shelf*\(^{90}\) case between Federal Republic of Germany on one side and Holland and Denmark on the other. Here the ICJ took the view that the relevant factors to be considered in the delimitation included agreements in accordance with equitable principles; the reasonable degree of proportionality between the lengths of the coastline and the extent of the continental shelf. The ICJ also reasoned that the natural prolongation of the land territory, being the continental shelf should be a key factor in maritime delimitation. In the *Anglo-French Continental Shelf*\(^{91}\) case, the court reasoned that in the absence of an agreement, the principle of equidistance and the presence of special circumstances will be the relevant rule. In *Tunisia/Libya Continental Shelf*\(^{92}\) case, the ICJ decided, on the basis of customary international law anyway, as none of the Parties was a Party to the 1958 Convention, that the satisfaction of the equidistance principle is of cardinal importance to maritime boundary delimitation and that the issue of natural prolongation is also quite important depending on the circumstances but still not as important as the equitable principle.

In the *Case Concerning the Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*\(^{93}\), the court noted that the first approach was to take the median line provisionally before inquiring whether there are special circumstances that will require the adjustment of the median line. In this case actually there existed some special circumstances as the coastline of Greenland was nine times bigger than that of Jan Mayen and the unmitigated application of the median line rule will result in a manifestly disproportionate result. Other

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\(^{90}\) *Supra*

\(^{91}\) 54 ILR, p. 6

\(^{92}\) *ICJ Reports of Judgment*, 1982, at pp. 18 and 47

\(^{93}\) *Supra*
special circumstances like fishing were also considered. In the *Gulf of Maine*\(^94\) case between Canada and the United States, for the delimitation of both the EEZ and the continental shelf, the Court stated that major consideration is the need to achieve an equitable solution, taking into account the geographical features of the area. In the *Cameroon v. Nigeria*\(^95\) case, the ICJ restated the equitable and relevant circumstances rule to achieve an equitable result and further noted that equity is not a method, but a result to be borne in mind in maritime boundary delimitation. Finally, in the *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*\(^96\) concerning the delimitation of the EEZ and continental shelf of the two States in the Black Sea, the Court observed that the equidistance and median lines are to be constructed from the most appropriate points on the coasts of the two States concerned, with particular attention being paid to those protuberant coastal points situated nearest to the area to be delimited. It also took into account the enclosed nature of the Black Sea, the presence of Serpents Island and delimitation treaties already signed by the parties. With this it appears the rule is getting close to being established, but subsequent cases will determine that.

### 2.5 Conclusion

While the relevant rules on territorial sea delimitation are fairly settled, that of the EEZ and continental shelf, in my opinion, are yet to be ascertained beyond argument. For instance there is a litany of what could constitute special circumstances for the Court in deciding delimitation matters. There is no *numerus clausus* of what constitutes special circumstances in the

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\(^94\) *Supra*

\(^95\) *Supra* at p. 301, paras. 441-445

\(^96\) *Supra*. The Court observed further “... that for the purposes of this final exercise in the delimitation process the calculation of the relevant area does not purport to be precise and is approximate. The object of delimitation is to achieve a delimitation that is equitable, not an equal apportionment of maritime areas”. At p. 11.
delimitation of maritime boundaries and what the Court might consider as qualifying is on a case-by-case basis. Parties to a delimitation dispute therefore cannot predict, with a fair and reasonable degree of certainty, where the boundary line will be drawn by the Court. Even the seeming certainty purportedly established by the *Black Sea Case* remains to be seen as capable standing the test of time. My view is that this area of international jurisprudence is, fair enough, approached by the international courts and arbitral tribunals on a case-by-case basis. This is even made more precarious considering that the ICJ is not bound by its own decision as the principle of *stare decisis* does not apply to the ICJ judgments. 97 Arbitral tribunals on the hand are ad hoc.

Granted that the rules of maritime delimitation as applied by the courts are pin-point accurate and crystal clear, where fugacious and mobile natural resources like oil and gas and living marine resources straddle clearly delineated maritime boundaries of costal States, it is practically impossible for States to exploit them without interfering with the resources on the other side of the divide. So, if after the rigours, the financial commitment and time waste associated with an international court or arbitral process; not to mention the haggling and time-consuming negotiation tactics employed in boundary delimitation, yet the major obstacle is not uprooted, will States not have merely succeeded in wasting their time and resources? So why not joint development *ab initio*? Hence it is not only on the basis of the inexactitude of delimitation rules, but also on the character of the natural resources involved, that the concept of joint development is advocated and recommended in resolving the challenges associated with the development of straddling resources. Henceforth in this work starting from the next chapter, attention will therefore be turned towards the general nature, application and the success associated with joint

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97 See Article 59 of The Statute of the ICJ which provides that the decision of the Court does not have binding force except between the parties and in respect of that particular case.
development, not just as an elixir, but as a panacea to maritime boundary delimitation in overlapping natural resources area.
CHAPTER 3

Defining the Concept of Joint Development

3.1 Meaning and Nature of Joint Development

In the previous chapter, the nature and concept of maritime boundary delimitation were examined especially in relation to straddling natural resources which delimitation has been found to be incapable of resolving satisfactorily. Joint development as known from state practice so far, occurs where two or more States decide to cooperate by jointly managing the development of natural resources that cut across their actual boundaries or perceived boundaries. An appropriate definition will be offered shortly in the course of this work. But the whole essence of a joint development is the realization that outright delimitation does not resolve all maritime boundary disputes and even land disputes- whether the said delimitation is as a result of agreement of the States or delimitation resulting from decision of a third party dispute resolution. In some circumstances, there are practical measures that need be taken to ensure peaceful exploitation of straddling natural resources- primary of which is joint development.

Several writers have defined joint development in their own ways and for the purpose of this work, at least three of the available definitions will be examined and analysed for adequacy or otherwise. Miyoshi defined joint development as “an inter-governmental arrangement of a provisional nature, designed for the functional purposes of joint exploration for and/or
exploitation of hydrocarbon resources of the seabed beyond the territorial sea”.

This definition certainly captures the essence of joint development especially in its functional purpose but fails to encompass all its ramifications in current state practice. First, while it is certainly an intergovernmental arrangement as opposed to arrangements by different operator or multinational companies, it need not be between just two States and as well may not be just of a provisional nature. While state practice points towards joint development with duration, some joint development agreements may contemplate a perpetual tenure or may contain a note of finality in the resolution of the maritime differences between the States. Besides, there is nothing in international law prohibiting States from engaging in a joint development contemplated to permanently resolve the maritime boundary differences existing between them and their straddling resources. Secondly, this definition contemplates that joint development can only exist for ‘hydrocarbon resources’. While majority of joint development agreements are concluded for hydrocarbon resources due to their fluid nature, these days, a good number of joint development agreements are also concluded strictly for fisheries or for petroleum and other non living marine resources.

Either separately or jointly, other petroleum joint development agreements contain


99 See for instance the Maritime Delimitation Treaty between Jamaica and the Republic of Colombia, 12 November 1993 (which entered into force on 14 March 1994) available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/JAM-COL1993MD.PDF> and also available at <www.state.gov/documents/organization/57677.pdf> (last visited on November 21. 2010) which relates to the living resources only. The preamble reads: “Recognizing the common interests of both countries in considering issues related to the rational exploitation, management and conservation of the maritime areas between them, including questions relating to the exploitation of living resources. The Treaty establishes “The Joint Commission” to manage the fisheries resources of the “Joint Regime Area”. Also, and perhaps the most apposite is the Agreement between Norway and Iceland Fisheries and Continental Shelf Questions available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/isl-nor1980fcs.pdf> which sets up in article 2 of the Agreement a “Fisheries Commission” to oversee the joint development of fisheries resources in the overlapping maritime space of the two countries. Also in the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Norway relating to the Delimitation of the Continental Shelf between the Two Countries, 10 March 1965 (which entered into force on 29 June 1965) [Hereinafter referred to as “the UK-Norway Agreement”] available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-NOR1965CS.PDF>
provisions on the joint development of “other natural resources”. Another reason the definition may not be comprehensive is the fact the joint development can also occur within the territorial waters of adjoining states with straddling natural resources, even though it most usually occurs within the EEZ, continental shelf and the extended continental shelf. There is nothing in international prohibiting it from occurring within the territorial sea. This has been discussed earlier in the previous chapter on maritime zones.

An eminent research team has also defined joint development as “an agreement between two States to develop so as to share jointly in agreed proportions by inter-State cooperation and national measures the offshore oil and gas in a designated zone the seabed and subsoil of the continental shelf to which both or either of the participating States are entitled in international law.” While this definition is all encompassing of the concept and a product of arguably the major authorities in this field, there appears to be two major shortfalls of this definition. First, a joint development agreement can be between two or more states while this definition appears to contemplate only a bilateral arrangement. Tripartite joint development agreements have been

which has an international unitization clause in article 4 which provides that “if any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, including sand or gravel, extends across the dividing line...” This clearly indicates that there is a possibility of maritime joint development extending to other mineral resources other that hydrocarbon.


known to exist\textsuperscript{102} and nothing precludes a quadripartite or even a multilateral joint development in international law especially where the maritime geography\textsuperscript{103} and political wills of the States involved accommodate such arrangement. Secondly, the definition is specific to the continental shelf while a joint development may as well occur in the EEZ and also the territorial sea of adjacent or opposite coastal States and finally, the definition is also specific to oil and gas-understandably so because the research team’s work is specific to oil and gas.

Another very important definition that has been offered of joint development is, “a decision by one or more countries to pool any rights they may have over a given area and, to a greater or lesser degree, undertake some form of joint management for the purposes of exploring and exploiting offshore minerals.”\textsuperscript{104} This definition appears to resolve the lapses earlier observed in the other definitions examined so far. It avoids limiting joint development to specific maritime zone by using “offshore” and contemplates the possibility of multi-State parties’ joint development. The definition also avoids the restriction of joint development to “oil and gas” or “hydrocarbons” unlike the previous definitions and the use of “… to a lesser or greater degree…” highlights the degree of autonomy or authority that State parties might confer upon the joint development structure. Perfect as the definition appears, it can still be criticized for

\textsuperscript{102} See for instance 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 Straits of Malacca, December 21 1971, Kuala Lumpur; cited by Ian Townsend-Gault, “Non-living Resource Development” (Unpublished) at p. 8. This Agreement is between Indonesia, Malaysia and Thailand and contains a cross border unitization clause for straddling resources. See also Agreement between the Government of the Kingdom of Thailand, the Government of the Republic of India and the Government of the Republic of Indonesia concerning the determination of the trijunction point and the delimitation of the related boundaries of the three countries in the Andaman Sea- signed on 22 June 1978 and which entry into force on 2 March 1979 available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-IND-IDN1978TP.PDF> also cited by Ian Townsend-Gault, \textit{op. cit.} at p. 10

\textsuperscript{103} For instance in the South China Sea and the Gulf of Guinea regions.

being restrictive to minerals. As has been noted earlier, either separately or in a petroleum joint
development, there are joint developments concluded for fisheries and other non-living natural
resources. Interestingly, fairly recently, there has been a quasi judicial definition of joint
development by the Arbitral Tribunal in The Matter of an Arbitration between Guyana and
Suriname,105 as “the cooperation between States with regard to exploration for and exploitation
of certain deposits, fields or accumulations of non-living resources which either extend across a
boundary or lie in an area of overlapping claims.” Here the Tribunal adopted the definition
offered by Lagoni.106

Admittedly, most joint development agreements concluded earlier were specific to petroleum
resources owing to their very character- hence these definitions discussed mostly do not include
other non-petroleum minerals or living resources of the sea as resources capable of joint
development base on the then available state practice. Also, generally speaking, the urgent needs
for joint development has also been more pertinent in oil and gas development that in any other
natural resources. At this point, it has become necessary to opine a working definition of joint
development in the context of this work and beyond. Hence, joint development can be regarded
as an arrangement between two or more States wherein the offshore petroleum or other offshore
living and/or non-living natural resources straddling any area of their maritime zones- whether

105 The Award by the Arbitral Tribunal of the PCA constituted pursuant to article 287 of UNCLOS, 1982 on 17
September, 2007 available at <http://www.pca-cpa.org/upload/files/Guyana-Suriname%20Award.pdf> at p. 153-
154, para. 462.
106 Rainer Lagoni, Report on Joint Development of Non-living Resources in the Exclusive Economic Zone,
John Mensah, “Joint Development Zones as an Alternative Dispute Settlement Approach in Maritime Boundary
Delimitation”, in Rainer Lagoni and Daniel Vignes, eds. Maritime Delimitation, (Martinus Nijhoff Publishers,
Leiden/Boston: 2006) p. 143 at 146. This was also quoted by Luis Rodriguez-Rivera, “Joint Development Zones and
other Cooperative Management efforts Related to Transboundary Maritime Resources: A Caribbean and Latin
American Model for Peaceful Resolution of Maritime Boundary Disputes” in Issues in Legal Scholarship: Frontier
p. 4, also available at <http://www.bepress.com/ils/iss11/art2>
delimited or disputed, are jointly developed, managed and shared in accordance with the agreement of the States either as a permanent measure to their maritime boundary claims or pending a permanent delimitation.

Joint development should be distinguished clearly from other maritime cooperation arrangements wherein natural resources are not developed and shared in an agreed proportion. For instance where States agree to cooperate to jointly patrol and police their coterminous maritime borders for security, for environmental protection or for the joint enforcement of their sanitary and customs law.  

107 While such mechanisms are certainly glorious exercises by governments to overcome their common challenges, they are clearly differentiated from joint development in the context of the definitions herein offered and to which this work relates. It is also different from a buffer zone or a prohibited zone since no joint resources development activities are expected to be undertaken within such zones.

From the definitions examined, joint development is usually concluded over areas of overlapping State maritime claims or over areas where there are straddling natural resources that cannot be reasonably exploited without interference with the sovereign right of the other State(s). However, where boundaries have been formally agreed, States can also negotiate a joint development for peaceful and equitable development of such areas of straddling natural resources. Joint development can also be concluded for all forms of natural resources, however, it is more prevalent for petroleum and fisheries owing to their mobile character. It can also be bipartite, 

tripartite or multilateral depending on geomorphologic or political considerations. Zones of joint development are usually the continental shelf, EEZ or territorial sea of States where the overlapping resources exist. Depending on the model of joint development agreed by the State parties, an international legal entity may be created to manage and administer the affairs of the joint development while the State parties play a superintending role over the entity, either directly or through a joint body. This model appears to be the most common form of joint development arrangement from available state practice. Typically, though depending on the model of joint development negotiated by the State parties and the circumstances of the arrangement, a joint development should contain the following important operative terms: the area, a joint development authority and its functions and powers, the ‘without prejudice’ clause, sharing formula, duration, contractual systems, jurisdiction, costs, taxation and budget. Other terms are like unitization, dispute resolution, transfer of technology, training and manpower, environment, other resources of the area and the termination procedures are equally important aspects of a joint development.

3.2 Joint Development Distinguished

There are terms used in the extractive industry and in the oil and gas industry in particular that are akin to joint development and oftentimes confused with it. While joint development, as already discussed is a development contract between two sovereigns, those other similar terms that will be discussed herein are not contracts between sovereigns, but like joint development, require the pooling of resources or rights and a certain degree of cooperation or joint activity of some sort. Those terms are joint venture, unitization and pooling.
3.2.1 Traditional Joint Venture

Joint venture is perhaps the most commonly confused of the terms similar to joint development. Joint venture has been described as the “name given to a business arrangement based on a contract between two or more parties where each party contributes something to a specific undertaking, has a degree of control over the undertaking, and is entitled to take its proportionate share of the profit in kind”. Hence joint venture as an undertaking by two or more persons is geared towards profit, but joint enterprises may not necessarily be established for profit only but could be for other purposes. Many joint ventures are cooperative joint ventures wherein there is no separate legal personality but the current trend has become for joint venture partners to incorporate a joint venture company that has a separate legal personality from the parties forming the joint venture. The following have been identified as the key elements in a joint venture: community of interest in the object of the undertaking; equal right to direct and govern the conduct of each other in the undertaking; share in the profit and loss in the proportion of ownership and fiduciary relationship between or amongst the participants.

In many jurisdiction of the world, petroleum deposits in its natural strata belong to the State. The State in turn chooses whether to develop those deposits by itself or through a process of licensing or concessions, production sharing contracts, risk service contract or a hybrid of these models. They usually invite participant, usually foreign investors, private sector and so on to develop the petroleum deposits on its behalf in accordance with the petroleum regime of the

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108 Joint Venture Agreements for Canadian Mining Companies, being Materials prepared for the Continuing Legal Education Seminar held in Vancouver, BC on May 14, 1998 at para. 1.1.03
110 Ibid.
111 Ibid.
Some States engages in joint venture with these participant or investors using the State’s enterprise in the petroleum industry. This model is mostly prevalent in the developing countries or countries lacking in the financial and technological capacity to go the whole hog in their petroleum industry. Two factors have been identified as instrumental to the increase in joint venture in the petroleum industry in the late 1970s- the influence of mining and timber industries encouraged by the success of oil exporting countries’ permanent sovereignty over their natural resources and the increased control over the petroleum industry by States. Another reason is also traceable to the fact that the petroleum producing and exporting countries were able to earn surplus revenue that enabled them take care of the cost associated with participating in petroleum joint venture with the multinationals operating in their (States’) territory. Limitation of investments and political risks; national participation in petroleum activities; merger of skills and economies of scale are the major strengths of joint venture while the slow, consensual decision making processes and parental company influence have been identified as the low points for joint venture.

Usually, even when a petroleum joint venture is incorporated or a joint venture agreement signed, there is also the need for a joint operating agreement to govern the relationship between the State enterprise and the petroleum investor company, usually designated as operator. This model exists in most developing countries where the State enterprise lacks the technological knowhow and the financial muscle to be an operator in the joint venture or to go it alone. The

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113 Ibid.
114 In Nigeria for instance, the Federal Government engages in joint venture with the oil majors through the State enterprise, Nigeria National Petroleum Corporation (NNPC).
115 David Smith, “Foreign Investments in Natural Resources: What Can Go Wrong?” in Ho Kee et. al. eds. Current Developments in International Law (Faculty of Law, National University of Singapore: 1992) p. 446
116 Ibid.
117 Edgar Hezfeld and Adam Wilson, supra at pp. 25-27
joint operating agreement is central to the success of the venture (usually an oil block to be developed) and therefore contains clauses on every conceivable aspect of the petroleum joint venture especially in jurisdictions where there is no specific legislation for contractual petroleum joint ventures. An operating agreement therefore typically contains provisions on the joint venture area and principle, scope, duration, taxation, parties and interests, exclusive operations, rights of operator and operating committee, costs, petroleum allocation and disposal, transfer of rights, withdrawal, liabilities, unitization, fiduciary duties, decommissioning, default, confidentiality, farm out and so on. From a developing oil-producing country perspective, clauses, on training and scholarship, transfer of petroleum technology and environmental issues are also imperative in the agreement. Thus the major gains of joint venture between the State enterprise and the oil companies may well be the prospects of transfer of petroleum technology and human capacity development while its major setback may be the inability of the State enterprise to meet its cash call and other obligations in the joint venture. But by and large, this arrangement has helped many developing oil producing States exercise some measure of control in their petroleum industry.

A joint venture therefore differs from a joint development for two main reasons. First, joint development is conceptually between two or more sovereigns in a disputed area, area of overlapping maritime claims area or undisputed area of straddling natural resources. These factors on the hand do not give rise to a joint venture and for wise investment reasons, most oil companies will not sign a joint venture over such areas suited for a joint development except the latter has be concluded. Secondly, joint development agreement does not concern itself with the modalities for the actual working of the oilfields or blocks while this is the major thrust of the

118 See generally Peter Roberts, supra.
joint venture agreement. Joint development merely provides a framework for possible joint venture.

3.2.2 Unitization

One of the seminal works in this area of oil and gas law noted that in the late 1920’s and the early 1930’s, there were booming discoveries of oil and gas field in the United States and the fields were developed and operated under the rule of capture and the offset drilling rule which led to a race amongst petroleum companies to outdo one another in the production of oil and gas. In turn, that state of affairs led to the flooding of the market with an artificial surplus of the thitherto scarce natural resources.\(^\text{119}\) The eventual effect was the fall in oil price and the attendant risk to petroleum investments hence the plight of the industry and the general public for an emergency measure- the most important of which was unitization.\(^\text{120}\) Unitization therefore has its origin in the United States and is a contraption intended to ameliorate the consequence of the rule of capture which necessitated competitive drilling and its associated geo-engineering and economic consequences. As an originally engineering measure, it is usually called for when the primary petroleum recovery process has begun to wane and there is substantial loss of well pressure. Due to private ownership of mineral rights in the United States, there was fragmentation of ownership of oil and gas fields and tracts of a common reservoir. But in most oil producing States where ownership of hydrocarbon and other minerals is vested in the State,\(^\text{121}\)


\(^{120}\) Ibid.

\(^{121}\) See for instance, section 44 (2) (3) of the *Constitution of the Federal Republic of Nigeria*, 1999 and section 1 of the *Petroleum Act*, 1969 (Cap 350 LFN 1990) which vest ownership of minerals and petroleum in the territory of Nigeria (which includes the land territory, inland waters, territorial waters, EEZ and the continental shelf) in the Federal Government of Nigeria.
unitization may not be as indispensable as it is in the United States, but nevertheless relevant.\textsuperscript{122} In Nigeria for example, the \textit{Petroleum (Drilling and Production) Regulations}, 1969 provides for unitization if it is in the national interest for the grantee, licensee, or lessee to secure the maximum ultimate recovery of petroleum.\textsuperscript{123}

Unitization has been described and summarized as:

\begin{quote}
…the joint, coordinated operation of all or large parts of an oil or gas reservoir by the owners of separate tracts overlying the reservoir. Only through such cooperative agreements and efforts by the many owners of interests in an oil and gas field can efficient, low-cost operations be realized and the optimal recovery of oil and gas achieved.\textsuperscript{124}
\end{quote}

In the first place, the rule of capture came to be because of the ownership challenges associated with the common law property \textit{ad coelum} principle\textsuperscript{125} characteristic of the Roman property law which presupposes that the owner of land owns everything in it from the depths of the earth to the surface and to the heavens. When applied to solid minerals, this principle presented no problems, but with the fugacious nature of petroleum, the theory faced a lot of challenges because of the mobile character of petroleum which made it possible for an owner of land to exploit not just the amount of petroleum available in his own tract, but also that of adjoining

\begin{footnotesize}
\begin{enumerate}
\item[123] See Regulation 47(1)(b) Appendix I, Petroleum (Drilling and Production) Regulations, 1969 of Nigeria; See also Jacqueline and David on Unitization Around the World, supra at p. 38.
\item[125] In full, \textit{Cujus est solum, ejus est usque ad coelum et ad inferos} literally meaning that whoever owns land owns what is in the land down to the depths of the earth and above the surface of the earth up to the heavens.
\end{enumerate}
\end{footnotesize}
property owners- an obvious trespass to property. The industry was faced this challenge and the
court had to make an exception to this absolute property ownership principle by devising the rule
of capture which states that there is no liability in trespass to property for capturing oil and gas
that drains from another’s land because the owner of land acquires title to the oil and gas that he
produces from the well, notwithstanding that part of such oil and gas migrated from the tract of
land belonging to an adjoining landowner.\textsuperscript{126} This is similar to the rule associated with the
ownership of wild animals. This has also been referred to “the rule of convenience” because the
courts adopted it in recognition of the society’s need for oil and gas.\textsuperscript{127} The rule of capture in
turn created an atmosphere for competitive drilling which in turn depressed the market and has
the potential for reducing well pressure thereby making oil and gas recovery process difficult and
inefficient and the market forces of demand supply unbalanced.\textsuperscript{128} It is in response to this
challenge that the concept of unitization evolved.

There are two types of unitization from the point of view of the mode of creation just like
pooling- voluntary or contractual and mandatory or statutory. A voluntary unitization is one
which occurs as a result of the conscious agreement of the parties- usually operators of
coterminous fields. A unitization clause in a lease gives the lessee the right to unitize the leased
substance and gives the lessee the discretion to determine the basis for unitization and is most
desirable in a lease agreement. A unit operating agreement is also central to unitization just as a
joint operating agreement is to the joint venture. The agreement will therefore naturally contain
clauses defining the rights of the parties on issues like the unit area, unitized substance and

\textsuperscript{127} \textit{Ibid.}
\textsuperscript{128} John Jacobs, “Unit Operation of Oil and Gas Fields” \textit{Yale Law Journal} (June 1948) Vol. 57, No. 7, 1207-1228 at
p. 1207
formation, unitized title, sharing formula, costs, working interests, royalty owner and interest, unit operation, unit operator, tract and unit participation, unit equipment, unit operations, oil and gas rights, decision making, dispute resolution and the necessary appendices or exhibits among other terms.\textsuperscript{129} The effect of unitization—whether compulsory or voluntary—will therefore be to minimize cost and maximize efficient production from both geo-engineering and economic perspectives.

Compulsory unitization is the species resulting from an administrative order of the relevant agency or commission. Mandatory or statutory unitization (as it is also called) also began in the United States in the State of Louisiana in 1940 and the legislation and administrative actions received the imprimatur of the US courts in \textit{Crichton v. Lee}.\textsuperscript{130} At present, many States of the United States and Canada have their various Oil and Gas Conservation Statutes that provide for the powers of a state agency to impose unitization on a pool against the objection of the minority if a majority is in support of the proposed plan.\textsuperscript{131} The details of the unitization rules vary from state to state and from jurisdiction.

From the point of view of jurisdiction, unitization can also be categorized as sole country and cross border or international unitization. In sole country unitization, unitization occurs within the country and the reservoir does not extend beyond the territory of the country but does extend beyond two or more licensed areas usually belonging to different holders. This is usually governed by the municipal laws and regulations of the country where the reservoir is situate and

\textsuperscript{130} 25 So. 2d 229 (1949)
\textsuperscript{131} Williams and Meyers \textit{Manual of Oil and Gas Law} 5\textsuperscript{th} ed. (Matthew Bender & Company, New York: 1980) p. 125
the contractual arrangement between the unitizing parties. International or cross border unitization on the other hand occurs where a petroleum reservoir overlies or straddles the territories of two or more countries that have delimited their boundaries. Usually, this involves two or more licensees.  

In most boundary delimitation agreements, it is most common to find a clause on cross border unitization anticipating future common deposits that will warrant cross-border unitization. The 1965 UK-Norway Agreement provides the first and perhaps most referred instance of a cross border unitization in its Article 4 which famously provides that:

If any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, including sand or gravel, extends across the dividing line and the part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the dividing line, the Contracting Parties shall, in consultation with the licensees, if any, seek to reach agreement as to the manner in which the structure or field shall be most effectively exploited and the manner in which the proceeds deriving therefrom shall be apportioned.

Subsequent maritime boundary delimitation agreements in the North Sea, Persian Sea, Pacific Sea and all over the world started adopting this clause in order to provide for a framework to unitize either existing or future discoveries of straddling petroleum reservoirs.

132 Jacqueline and David on Unitization Around the World, supra at p. 14
134 See for instance article 31 of the Nigeria-STP JD Treaty which contains similar provision and contemplates three international unitization scenarios of unitization- between the joint development Zone and a State Party; between the joint development Zone and Third Party State and between the joint development Zone and the Special Regime Area falling under the exclusive jurisdiction of Nigeria. It also provides for unitization between or amongst operators with the licensed areas of the joint development zone.
However, in order to practically actualize a cross border unitization, apart from the sovereign unitization agreement or clause, the respective cross border licensees would also be required to execute a unit operating agreement, *inter se*. It is at the level of cross border unitization that there seems to be a convergence between unitization and joint development for two reasons. First, contrary to some expectations, joint development can exist where there are no disputed boundaries as well. Where States, in the interest of their peaceful coexistence and friendship, decide to maintain such relationship (either for historical reasons or other considerations or tradeoffs) by jointly developing their straddling resources, the two will become similar. Indeed there is nothing in international law that either forbid or discourages this practice; rather such practice would be exemplary. Secondly, joint development and international unitization both require sovereign intervention, consent and participation. After that first level of intervention by the States, then the operators/licensees, in both circumstances can engage in the joint operating agreement and unit operating agreement, respectively none of which must be inconsistent with the sovereign agreement.

However, the major difference between joint development and cross border unitization is that the former is concerned with an area development while the latter is on a unit operation entered into for the same reasons that unitization is called for albeit with cross border effects of such reasons. Also, the sharing formular in joint development is as may be agreed by the State parties while in unitization the sharing formula is based on the apportionment ratio of the unit production of the common reservoir.
3.2.3 Pooling

This a term usually confused with unitization but appropriately used to denominate the bringing together of small tracts sufficient for the granting of a well permit under an applicable spacing regulations.\footnote{Supra at pp. 554-555} Most authoritatively, pooling has been defined as “… the combination of leases or parts of leases for the development of, for the production of oil, gas and associated products.”\footnote{Richard Hemmingway, The Law of Oil and Gas, 3rd ed. (West Publishing Co., Minnesota: 1991) p. 427.} It is the consolidation and combining of enough leased land with adjoining leased tracts to form an appropriate drilling unit.\footnote{Ibid.} The area is called a pool. Pooling has the benefit to the production company of uniting all landowners’ leases into a common pool under one drilling production company and utilizing one common underground geological reservoir.\footnote{See <http://www.oil-gas-leases.com/oil-gas-pooling.html> last visited on November 23, 2010.} This is a concept developed to eliminate environmental degradation caused by incessant and uncontrolled drilling of land and to ensure the conservation of oil and gas. Apart from those, there are also economic and engineering reasons for pooling.

Thus the primary essence of pooling is to enable the petroleum company obtain the necessary acreage that qualifies for a drilling permit as contained in the laws of the State in question. This appears necessary in jurisdictions where the petroleum leases are granted by individual landowners like the United States and used to regulate drilling. Under the law of leases, a lessee has no power to effect a unitization or pooling on a leased land and bind the lessor except by express consent or estoppels or a compulsory statute.\footnote{Charles Meyers and Howard William, “The Effect of Pooling and Unitization on Oil and Gas Leases” California Law Review (Oct. 1957) Vol. 45, No. 4 pp. 411-449 at p. 411, sourced from <http://www.jstor.org/stable/pdfplus/3478599.pdf?acceptTC=true>} It is therefore expeditious for an oil company in jurisdictions like the United States, when negotiating an oil and gas lease, to insert a
clause on pooling and unitization in the event that they become necessary. A typical pooling clause which would authorize the lessee oil company to join tracts of leased land would usually provide as follows:

Lessee is granted the right, power and option at any time or times to pool and combine the land covered by this lease or any portion thereof with any other land, lease or leases in the vicinity thereof with any other land when in the Lessee’s judgment it is necessary or advisable to do so. Such pooling may include all oil, gas and other minerals or may be limited to one or more such substances and may extend to all such production or may be limited to any one or more zones or formations.\(^\text{140}\)

Courts in the United States have also assisted in the development of this area of oil and gas jurisprudence as evidenced in *Debetaz v. Chevron USA Inc.*\(^\text{141}\) Here, the lessee, Chevron had four tracts of leases and was permitted to pool in the lease at any necessary time provided the pooled acreage does not exceed 160 acres, except when statutorily ordered. They (Chevron) filed for pooling of 160 acres in line with the lease and subsequently the statutory authorities ordered a 640-acre unit to be pooled which included the 160 acres and they sought to pool as required. The court held that the lessee acted in good faith and in the best interest of both itself and the lessor by declaring 160 acre-unit and commencing pooling operations and that since the lease merely stated that the units to be pooled should not be less than the statutory requirement, the 640-acre can be accommodated within the lease agreement. Good faith has therefore become an essential element of the exercise of the right of pooling in oil and gas lease. In a Texas case of *Elliot v.*

\(^{140}\) Williams and Meyers Manual of Oil and Gas Law, supra at p. 555
\(^{141}\) 891 F.2d 562 (5th Cir. 1990)
*Davis*, the United States court stated that the lessee’s exercise of the authority to pool as contained in the lease must be exercised in good faith in the circumstances, and has to be for the reasonable development of the property and in the interest of both the lessor and the lessee.

There are basically three types of pooling from available literature and practices- voluntary, compulsory or statutory and equitable. Voluntary pooling is the pooling arrangement properly negotiated and inserted in the lease. Therefore, it is prudent in the lease to set the acreage to be pooled in the leased land to only the minimum acreage necessary for the drilling permit or to tie it the statutory requirement. Where it is not contained in the lease, the consent of the landowner to the pooling must be obtained or a renegotiation of the lease sought. Compulsory or statutory unitization is the bringing together as may be required by law or a valid order or regulation, separately owned small tracts of leased land, as a regulatory intervention, to qualify for the granting of a well permit under applicable spacing rules. Virtually all oil producing States of the United States have their various Oil and Gas Conservation and Unitization Statutes and Spacing Orders. In Alberta, Canada, for example, by virtue of section 72 of the Oil and Gas Conservation Act, the Alberta Energy Resources Board, on the application of the owners of land, may order that all tracts within a particular drilling spacing unit be operated as a unit, subject to the approval of the Lieutenant Governor in Council. Equitable pooling on the other was developed by the courts in a series of Mississippi cases and used to describe the consequences of the cases in which the court held that spacing regulations based on general

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142 Tex. Civ. App. 553 S.W. 2d 223.
143 Williams and Meyers Manual of Oil and Gas Law, supra at p. 125
145 RSA 1980 c.0-5
146 Alastair Lucas and Constance Hunt, Oil and Gas Law in Canada (Carswell, Toronto: 1990) pp. 202-203
147 Superior Oil Co. v. Beery, 216 Miss. 644; Superior Oil Co. v. Foote, 216 Miss. 728; Humble Oil & Ref. Co. v. Hutchins, 217 Miss. 636, obtained from Williams and Meyers Manual of Oil and Gas Law, supra at p. 241
conservation statutes that do not have compulsory pooling provisions, had the legal effect of pooling the land included in drilling units.\textsuperscript{148} This has also been referred to as judicial pooling since it is a polling resulting neither from agreement or statutory mandate, but by judicial decisions.\textsuperscript{149}

While the focus of pooling is meeting regulatory drilling requirements, unitization approaches oil and gas development from geo-engineering and economic perspectives. Clearly, pooling and unitization, yet with the requirement of joining certain resources and requiring cooperation in the development of oil and gas, are not the same as joint development for the same reasons joint venture is not.

\textbf{3.3 International Legal Framework for Joint Development}

The concept of joint development in international law has its root form various known sources of international law and this subsection will examine the specific aspects of each of the sources of authority to joint development in international law and how they have shaped and advanced the idea of joint development as an international law concept.

\textsuperscript{148} \textit{Ibid.}\textsuperscript{149} \textit{Ibid.}
3.3.1 Judicial Decisions and Arbitral Awards

In discussing the international judicial contribution to the advancement of joint development, the separate opinion of Judge Jessup in the *North Sea Continental Shelf Cases* quickly comes to mind. The ICJ, perhaps influenced by state practice in the then recent *UK- Norway Agreement*, particularly by the Article 4 and other treaties on the North Sea resources development stated that:

In a sea with the particular configuration of the North Sea, and in view of the particular geographical situation… The Court considers that such a situation must be accepted as a given fact and resolved either by an agreed, or failing that by an equal division of the overlapping areas, or by agreements for joint exploitation, the latter solution appearing particularly appropriate when it is a question of preserving the unity of a deposit.

Here, the ICJ clearly showed its approval for joint development which was then beginning to manifest in state practice. This opinion also opened the way for further joint development and maritime cooperation agreements amongst States. In the dissenting opinion of Judge Evensen in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya) Case*, he was strongly of the view that an arrangement for joint exploration, user or even joint jurisdiction over restricted overlapping areas may be a corollary to other equity consideration. He went on to cite the

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150 *Supra*
155 *Supra*, at p. 320-321
North Sea Continental Shelf Cases\textsuperscript{156} in support of his assertion and further said that in the anticipated joint exploitation zone, the two States should establish a joint policy of exploration and exploitation and went ahead to recommend a 50-50 sharing formula.\textsuperscript{157}

Also, in the \textit{Eritrea-Yemen Arbitration}\textsuperscript{158} the Tribunal stated that the Parties are bound to inform one another and to consult one another on any oil and gas and other mineral resources that may be discovered that straddle the single maritime boundary between them or that lie in its immediate vicinity, and that the practice in the exploitation of resources that straddle maritime boundaries import that Eritrea and Yemen should give every consideration to the shared or joint or unitized exploitation of any such resources.\textsuperscript{159} In the \textit{Guyana and Suriname Arbitration},\textsuperscript{160} the Tribunal stated that joint exploitation of resources that straddle maritime boundaries has been particularly encouraged by international courts and tribunals and cited the other previous cases in support.\textsuperscript{161} The Tribunal further stated that joint development as a provisional arrangement of a practical nature has been recognised as important tool in achieving the objectives of UNCLOS, 1982 and it is for this reason that UNCLOS, 1982 imposes an obligation on parties to a maritime boundary dispute to make every effort to reach such arrangements.\textsuperscript{162}

Finally, the recommendation of the International Conciliation Commission set up by Iceland and Norway was that there should be a single dividing line for both the continental shelf and EEZ of

\textsuperscript{156} \textit{Supra}
\textsuperscript{157} \textit{Supra} at p. 320-321
\textsuperscript{158} In the \textit{Matter of Arbitration between the Government of the State of Eritrea and the Government of the Republic of Yemen}, available at \texttt{<http://www.pca-cpa.org/upload/files/EY\%20Phase\%20II.PDF>}
\textsuperscript{159} \textit{Supra} at p. 28, para. 86.
\textsuperscript{160} \textit{Supra}
\textsuperscript{161} \textit{Supra} at p. 154, para. 463
\textsuperscript{162} \textit{Supra} at 154, para. 464
the States on the Jan Mayen and that for those areas of overlapping claim with substantial promise of hydrocarbon, there should be joint development agreement for those areas.\textsuperscript{163}

\subsection*{3.3.2 Soft Law}

There are a good number of international resolutions and declarations that point towards joint development or at least some form of cooperation amongst States in the development and management of common natural resources. First of those to be considered is the \textit{United Nations Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States.}\textsuperscript{164} This is in accordance with the \textit{United Nations Charter} on the peaceful resolution of disputes. Specifically on the duty to co-operate, it declares that irrespective of differences in political, economic and social systems, States are under obligation to maintain international peace and security, the general welfare of nations and to promote international economic stability and progress in an atmosphere free from discrimination based on their differences.\textsuperscript{165} The Declaration also generally condemns acts of war, aggression and intimidation by States. Similarly, the \textit{United Nations Resolution on Permanent Sovereignty over Natural Resources}\textsuperscript{166} resolved that the free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality and further encourages international co-operation for the economic

\begin{footnotesize}
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\item[\textsuperscript{164}] Resolution 2625 (XXV), 24 October 1970
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development of developing countries. Indeed the entire Resolution enjoins cooperation from all nations for the realization of the natural resources goal. Some Resolutions of the United Nations are quite specific to cooperation in areas of shared natural resources. For instance the United Nations General Assembly in Resolution 3129 (XXVIII) of 13 December 1973 mandated the United Nations Environmental Programme to produce a *Guideline for Cooperation in the Field of Environment Concerning Natural Resources Shared by Two or More States*. The Guideline called upon States to cooperate in the harmonious utilization of shared natural resources and in the protection of the environment from such harm. The General Assembly responded by encouraging States to formulate bilateral and multilateral treaties regarding shared natural resources in good faith and in the spirit of good neighbourliness.\(^{167}\) Perhaps much more specifically, the *United Nations Charter on Economic Rights and Duties of States* provides in Article 3 that “in the exploitation of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others.”\(^{168}\)

All these principles of resolutions and declarations point towards the fact that international law encourages States to cooperate in the management and development of shared natural resources and the most practical way of doing this is by joint development. It may be argued that resolutions do not have any binding force in international law, but the fact remains that they indicate the trend in state practice and, especially when they are unanimous, could be forceful. In

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a way, they set international standards of best practices for States to adopt and in recent times, resolutions have assumed a significant role in the ICJ decisions as the ICJ has been referring to Security Council and General Assembly Resolutions in reaching very critical decisions especially as evidence of *opinio juris* for instance in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion).*\(^{169}\) Resolutions and declarations therefore form evidence of State intention, practice or aspiration and relevant in decision making by the international adjudicatory bodies.\(^{170}\) They have also added force and legitimacy to the concept of joint development.

### 3.3.3 Conventional Law

Here, UNCLOS, 1982 quickly comes in handy in confirming that States owe each other the obligation to mutually cooperate in the development of their shared marine natural resources. Very readily, Articles 74 (3) and 83 (3) come to mind as laying the foundation for not just mere cooperation, but a practical one. It provides:

> Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements *of a practical nature* and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.


It is on the strength of these provisions that coastal States have been able to conclude literally countless joint development treaties giving them the joint right to their common natural resources, managed and shared as may be provided by the treaties for their economic benefits and sustenance. Indeed, a good number of these joint development treaties specifically recite those provisions of UNCLOS, 1982 as the source of their authority to engage in the joint development. Incidentally the provisions only contemplate a situation where the maritime boundary is undelimited, but understandably so considering that candidate areas for joint developments are more prevalent in areas of overlapping maritime claims than otherwise.

On the other hand, the provisions of Article 123 of UNCLOS, 1982 also lend further credence to the concept of joint development and maritime cooperation especially for the States bordering and sharing a basin or gulf, defined as closed or semi-enclosed sea. It enjoins thus:

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

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171 See for instance the Preamble to the Nigeria-STP JD Treaty which reads in part, “… taking into account the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 and, in particular, Article 74(3) which requires States with opposite coasts, in a spirit of understanding and co-operation, to make every effort, pending agreement on delimitation, to enter into provisional arrangements of a practical nature which do not jeopardize or hamper the reaching of final agreement on the delimitation of their exclusive economic zones…”
(c) to coordinate their scientific research policies and undertake where appropriate
joint programmes of scientific research in the area;
(d) to invite, as appropriate, other interested States or international organizations
to cooperate with them in furtherance of the provisions of this article.

Many joint development and maritime cooperation treaties have been concluded with this
 provision in mind or in the spirit of the realizing the goals of this provision whether or not these
provisions are recited therein. Even though the provision did not mention non living resources,
but it provides a kind of transplant effect for the joint development of non living resources like
petroleum, having equally similar mobile character as the living resources of the sea like
fisheries which that particular provision seems to contemplate. Interestingly however, the States
bordering on the Gulf of Guinea have not just concluded a treaty in this direction, but have also
established a regional body to effect the goal of maritime cooperation in the region. The Treaty
Establishing the Gulf of Guinea Commission was signed on February 21 2001 and established the
Gulf of Guinea Commission comprises eight States bordering on the Gulf of Guinea. The
Commission has its headquarters at Luanda, the Angolan capital and the current Executive
Secretary of the Commission is the President of Sao Tomé and Principe, Fredique de Menezes
who was elected on August 25 2006 when the Commission met at the Gabonese capital,
Libreville. The major thrust of the treaty is to promote cooperation in the management,
conservation and exploitation of the living and nonliving natural resources of the Gulf of Guinea
as enjoined by UNCLOS, 1982.

172 The member States of the Gulf of Guinea Commission are the Republic of Angola, the Republic of Cameroon,
the Republic of Congo, the Democratic Republic of Congo, the Republic of Gabon, the Republic of Equatorial
Guinea, the Federal Republic of Nigeria, the Democratic Republic of Sao Tome and Principe.
173 Emmanuel Kendemeh, “West Africa: Gulf of Guinea Commission goes Functional”, Cameroon Tribune,
3.3.4 Municipal laws

Municipal laws also have their influences in the development of international law, actively or passively. For instance, the concept of equity or equitable principles applied in international judicial decisions has its origin in the Courts of Equity of England that were established to ameliorate the harshness of the common law courts. In the area of natural resources cooperation, the concept of unitization\(^{174}\) was domestically developed in the United States to avoid wasteful and competitive oil and gas drilling first by the State of Louisiana before other States started enacting their various Oil and Gas Conservation Statutes. Today, several maritime delimitation treaties between States, too numerous to mention,\(^ {175}\) contain the international or cross border unitization clause(s) to enable the operators of the two States unitize the oil and gas deposit where it straddles the national borders, just like the municipal America. From the United States where it was developed, this concept has found its way successfully into the body of state practice in international law. The status of unitization and joint development in international law is not very clear but will be discussed later. However, considering that the ICJ, in deciding disputes, is enjoined to apply international custom, as evidence of a general practice accepted as law and the general principles of law recognized by civilized nations,\(^ {176}\) the status of unitization and joint development in international law will likely receive judicial pronouncement in the probable future. Also, the ICJ, having been enjoined to apply “the general principles of law

\(^{174}\) This has been discussed earlier in greater details in the beginning part of this chapter.

\(^{175}\) See for instance the famous article 4 of the *UK-Norway Delimitation Agreement*; article 31 of the Nigeria-STP JD Treaty to mention a few. For a comprehensive study of unitization clauses of maritime delimitation agreements, see Charney on *International Maritime Boundaries*, Vols. I-V as applicable or the United Nations Treaties Series for Maritime Boundary Agreements deposited with the Secretary General of the United Nation in accordance with Article 102 of the *United Nations Charter* at <http://treaties.un.org/Pages/DB.aspx?path=DB/MTDSG/page1_en.xml>

\(^{176}\) Article 38, Statute of the ICJ
recognized by civilized nations” may one day pronounce on the international law status of this practice.

3.3.5 State Practice

There is litany of bilateral and a few trilateral joint development and maritime cooperation treaties that have been concluded by States way too numerous to mention individually but have been mentioned previously in this work. Also, chapters four and five will be devoted towards the empirical workings of this concept. The insertion of cross border unitization clauses in maritime boundary delimitation agreements and the presence of several joint development treaties being actualized into joint development of natural resources, point towards a generally acceptable and consistent state practice in this direction of international law and relations.

3.3.6 Analogous Practices in Shared Resources Management

International cooperation is at the root of several other conventions and practices adopted by nations in the management, utilization and conservation of certain shared resources. The principle of common heritage of mankind in UNCLOS, 1982 is used as the basis for the

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designation of the Area (and its resources),\textsuperscript{178} being the zone of the sea beyond national jurisdiction, as \textit{res communis}, the exploitation of which is to be managed for the benefit of mankind as a whole in trust by the ISA with the Enterprise as the commercial and operating organ charged with the responsibility of engaging in commercial exploitation of the natural resources of the Area for the benefit of all nations.\textsuperscript{179} Another easily identifiable convention that enjoins cooperation in the management of shared resources is the \textit{Treaty on Principles Governing the Activities of States in the Exploration and uses of Outer Space Including the Moon and Other Celestial Bodies}.\textsuperscript{180} This universal treaty in general provides that States are free to explore the space and that the space or any part thereof or any other celestial body for that matter shall not be subject to State occupation or appropriation.\textsuperscript{181} Article 1 mandates that the exploration and use of the outer space including the moon and other celestial bodies shall be carried out for the benefit and in the interest of all countries regardless of their economic and or scientific development and shall be the province of all mankind. Indeed the space has been characterized as the common heritage of mankind akin to the Area of UNCLOS, 1982.\textsuperscript{182}

In the use of transboundary water courses like rivers, lakes and basins, several bilateral and multilateral cooperative initiatives\textsuperscript{183} have been developed by the riparian States to accommodate

\begin{footnotesize}
\begin{enumerate}
\item Part XI UNCLOS, 1982
\item Part XI and Annex IV, the Statute of the Enterprise UNCLOS, 1982. This regime for the exploitation of the resources of the Area has been significantly amended by the \textit{1994 New York Agreement} in order to accommodate the interest of the developed States and as an incentive for them to come on board the convention.
\item (1968) 610 UNTS 205; 6 ILM 386: in force October 10, 1967 and hereinafter referred to as “the Moon Treaty”.
\end{enumerate}
\end{footnotesize}
the shared interests of one another in the equitable uses of such resources, the most principal of which is the *Convention on the Law of the Non-navigational Uses of International Watercourses*. The major principle of the Convention is to ensure the equitable utilization of watercourses by States with the interest of others States in mind. There is also an obligation not to cause harm to the interest of others. Most relevantly, Articles 8 the *Convention on Watercourses* creates an international obligation on States to cooperate in the use of the shared watercourses. The *Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes*, like the *Convention on Watercourses*, also make provision for the requirement of cooperation in the use of shared resources. Article 2(6) mandates that the riparian Parties:

“…shall cooperate on the basis of equality and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies, programmes and strategies covering the relevant catchment areas, or parts thereof, aimed at the prevention, control and reduction of transboundary impact and aimed

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185 Article 5 *Convention on Watercourses*

186 The full provisions of article 8 are as follows:

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.

2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

187 Adopted by European State at Helsinki on 17 March 1992 and done by the Economic Commission for Europe countries. [Hereinafter referred to as the “*Helsinki Convention*” and “UNECE”, respectively] available at <http://www.unece.org/env/water/pdf/watercon.pdf>. However in 2003, the *Helsinki Convention* was amended to allow countries outside the UNECE region to accede thereto, thus inviting the rest of the world to use the *Helsinki Convention*’s legal framework and experience.
at the protection of the environment of transboundary waters or the environment
influenced by such waters, including the marine environment.”

All these analogous practices and conventions point towards the fact that equitable utilization of such shared resources, regardless of sovereignty, are mandated by international law. Equity and the doctrine of community of interest have remained the operating ideas behind the joint utilization of shared resources. These principles equally inform the basis for advocating joint development of common natural resources.

3.4 Reasons for Joint Development

Several reasons have been canvassed as to why States agree to jointly develop their straddling natural resources however, whatever the reasons are, it is inarguably in the interest of nations with straddling natural resources to jointly develop them. Here, some of the reasons that engender joint development are identified and briefly discussed.

3.4.1 Peaceful Co-existence and Security

The UN Charter and numerous other conventions, treaties and resolutions enjoin States to ensure international peace and security and friendly relations amongst States. Indeed, maintenance of international peace and security is the whole essence of international law and politics. Acts of aggression, browbeating and intimidation by States are condemned outright by the tenets of

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189 Chidinma Bernadine Okafor, *supra* at pp. 506-509.
international co-existence and sovereign equality. In the circumstances of the *Cameroon v. Nigeria*\textsuperscript{190} case, Nigeria actually militarily occupied parcels of Cameroonian territory in the area of Lake Chad and the Bakassi Peninsula in anticipation of military aggression. The occupied areas were eventually awarded to Cameroon. Many acts of aggression and intimidation by States have been boundary disputes related. Therefore, in the interest of international peace and security, peaceful co-existence and good neighbourliness, coterminous States may decide to jointly develop their straddling natural resources than engage in unacceptable forms of securing compliance from each other. Going through the preamble of almost all the available joint development agreements, the recurrent decimal has been the restatement of the spirit of cooperation, friendship and good neighbourly relations between the contracting States.\textsuperscript{191} In the absence of joint development of disputed areas, the sea may also be perilous where an acrimonious maritime dispute turns the maritime area to a no-man’s-land especially for seafarers. In such situation, enforcing safety rules at sea becomes no State’s concern. And apart from navigational challenges, piracy may also thrive like in the Gulf of Aden under Somalia’s failed government. A joint development regime will address such concerns where properly articulated to include appropriate policing procedures and security measures.

### 3.4.2 Economy before Politics

From the above point discussed, neighbouring States who are in dire need of bolstering up their economy from the proceeds of their straddling natural resources or even in dire need of the resources for domestic consumption may well decide to leave aside their political and ideological

\textsuperscript{190} Supra  
\textsuperscript{191} Preamble to the *Nigeria-STP JD Treaty*
differences and cooperate towards harnessing their common natural resources. For instance where the said natural resources are in dire domestic need, pressure from within the polity may compel such States to jointly develop their common natural resources where perhaps the governments are stonewalling. Indeed that is why there is pressure on the States bordering the South China Sea to engage in joint development and harness the oil and gas deposits of the Sea instead of focusing on divisive politics. As a matter of fact, if the big ones like China and Japan consider their domestic economic and oil and gas interests, or better still for an example, that of their comparatively small neighbours, they should be able to see why there is an urgent need for joint development if the South China Sea. The same scenario is also applicable in other regions where there has been protracted struggle for control for straddling natural resources like in the Aegean and Caspian Seas. Perhaps the big powers bordering the South China Sea and other troubled seas should emulate the likes of Australia and Nigeria in their joint development relationships and concessions made with their relatively weaker neighbours in Timor-Leste and Sao-Tome and Principe, respectively.

3.4.3 Unpredictability of a Third Party Decision

States may decide to resolve their maritime disputes by a third party decision. Whether international arbitration, conciliation or courts, there is no exactitude as to the outcome of a dispute. At best there could be some measure of vague predictability, but the state of international jurisprudence in maritime boundary delimitation has made predictability mere guesswork. Not just because of the erratic nature of the jurisprudence in maritime boundary

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delimitation as has been with the ICJ but due to the fact that naturally, decisions of courts cannot be predicted with certainty. Considering the fact that the courts and tribunals, in maritime delimitation, take into account several factors including “special circumstances” in reaching a decision, it may well be better for States to ‘decide’ their disputes themselves by jointly developing their common resources. Furthermore, the winner-takes-all character of adjudication and arbitration should be enough encouragement for joint development. In fact, the Nigeria v. Cameroon\textsuperscript{193} case very quickly comes to mind. Upon the judgment, Nigeria immediately lost the whole of the disputed oil-rich Bakassi Peninsular to her neighbour, Cameroon. If the outcome of this judgment were foreshaded, Nigeria would definitely have grabbed the option of joint development or even persuaded settlement for a joint development as was proposed by some Nigerian writers, albeit belatedly.\textsuperscript{194}

3.4.4 The Presence of Natural Resources

The need for joint development arises because natural resources are in existence to be developed by the bordering States. Where natural resources do not exist or suspected to exist, there will be no need to jointly develop any resources. Where borders are disputed (or even agreed) and there no natural resources, States may negotiate some other forms of maritime cooperation for maritime security and safety, environmental protection or any other issue of value to them. But primarily, it is the presence of natural resources- oil and gas or fisheries that propel States towards joint development. Where there are no natural resources in the context of a maritime boundary or where the natural resources are yet to be discovered, the tension in those areas will

\textsuperscript{193} Supra
\textsuperscript{194} Chidinma Bernadine Okafor, supra
likely be less, or potential for conflict ignored, than where such resources have been discovered or even suspected to exist in commercially exploitable quantity. Therefore the availability or otherwise of natural resources in the area of overlapping claims may either fuel or dampen the urge to engage in joint development.

3.4.5 Unilateral Action by One State

Unilateralism in the development of common natural resources is not encouraged in international law and it is expected that States should not unilaterally exploit the resources that straddle their border and that of another State. Having said that, it has however occurred that there are instances where States have gone ahead to exploit the resources that straddle boundaries, regardless of the effect of the exploitation of the deposit on the other side of the boundary or regardless of the overlapping claims to the area. And usually, such unilateral action will emanate from the stronger State. In order to prevent this, a better idea may be to negotiate a joint development, lest the alternative action may be recourse to court for possible declaration of title and compensation. It is also in the bid to prevent this that States might decide to jointly exploit their straddling natural resources.

3.4.6 The Need to Attract Investors

Investors would want to know that their title to the natural resources they are being invited to develop is unimpeachable. They would also want to be assured of undisturbed and quiet possession of their licensed or leased development areas. Where there is dispute as to natural resources, for instance oil and gas, it will be difficult to get oil and gas company to invest its
resources in the exploration of such fields that are uncertain in ownership. The financiers or shareholders of such companies will be most reluctant to commit resources to the exploration that may well turn futile for lack of title of the host government or title that will result in a protracted dispute, or even worse still possible acts of aggression and intimidation by the rival Claimant State. For instance, in the *North Sea Continental Shelf cases* ¹⁹⁵ there was evidence of petroleum exploration pursuant to the licensing by one of the States which the Court did not consider to be a relevant factor in the delimitation. In other words, the Court will reach its decision unperturbed by the fact that one State has assumed it has the right to license the disputed area.

### 3.4.7 The Character of Petroleum and Fisheries

Natural resources—whether liquid, solid or living do not respect human boundaries. Solid minerals may be easier to deal with. Take fisheries for instance, that could be straddling or migratory— the essence of boundary is meaningless. UNCLOS 1982 in recognition of this fact encourages States to cooperate in developing a mechanism for handling the character of this living natural resource and based on that, an agreement is being concluded to that effect to cater for different species, most relevantly here the highly migratory ones. ¹⁹⁶ Bilateral arrangements are also going on in this respect depending on the States’ interests, available species and location. Oil and gas on the other hand are fluid and when they are found to straddle national boundaries, unlike solid minerals, cannot be exploited from one side of the boundary without a

¹⁹⁵ *Supra*
distortion in their natural equilibrium and quantity in the straddling common reservoir. Such exploitation can, due to their fluid character, cause interference in the neighbouring State’s equivalent right to the oil and gas in the reservoir by making the substances migrate from one side of the boundary to the other.\(^{197}\)

### 3.4.8 Time and Cost of Proceedings

As unpredictable as the international adjudicatory decisions may be, so they are expensive and most times tortuously long. Contrarily, oil and gas companies and investors may not be able to exercise that length of patience for the proceedings to go the whole hug of international adjudication. States may also be losing time in utilizing the available natural resources to fuel their economic growth and better the lots of their citizenry especially when it is in dire domestic demand. To be much more specific, the process of adjudication in the *North Sea Continental Shelf*\(^{198}\) case, as an example, lasted from 1964/65 to 1971 while the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*\(^{199}\) case lasted 8 years.\(^{200}\) *Cameroon v. Nigeria*\(^{201}\) lasted from 1994 to 2002. Those cases provide empirical evidence on the average time it takes to get a final decision from the ICJ. It will also be made worse if there are applications for interim measures within the trial or where other preliminary issues like the jurisdiction of the court is called into question and requires to be disposed of as an interim issue before the substantive matter is dealt  


\(^{198}\) Supra

\(^{199}\) Supra


\(^{201}\) Supra
with. In such circumstances, it could take a whole decade. Admittedly, arbitration is much shorter in terms of time frame for adjudication, but nevertheless relatively long. The doctrine of *lis pendis* also applies to international litigation and States and their investors may be ordered or required to refrain from any action that might prejudice the decision of the court. This portends that they may have to agonizingly wait for the court proceedings to run their full course before any investment decision can be made in the disputed area. To this end, States may be better off if they had opted for joint development taking into account lost investment time.

Cost of litigation may also be another consideration depending on the economic strength of the State, for instance States like Sao Tome and Principe and Timor-Leste against the State Parties they are currently enjoying a joint development relationship with. Joint development is surely a better choice than long, unpredictable and expensive litigation.

### 3.4.9 Compelling Geography and Geomorphology

The geographical location and geomorphologic aspects of the seas containing the natural resources may compel a joint development for instance where there is a legitimate extended continental shelf. Another, perhaps stronger, instance of the role of geography or geomorphology in joint development is where there is the presence of islands capable generating an EEZ and continental shelf or extended continental shelf scattered over a few hundred nautical miles apart. In such situation, it will be impossible to neglect their importance to maritime boundary delimitation and their possibly intricately overlapping maritime zones- hence the compelling
need to jointly develop the resources that may straddle the zones. In the Gulf of Guinea, the presence of Sao Tome and Principe (which is relatively a very small island State) made the Nigeria-STP joint development deal inescapable. The presence of Bioko Island in the Gulf of Guinea may also engender further such joint development relationships, possibly between Cameroon and Guinea Bissau or Guinea Bissau and Nigeria and/or Sao Tome and Principe. Indeed, in recognition of geographical circumstances like gulfs and basins- enclosed or semi enclosed seas, UNCLOS, 1982 has enjoined cooperation amongst such bordering States obviously to resolve possible intricate problems of delimitation.

3.4.10 Preservation of the Unity of Deposit

The unity of deposit consideration in maritime delimitation and joint development probably originated from the wisdom in the Grisbadarna Case of 1909 where the PCA settled the maritime boundary dispute between Norway and Sweden at the lobster bank of the Grisbardana. The PCA held, in their award, that in order to avoid cutting through the bank, the dividing line was to run perpendicular to the coastline and allocated the whole of the bank to Sweden, though on historical antecedents primarily. According to Lagoni, the unity of deposit was picked up by M. W. Mouton in his work wherein the latter argued in favour of this concept in maritime delimitation of areas of straddling resources and coining the phrase “never put two straws in one

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202 UNCLOS 1982, Article 121
203 UNCLOS 1982, Article 123
204 Supra
205 Supra at 129 also quoted by Rainer Lagoni on Deposits across National Frontiers, supra at p. 240
206 Ibid.
207 Rainer Lagoni on Deposits across National Frontiers, supra quoting M. W. Mouton, “The Continental Shelf” 85 Recueil Des Cours (1954, 1) 347, 422
The glass he (Mouton) submitted that a boundary line should not traverse an oil pool by likening it to the international law of rivers. Interestingly, the Agreement between the Kingdom of Saudi Arabia and the Government of Bahrain incidentally appears to have observed the principle by refraining from drawing a boundary line across the area of deposit in the delimitation agreement between the two countries by creating a hexagonal zone over the overlapping claims and leaving Saudi Arabia to exploit the petroleum deposits therein in accordance with Second Clause of the said Agreement requiring remittance of one half of the revenue accruing therefrom to Bahrain.

However, it must be quickly pointed out that current literature on the subject of joint development appears to have abandoned this reasoning and it does not recognize this unity of deposit principle as a strong consideration in maritime boundary delimitation of straddling resources areas. But then, a further argument could be that the insertion of a unitization clause in almost all the maritime delimitation agreements may well be to achieve this unity of deposit principle, albeit now called unitization. Whatever value may be ascribed to the principle—whether historical or factual, States may be influenced by this in deciding to enter into a joint development as was Saudi Arabia and Bahrain and there is nothing in international law that prohibits this thinking.

Ibid.
Ibid.
3.5 International Law Issues in Joint Development

The concept of joint development of natural resources in international has not been bereft of controversies and arguments especially as to its status, extent and implications from international law experts and scholars and most probably in the near future, the courts. In this part an attempt will be made to discuss some of the major international law challenges that the concept has been faced with over the years and my personal leaning in all the issues discussed using state practice, international law principles and persuasive literature as guide.

3.5.1 Duration of Joint Development

Articles 74(3) and 83(3) UNCLOS, 1982 enjoin adjacent and opposite States who are unable to agree on their maritime boundaries to engage in provisional measures of a practical nature pending the final delimitation. One of the most practical of these interim measures has always been interpreted to include joint development. Indeed where tension is so high, joint development, as an interim measure, makes a practical sense. Most probably because of the language of those Articles, many writers have interpreted this to mean that joint development can only be a temporary measure that cannot replace outright delimitation. Joint development agreements usually have an average life span of 30-60 years. However, my opinion is that all world maritime boundaries need not be delimited by hypothetical delimitation lines. There are geographical circumstances like the presence of archipelagoes, islands, peninsulas and so on that make accurate delimitation difficult and perhaps almost impractical and unrealistic. Generally speaking, there are also boundaries that may not be delimited by their very nature for instance

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211 Rainer Ragoni on Interim Measures, supra at p. 361
212 The Nigeria-STP JD Treaty provides for a life of 45 years subject to renewal for another 45 years.
the Nigeria-Chad-Niger-Cameroon boundary to the Lake Chad- hence the Lake Chad Basin Commission\textsuperscript{213} as a permanent delimitation “measure” for the boundaries of the four countries on the Lake Chad. Another ready example is the Marine Peace Park resulting from the \textit{Israel/Jordan Peace Treaty} of October 26, 1994. The latter established the Red Sea Marine Peace Park at Gulf of Eilat/Aqaba between the two States.\textsuperscript{214} Though the major objectives were boundary and peace, it however created some commercial and recreational interests in the resources of the Red Sea akin to a resources joint development for the benefit of the two States.\textsuperscript{215} It serves a permanent maritime boundary between the two Countries on the Red Sea. As another example, there is also the Korean Peace Park between North Korea and South Korea in their western sea established in 2005 with the “3 Ps” as the governing principle in the establishment of the Park- protection of ecological integrity, peace, economic prosperity.\textsuperscript{216} All these, being delimitation agreements, are permanent in nature.

\textsuperscript{213} This Commission was created in 1964 by the four countries bordering Lake Chad- Cameroon, Chad, Niger and Nigeria. The aims of the Commission are to regulate and control the use of water and other natural resources in the basin and to initiate, promote, and coordinate natural resource development projects and research in the absence of a delimitation line. Information available at <http://lakechad.iwlearn.org/about/partners/partnerprofile.2007-02-15.9132809202> last visited December 8, 2010.

\textsuperscript{214} \textit{Treaty of Peace between The State of Israel and The Hashemite Kingdom of Jordan} (October 26, 1994) [Hereinafter referred to as the “\textit{Israeli-Jordan Treaty}” and “Red Sea Park”, respectively] available at <http://www.mfa.gov.il/MFA/Peace\%20Process/Guide\%20to\%20the\%20Peace\%20Process/Israel-Jordan\%20Peace\%20Treaty>. The Parties recognize the Red Sea Park as their common international boundary. Article 3(2) of the \textit{Israeli-Jordan Treaty} provides that “…the boundary, as set out …is the permanent, secure and recognised international boundary between Israel and Jordan.” The overall goal of this Red Sea Park project is to foster cooperation and collaboration between Jordan and Israel in studying, managing, promoting awareness of, and protecting their shared marine resources. However research and commercial objectives are also being realized. The Israeli-Jordan Treaty provides for cooperation in other areas including telecommunications, energy, tourism, environmental protection and so on. The Treaty is available at <http://www.mfa.gov.il/MFA/Peace\%20Process/Guide\%20to\%20the\%20Peace\%20Process/Israel-Jordan\%20Peace\%20Treaty>


One writer appears to have identified with this view that joint development can be permanent when he confirmed that a boundary agreement can provide for unitization clause to cover the possible discovery of a straddling deposit “or an agreement could provide for joint development in lieu of delimitation, either temporarily or permanently.” 217 Apart from that, there is nothing in international law or state practice which suggests that States cannot make their joint development effort a permanent one. Practically, States can achieve this by creating a joint development and evincing an intention that it should be permanent and the practice if long established as to constitute state practice between the States can becomes of historic-water value. Another way this can be done is where States in their agreement tie the life of the joint development to the commercial life of the petroleum resources; thereafter it shall become a joint fisheries zone or a buffer zone. Still another possible scenario is where the States specifically confirm in the treaty that the arrangement shall be a permanent one by dispensing with the duration and the ‘without prejudice’ clauses. While these scenarios may appear merely academic or theoretical, they are certainly possible in international law and the Bahrain-Saudi Agreement which will be discussed in Chapter Four of this work also lends credence to this possibility by way of state practice.

3.5.2 Does Rule of Capture Apply in International Law?

The rule of capture has been discussed earlier in this chapter in discussing unitization. It was noted that due to the ad coelum principle, the oil and gas industry in the United States faced the challenge that was stifling the industry if the ad coelum principle was strictly applied. This was due to the private ownership of mineral rights in the United States. The rule of capture, which applies to the ownership of wild animals, was developed by the US courts to apply to oil and gas

217 David M. Ong “Common Offshore Oil and Gas Deposits”, supra at p. 379. [Emphasis added].
as well by bringing in the two elements of effective possession and ownership in property law—
the *animus possidendi* and *corpous possessionis*.\(^{218}\) The courts in the US were faced with the
close in *Kelly v. Ohio Oil Co.*\(^{219}\) wherein it established the rule of capture that was to
become the operative ownership concept for oil and gas ownership in the US till date, though
with some modifications and exceptions created by case law and statutes over the years. To that
effect, ownership of oil and gas becomes established when ‘captured’ at the wellhead.
Discussing the rule, one writer said: “That rule may be stated in this way: one who has the right
to drill for and produce oil and gas from a particular tract of land may so produce such
hydrocarbon even though the oil or gas so produced is drained from the land of another.”\(^{220}\) That
writer also believes that the rule of capture applies to international law. He is not alone in this
view as some have also argued that the reason unitization clauses are inserted in delimitation
treaties is because the rule of capture applies to straddling resources—hence unitization to obviate
the consequences of the rule. But they forget that conversely, it can also be argued that if the
right of prior appropriation exists in international law, States would not want to sign a
delimitation treaty with a unitization clause that will compromise their position, but this has not
been the case as States very willingly agree to unitize even when they have a greater capacity to
outperform their neighbours if the rule of capture were to apply.

Without much ado, the provisions of Article 77 UNCLOS, 1982, in my opinion, resolve the
controversy, if any, aptly. It wholly provides (with my emphasis italicized) therein:

\(^{218}\) Meaning the intention to possess and the actual possession itself, respectively.
\(^{219}\) 49 N.E. 399 (Ohio 1897)
\(^{220}\) Miyoshi on Basic Concept of Joint Development, *supra* at p. 6, fn 28, quoting Joseph W. Morris, “The North Sea
1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 142 UNCLOS, 1982 also clearly sanctifies the coastal State’s sovereign right to its continental shelf resources when it provides that even exploitation activities in the Area, being the common heritage of mankind, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction some mineral deposits may overlap with the Area. It goes further to mandate consultations and a system of prior notification of the concerned State in such situation, with a view to avoiding infringement of the coastal State’s overlapping rights and interests. And in extreme cases where activities in the Area may result in the exploitation of resources lying within the said coastal State’s jurisdiction, the prior consent of the coastal State concerned must be obtained.221

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221 Ibid.
Indeed, even before UNCLOS, 1982, the ICJ had, on the basis of customary international law, concluded in the *North Sea Continental Shelf* case\(^{222}\) that sovereign rights of coastal States exist *ipso facto* and *ab initio* by virtue of its sovereignty over the adjacent land territory.\(^{223}\) And rightly too, that the right is not gained by occupation, annexation or proclamation neither is it lost or extinguished by neglect or estoppel.\(^{224}\)

I would conclude this reasoning by summarizing that rather than the rule of capture apply in international hydrocarbon law, what seems logically applicable to international property law regime is the *ad coelum* principle, subject however to certain rights like overflight, freedom of the sea, *et cetera* as has been amended by the relevant conventions, including UNCLOS, 1982 and customary international law. Indeed the *ad coelum* principle is further strengthened by the concept of the territorial integrity of a sovereign State and the general concept of sovereignty.

### 3.5.3 The Obligation of Mutual Restraint in Straddling Resources

Flowing from the above is therefore the obligation to exercise mutual restraint in the development of straddling natural resources whether in agreed or disputed boundaries. States in international law are therefore expected to reach an agreement on how the straddling resources are to be developed. Pending the reaching of that agreement, none of the States is expected to exploit the disputed resources. Articles 74(3) and 83(3) restrain States, pending the reaching of a final agreement on boundary delimitation and treatment of shared resources, from doing anything that will jeopardize or hamper the reaching of the final agreement. The importance of

\(^{222}\) *Supra*

\(^{223}\) David M. Ong on Common Offshore Oil and Gas Deposits, *supra* at p. 775, fn 27.

\(^{224}\) *Ibid.*
this is to maintain the status quo and prevent the violation of States’ right to their natural resources. A writer\textsuperscript{225} has likened this to the obligation not to jeopardize the reaching of final and binding court decision which was restated by the PCIJ in the \textit{Electricity Company of Sofia v. Bulgaria} case when it said: “The parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given and, in general, not to allow any step of any kind to be taken which might aggravate or extend the dispute.”\textsuperscript{226}

In the \textit{Aegean Sea Continental Shelf}\textsuperscript{227} case, the ICJ noted that mere petroleum exploration activities in the disputed area did not amount to an act of prejudice to the rights of the Parties. Further acts like drilling and production would certainly have amounted to such prejudice. The Tribunal in the \textit{Guyana and Suriname Arbitration},\textsuperscript{228} relying on the above case said: “A distinction is therefore to be made between activities of the kind that lead to a permanent physical change, such as exploitation of oil and gas reserves, and those that do not, such as seismic exploration.”\textsuperscript{229} Considering the inherent right of States to their natural resources, interference thereto, causing a loss or depletion, is certainly actionable in international law for damages and for breach of territorial sovereignty.

It may be argued that this obligation of mutual restraint created by Articles 74(3) and 83(3) UNCLOS, 1982 applies specifically to the EEZ and continental shelf of coastal States since there is no equivalent provision in the case of resources of overlapping territorial waters in UNCLOS,

\textsuperscript{225} Rainer Ragoni on Interim Measures, \textit{supra} at p. 363
\textsuperscript{226} [1939] PCIJ, ser. A/B, No. 79, at 199; \textit{Ibid}.
\textsuperscript{227} \textit{(Greece v. Turkey), (Interim Protection), [1976] ICJ Reports of Judgment} 3 (Order of Sept. 11, 1976) referred to by David M. Ong “Common Offshore Oil and Gas Deposits”, \textit{supra} at pp. 798-799.
\textsuperscript{228} \textit{Supra}
\textsuperscript{229} At p. 155, para. 467
1982. My opinion about that is that the rights and measures recognized therein relate to the substance, being their natural resources and not the location. Thus regardless of the location, provided the coastal State is recognized to have sovereignty over the area or sovereign rights over the resources, the name given to that location or maritime zone becomes a mooted point. Besides, the particular provision on the continental shelf and EEZ can be analogously applied to all the maritime zones where the coastal State has sovereignty or sovereign rights over natural resources. At any rate, recourse can also be had to customary international law as re-echoed in the *North Sea Continental Shelf* case to the effect that sovereign rights of coastal States exist *ipso facto* and *ab initio* by virtue of its sovereignty over the adjacent land territory. Perhaps the reason those provisions were localized to the continental shelf and the EEZ section is the anticipation that there will be more overlaps in those zones than any other maritime zone around the world, taking a look at the world map. With all these, there is no reason the obligation should not apply to territorial waters or another overlapping maritime zone, for that matter.

### 3.5.4 The Obligation to Cooperate and its Nature in International Law

The earlier discussions on the declarations, resolutions and conventions enjoining cooperation amongst State in international law as regards common resources use and management show that there is inescapably an obligation on States to cooperate where required in international relations, for instance where natural resources are common to them. Article 123 UNCLOS, 1982 clearly creates such an obligation on States in enclosed or semi-enclosed sea to cooperate towards achieving the harmonious exploitation of the living resources, and I would also add, non living resources of the area. Considering the earlier submission, the obligation to negotiate in

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230 *Supra*
international law clearly exists, not just as conventional international law, but also customary international law.

3.5.5 Is there an International Obligation to Negotiate Joint Development?

Flowing from the obligation to cooperate is also the question of whether there is an obligation to negotiate and more specifically- to negotiate a joint development where the circumstances exist. The wordings of Articles 74(3) and 83(3) mandate States to negotiate an interim measure and an agreement. It reads in part that States “…in a spirit of understanding and cooperation, shall make every effort…” has also been rightly interpreted to mean an obligation to negotiate in good faith, which view has been shared by experts unanimously.231 In the Guyana and Suriname Arbitration232 the Tribunal reasoned this way:

“…it is the opinion of the Tribunal that the language in which the obligation is framed imposes on the Parties a duty to negotiate in good faith. Indeed, the inclusion of the phrase ‘in a spirit of understanding and cooperation’ indicates the drafters’ intent to require of the parties a conciliatory approach to negotiations, pursuant to which they would be prepared to make concessions in the pursuit of a provisional arrangement.”233

In other cases before UNCLOS, 1982, the Courts and Tribunals have consistently held that there is an obligation to negotiate in good faith in international law. In the Railway Traffic between Lithuania and Poland,234 the PCIJ noted that the Parties not only had an obligation to enter into

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231 Miyoshi on Basic Concept of Joint Development, supra at p. 12
232 Supra
233 At p. 153 para. 461
234 [1957] 12 R.I.A.A. 281
negotiations but to pursue them as far as possible.\textsuperscript{235} In the \textit{Lake Lanoux Arbitration (France v. Spain)},\textsuperscript{236} the Tribunal observed that the parties were under obligation to enter into negotiations with a view to reaching an agreement.

Apart from the international adjudication on the duty of States to negotiate, Article 33 of the \textit{UN Charter} mandates States to seek a peaceful solution to their disputes, one of which is surely negotiation and this is at the heart of pacific settlement of differences. It is therefore settled beyond argument that States are under general obligation to negotiate in good faith with a view to reaching a meaningful agreement. However, the obligation to negotiate in good faith does not mean that Parties must reach an agreement—whether joint development or some other form of settlement. The positive act and process of negotiation are mandated in international law but certainly not the result.

\textbf{3.5.6 The Status of Joint Development in International Law}

As beautiful a concept as it is in enhancing global peace, good neighbourliness amongst nations; and as widely as it has been used and is expected to be used to prevent conflicts in the management of straddling natural resources, the reality remains that joint development has not yet been mandated by international law. It appears that it has not acquired the status of \textit{opinio juris} as to make it state practice of customary international law, unfortunately. The reason is that as it is currently, States have not developed or attached the psychological element of a peremptory norm of international law to joint development yet. Put in another way, can an

\footnotesize{\textsuperscript{235} \textit{Ibid.}\textsuperscript{236} \textit{Supra}}
unwilling State feel or be compelled to jointly develop its straddling natural resources? And my answer to that is not yet, in international. The only thing mandated by international law and which has acquired the statuses of both customary and conventional international law is the step towards joint development- the obligations to cooperate and negotiate, in good faith.

On the conflict of learned opinions on the status of joint development and cross border unitization in international law, a distinguished research team has also, though in 1989, summarised their position thus:

In the light of this conflict of views it would seem that international law only entails an obligation to consult and negotiate where States have broadly agreed on the delimitation of their maritime boundaries. There would seem to be no body of State practice upon which to underpin such a general obligation in the case where no boundary has been drawn in a disputed area…

Our conclusion, therefore, is that in agreed boundary areas where a known field straddles the boundary, there is at present as regards disputed areas no clear rule of customary law which requires a State to inform and consult other interested parties. Clearly, however, a State in such a position who proceeds to authorise commercial production of the disputed resource may expose itself to protest and claims for breach of sovereign rights. One method of avoiding such a situation is to agree to some form of joint development.²³⁷

This view on the status of joint development in international law appears to be shared by some other eminent writers as well.\textsuperscript{238}

3.6 Conclusion

In concluding this chapter, an attempt has been made to discuss the concept of joint development from all its ramifications beginning from its definition to its elements, components and controversies. Other concepts that have similar features with joint development were also discussed with a view to highlighting the distinguishing factors from those other concepts. The bases for joint development and its backing in international law were equally discussed for a proper introduction of the subject in focus. Having done all that and tried to settle the controversies surrounding joint development in its practical application, it must be quickly added that there may be other issues in joint development which are not within the scope of this work hence the reason they will not be discussed. And finally having laid the foundation of the thesis on joint development herein, the remaining chapters will be devoted towards examining the available and selected specimens of joint development treaties with a view to analyzing them against this theoretical background already set out in this chapter and bringing out their uniqueness and significance. Where applicable and possible, the current trends and ongoing events in the practical implementation of the joint development arrangement will also be

\textsuperscript{238} Miyoshi on Basic Concept of Joint Development, \textit{supra} at pp. 8-10, commenting on his and Lagoni’s shared support for this position on the status of joint development in international law in contrast with Onorato’s view. See also David M. Ong, “The New Timor Sea Arrangement 2001: Is Joint Development of Common Offshore Oil and Gas Mandated under International Law” (2002) \textit{International Journal of Marine and Coastal Law} Vol. 17, No. 1, pp. 79-122 at p. 84; David M. Ong “Common Offshore Oil and Gas Deposits”, \textit{supra} at p.792 where the writer admitted: “This survey of bilateral state practice indicates, as a preliminary conclusion, that a rule of customary international law requiring cooperation specifically toward joint development or transboundary unitization of a common hydrocarbon deposit has not yet crystallized.”
discussed in order to marry the theory and practice and take this work beyond mere treaty provisions to current state practice and actual workings of joint development in the field.
4.1 Some Joint Development Efforts around the World and their Significance

In the previous chapter, I examined the theoretical issues in joint development including but not limited to its status in international law and the challenges the concept is facing in its application in the context of international law. The various definitions, elements and issues in joint development were also considered. Having done all that, this chapter is devoted to examining some selected joint development agreements in the world and their features with a view to sifting their importance and significance in international law of joint development and their addition to the body of state practice on the subject. Apart from examining the important provisions of the joint development agreements, efforts will also be devoted, where possible and where information is available, towards the actual workings of the joint development initiative with a view to determining whether it is living up to its billing or achieving the desired objectives set by the State parties.

Three classes of joint development will be discussed. First, joint development that fixes maritime boundary and one that does not fix boundary but focuses on the development of resources only while shelving maritime delimitation as contemplated by Articles 74(3) and 83(3) UNCLOS, 1982. Finally a look will also be taken at the kind of joint development that focuses solely on the development of living resources- fisheries, and which delimits boundaries or leaves them
undelimited. For obvious lack of space, efforts will be concentrated on the remarkable elements of the joint development agreements like governance and management, costs and revenue sharing, jurisdiction, duration and termination, environmental issues, dispute resolution and any other outstanding feature of the joint development agreement.

4.2 Joint Development Fixing Boundaries

As earlier indicated, the joint development agreement discussed in this particular segment of the chapter are those concluded after or upon agreement on maritime boundary and not the ones contemplated by Articles 74(3) and 83(3) UNCLOS, 1982. In other words, they are negotiated in recognition of the straddling resources and the need for avoidance of unilateralism in international common resources development and management. They will also go to prove that joint development can be negotiated without the compelling factor of disputed boundary or overlapping maritime boundary claims. However, since there is no known joint development strictly in this category, the example here is cross border unitization- which generally invariable has similar features as such a possible joint development.

4.2.1 UK and Norway in the North Sea

This agreement is formally known as the *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Norway*
relating to the delimitation of the Continental Shelf between the two Countries. In treating this agreement under joint development, it should be noted that this agreement is actually an international unitization agreement and not joint development stricto sensu but because of its importance in general international maritime cooperation and its influence in the North Sea and beyond, it cannot be easily ignored. Indeed the North Sea remains arguably the most active and productive offshore petroleum production hub in the entire Europe. The UK-Norway Delimitation Treaty remains the first of its kind and class, later to be referenced in international petroleum cooperation and continental shelf boundary delimitation. It remains outstanding because of its trademark Article 4 which provides:

If any single geological petroleum structure or petroleum field, or any single geological structure or field of any other mineral deposit, including sand or gravel, extends across the dividing line and the part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the dividing line, the Contracting Parties shall, in consultation with the licensees, if any, seek to reach agreement as to the manner in which the structure or field shall be most effectively exploited and the manner in which the proceeds deriving therefrom shall be apportioned.

Notably a few agreements have resulted from the Article 4 of the UK-Norway Delimitation Treaty one of which is the Stratfjord Agreement and currently the Framework Agreement


between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Norway concerning Cross-Boundary Petroleum Co-operation.\textsuperscript{241}

Instead of continuing to generate fresh unitization agreements for each field that is discovered, the two Governments eventually thought better of it and produced the \textit{UK-Norway Framework Agreement} into which future unit discoveries will dovetail. This makes for consistency and predictability as investors already know what to expect from the commencement of production to decommissioning. For the purpose of this work, the \textit{Stratfjord Agreement} and the \textit{UK-Norway Framework Agreement} will be generally discussed.

4.2.1.1 \textit{Stratfjord Agreement}

The preamble acknowledges that the petroleum in the Stratfjord Field Reservoir straddles the continental shelf of the two Countries thereby calling into play an agreement pursuant to Article 4 of the \textit{UK-Norway Delimitation Treaty} to enable the development of the reservoir as a single unit.\textsuperscript{242}

With respect to the operations of the field, the \textit{Stratfjord Agreement} requires that each country will make their respective licensee enter into a unit agreement which will incorporate the terms


\textsuperscript{242} Article 1 (1)
of the Stratfjord Agreement and which recognizes that in the event of conflict between the unit operating agreement and the Stratfjord Agreement, the latter prevails.\footnote{Article 1 (2) (a)} The unit agreement, amongst others, is expected to cover issues like accounting, operations and other specialized aspects of petroleum development.\footnote{Article 1 (3)} There is a distinction in the ownership of the installations by recourse to the dividing line agreed in the UK-Norway Delimitation Treaty. As to the ownership of the petroleum, the two Governments agree on this based on the proposal for apportionment of the reserves submitted by the licensees and approved by the two Governments. In the event of disagreement, the proposed apportionment was to apply provisionally pending when the two Governments agree on the appropriate apportionment. The cumulative volume received by the licensees of each State will correspond to the apportionment of the reserve, regardless of the physical location of the installation.\footnote{Article 2 generally} Article 3 requires that the reserves be reapportioned and redetermined from time to time. The licensees cannot transfer any of the rights granted by the production licence relating to the Stratfjord Field Reservior without the express consent of the granting Government in consultation with the other, neither can a licensee commence exploitation except in accordance with the exploitation programme approved by the two Governments.\footnote{Articles 9 and 11, respectively} The installations of the Stratfjord Field Reservoir can be used by a third person provided the use does not interfere or adversely affect Stratfjord’s exploitation.\footnote{Article 10} This is certainly in line with the Articles 18 and 20 of the current EU Directive on open and fair access to pipelines to ensure competitive market in natural gas and avoid any abuse of a dominant
position. Where the Stratfjord Field Reservoir straddles another field belonging to a third person who is not a licensee, the licensee and that person will be required to enter into an agreement on the unit operation of the straddled field subject to the approval of the two Governments. The licensees of the two Governments are also mandated to appoint a unit operator in their own agreement subject to the approval of the two Governments. The Stratfjord Field Consultative Commission comprising six members, three of whom are appointed by each of the two Governments, was set up for the purpose of facilitating the implementation of the provisions of the Stratfjord Agreement and considering matters referred to it by the Governments.

With respect to safety measures and prevention of pollution, the two Governments are expected to consult and adopt, as far as possible, uniform and appropriate safety and construction standards for the installations on both sides of the dividing line. The two Governments shall also endeavour to ensure that the exploitation of the Stratfjord Field Reservoir does not cause pollution of the marine environment, coastline, shore facilities, amenities, vessels and fishing gears. The importance of this provision quickly brings to mind the offshore rig, Piper Alpha incident of 1988 which claimed a total of 167 lives (most of whom were suffocated in toxic fumes which engulfed the Piper Alpha) after a gas leak set off a blast and sparked a huge fire and producing arguably the world's worst offshore oil disaster in terms of loss of lives. 

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249 Article 3 (6)
250 Article 4
251 Article 20
252 Articles 5 and 14, respectively
253 Article 14
254 Available at <http://news.bbc.co.uk/onthisday/hi/dates/stories/july/6/newsid_3017000/3017294.stm>
was the largest and oldest platform in the North Sea oilfield belonging to Occidental Petroleum (Caledonia) Ltd. A 1990 report into the disaster severely criticised the safety procedures on the rig. The Gulf of Mexico BP Oil Spill Incident is also very fresh in the memory- hence the importance of strict safety and environmental protection measures in offshore petroleum development.

Each of the States retains jurisdiction within its own part of the boundary line and over the installations thereon and also over its own continental shelf, the Stratfjord Agreement notwithstanding. Dispute resolution is the responsibility of the Stratfjord Field Consultative Commission, failing which such dispute will be referred to arbitration. Each State is entitled to appoint its own arbitrator and both arbitrators will appoint the chairman of the arbitral tribunal who must not be a national or a habitual resident of either of the two Countries. If after three months of being requested to appoint its own arbitrator a State fails to do so, the requesting State may refer the appointment to the President of the ICJ to avoid a deadlock.

In all, the Stratfjord Agreement also contains provisions on taxation, royalty, inspection, transportation and transmission, emergencies, measuring systems, conditions of employment, confidentiality, inspection and so on. The Stratfjord Agreement followed the patterned example

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255 <http://en.wikipedia.org/wiki/Piper_Alpha>  
256 Ibid. fn 13  
257 Article 22  
258 Article 21  
259 Ibid.  
260 Ibid.
of the Frigg Agreement of 1976 and subsequent ones- Murchison Agreement and Markham Agreements all followed the same pattern with slight modifications.\textsuperscript{261}

Figure 4.1: Map Showing the Stratfjord Area

Figure 4.1 has been removed due to copyright restrictions. However, it is a hypothetical geographical diagram demonstrating the Stratfjord Unit Area of international unitization between the United Kingdom and Norway. From the map, the deposit lies more on the Norwegian side. Original source: \textit{United Nations Treaty Series} (1981) Vol. 1254, 1-20551 at p. 391.

4.2.1.2 UK-Norway Framework Agreement

This unique intergovernmental arrangement on cooperation for the development of cross-border petroleum has not yet been tested, in terms of practical application. Unlike the earlier treaties that were concluded once petroleum is discovered to straddle the continental shelves of UK and Norway, this UK-Norway Framework Agreement instead, sets out a framework of cooperation that will govern subsequent straddling discoveries. This holistic and futuristic approach was born out of the initiatives of the Energy Ministers of the two Countries resulting in the Pilot-Konkraft Recommendations of August 2002 and titled “Unlocking Value Through Closer Relationships” and which is clearly recited in the Preamble to the UK-Norway Framework Agreement. The “Cooperation Corridor” identified by the report covers an area of about 60 kilometres from each side of the median line.262 The Corridor in total represents nearly 13 billion barrels oil equivalent of remaining hydrocarbons. On the UK side is warehoused some 32 potential developments with a further 75 discoveries not currently commercial while on the Norwegian side, some 31 potential developments with a further 7 discoveries not currently commercial.263

It is not radically different from the earlier Agreements and in particular the Stratfjord Agreement already examined except for its framework status and a few other incremental improvements on the earlier ones. First, when a straddling discovery is made, it will be exploited as a single unit as provided for by the UK-Norway Framework Agreement.264 Article 6.1 preserves all the other Agreements between the two Governments as specifically listed in Annex E insofar as they remain operational for the purpose of petroleum development. The jurisdictions of the two States

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262 Being a Report of the UK-Norway North Sea Co-operation Workgroup (August 2002) available at <http://www.pilottaskforce.co.uk/files/workgroup/308.pdf> last visited December 21, 2010, at p. 10, Fig. 3
263 Ibid.
264 Articles 3.1-3-9
remain as they are under the previous agreements. More powers are given to inspectors for the purpose of health, safety and environmental issues than in the *Stratfjord Agreement* and its counterparts.\(^{265}\) Another major innovation of the *UK-Norway Framework Agreement* is the provision on decommissioning. Previous agreements left it to the licensees’ agreements. Here, the plan for decommissioning must be approved by the Government on whose continental shelf the installation lies in consultation with the sister Government and the two Governments would have to agree on the timing, methods, costs, standards and so on for the exercise.\(^ {266}\)

A more robust dispute settlement procedure is also adopted by the new framework providing for three stages/levels of dispute resolution. First, there is a Framework Forum akin to the Consultative Commission of the *Stratfjord Agreement* similarly charged with the implementation of the treaty with equal representation from each Government, and meeting twice in a year, though subject to what the two Governments agree.\(^ {267}\) There is also dispute settlement procedure on pipeline and shipping access systems including tariff, which is expected to be resolved by the two Governments “within a reasonable time frame, taking into account the need for a speedy resolution.”\(^ {268}\) The uppermost level of dispute resolution is a departure from arbitration. It establishes a Conciliation Board for the resolution of disputes which the Framework Forum and two Governments are unable to resolve, and such disputes are referred to the Conciliation Board by either or both Governments.\(^ {269}\) The Conciliation Board consists of five members, two apiece and the fifth who shall be the Chairman, appointed by the four, failing which the President of the ICJ assists in the appointment upon request by either Government. In any case, the Chairman

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\(^{265}\) Article 1.6  
\(^{266}\) Article 1.14  
\(^{267}\) Article 1.15  
\(^{268}\) Article 2.7  
\(^{269}\) See generally Chapter 5, Article 5.
shall not be a national or habitual resident of any of the two Countries and the decision of the Board on any matter referred to them shall be by simple majority, final and binding on the two Governments.  

Two small oilfields and a gas transmission project (Langeled line) have been initiated following the signing of the UK-Norway Framework Agreement and the oilfields are the Boa field and Playfield. However, considering the configuration of these fields, the two Governments decided on a mutually beneficial tradeoff of a kind. The Boa field lying mostly on the Norwegian continental shelf and the Playfield lying more on the UK continental shelf were agreed and deemed to be lying fully on the continental shelves of the respective States to be wholly exploited independently by each State. The real test for the UK-Norway Framework Agreement may be the Enoch and Blane fields discovered since 1985 and 1989, respectively and approved as cross border fields since 2005 but awaiting commencement of development. To that extent therefore, the UK-Norway Framework Agreement has not been truly tested yet and its efficacy as a model may soon be ascertained. However, it is no doubt yet another innovation from the North Sea.

4.2.2 Bahrain and Saudi Arabia Agreement of 1958

This joint development effort remains the first ever known joint development in the word and what is currently known today as joint development must have been sparked off by this Arabian

270 Article 5(1) (vi)
271 Cameron on Cross- Border Petroleum Deposits, supra at p. 576
272 Ibid.
273 Ibid.
initiative. While it must be conceded that it is more or less a modest and simplistic model of joint development and may not offer so much to the contemporary body of learning in this subject matter, the historical and functional values of this joint development have earned it a place in this work. The *Bahrain-Saudi Agreement*\(^\text{274}\) was made in the “spirit of affection and mutual friendship” existing between the two State and which till date remains the elementary philosophy of joint development agreements and in recognition of the need to delimit the “regional waters” of the two States.\(^\text{275}\) In the First Clause, it sets out the boundary line between the two States with its coordinates and further provides that “everything” situate to the left side of the boundary belongs to Saudi Arabia while those to the right side of the line belongs to Bahrain.\(^\text{276}\) By using the word “everything”, it automatically includes natural resources and specifically petroleum. However the boundary rights set out therein was subject to the Second Clause which created six coordinates over an area which encompasses the Fasht Abu-Sa’fah oilfield which ownership was disputed between the States\(^\text{277}\) and which, by the *Bahrain-Saudi Agreement*, was deemed to belong to the left side of the dividing line and therefore within the Saudi territory. A condition for allowing the area (comprising the Fasht Abu-Sa’fah oilfield) to remain within the Saudi boundary line is that the Saudi Government shall pay to the Bahraini Government 50 percent of the net revenue accruing from the exploitation of oil resources within the area. The Saudi


\(^{275}\) Preamble to the *Bahrain-Saudi Agreement*

\(^{276}\) First clause, No. 16

government shall however choose any means or method to exploit the oil and retain territorial sovereignty over the area and its administration.\textsuperscript{278}

As simple as this model of joint development is, its invaluable contribution to joint development is not lost, and cannot be flattened. It remains a functional approach to the resolution of maritime boundaries challenges and historic as the watershed and origin of modern day joint development all over the world. It also provides us with a perfect example of a model of joint development wherein all powers of management and exploitation of the resources of the area rest with one of the States as a sovereign State “joint development authority”. The \textit{Bahrain-Saudi Agreement} also provides us the example of a joint development and maritime boundary agreement that maintains the concept of unity of deposit as earlier discussed in this work by upholding, rightly or wrongly, that a boundary line should not traverse the deposit of petroleum. This model even takes it a step further by granting sovereignty to the disputed area to Saudi albeit in exchange for financial gain- a form of tradeoff seen in modern joint development negotiations. Also, it represents a model whereby joint development is used as a means of permanently settling maritime boundary delimitation problems. This was achieved by the fact that the agreement was not signed “without prejudice” to the final delimitation; was not tenured and did not provide for redetermination or termination. To that end it is final. And upon exhaustion of oil, the territory belongs to Saudi Arabia as the only right of revenue which the Bahraini government has relates only to the exploitation of “oil resources” and not to all or any other resources of the area.

\textsuperscript{278} Second clause, No. 7
4.3 Non Boundary Fixing Joint Development

Joint developments need not fix maritime boundaries permanently or even at all. Perhaps joint development in its most valuable form is where it is used by the Parties to shelve their maritime boundary issues with a view to jointly developing the resources in their disputed areas or overlapping areas. A non boundary fixing joint development is the model contemplated by UNCLOS, 1982 when it provides in Articles 74(3) and 83(3) respectively for the EEZ and the continental shelf as follows:

Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

As enjoined by UNCLOS 1982, States involved in maritime disputes find joint development a convenient resort and little wonder most joint development efforts have been concluded with a view to effecting the spirit and intendment of these UNCLOS, 1982 provisions, and clearly recite the wordings of the Article above in their Preambles. Joint development has therefore become the most effective and popular of all the “provisional arrangements of a practical nature”.

Attention in this work will therefore be shifted towards this major form of joint development and principally two of these will be discussed- the Nigeria-Sao Tome and Principe model and the Australia-Timor-Leste model. The latter will be discussed in this chapter while the former will form the next chapter of this work for a much more detailed focus. However, the two models

279 Rainer Ragoni on Interim Measures, supra
appear to be the most recent of joint developments and are also exemplary, not just in terms of the uneven size of the joining State parties, but also in their uniquely brilliant and peculiar provisions. The Australia-Timor-Leste treaty was concluded when Timor-Leste was still known as East Timor hence the name in the treaty will not be changed, but in the discussions, the new name will be used.

4.3.1 Australia-Timor-Leste Treaty

This Treaty was negotiated on behalf of Timor-Leste by and between the UNTAET and Australia. It effectively supersedes the previous joint development agreement between Australia and Indonesia (when Timor-Leste was under the latter’s colonial administration) - the 1989 Timor Gap Treaty though with some saving clauses in the new arrangement. As earlier noted, this is a model of joint development that shelves maritime delimitation as Article 2 (a) clearly restates the relevant UNCLOS, 1982 provision while (b) remarks that the joint development is without prejudice to a final delimitation agreement between the States. The various elements of joint development agreements like joint development area, governance and management, costs and revenue sharing, jurisdiction, duration and termination, environmental issues, dispute resolution and any other outstanding feature of the joint development will be examined herein.

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280 United Nations Transitional Administration of East Timor
4.3.1.1 Joint Development Area and Governance

The Joint Petroleum Development Area (JPDA) was created by the *Timor Sea Treaty* as the area wherein both Australia and Timor-Leste shall exercise joint control, management and facilitation of petroleum development for their joint benefits. The coordinates of the JPDA is as set out in Annex A of the *Timor Sea Treaty*. The administration of the JPDA has a three-tier structure- a Designated Authority, a Joint Commission and a Ministerial Council. The Designated Authority- the Timor Sea Designated Authority (TSDA) is also established by the *Timor Sea Treaty* as a limited liability corporation, capable of contracting, suing and being sued under the laws of the two States for the sole purpose of acting as the contracting authority for petroleum development activities in the JPDA. The TSDA is exempt from taxation and customs duties, except payment for services and it enjoys immunities and privileges with respect to its duties. The other daily duties and powers of the TSDA are as contained in Annex C to the *Timor Sea Treaty* which powers include pollution prevention and control, search and rescue, air and sea traffic control, preparation of annual income and expenditure reports amongst others. The personnel of the TSDA shall have no financial interest in the development activities of the JPDA. For the first three years of the *Timor Sea Treaty*, the TSDA shall be Timor-Leste Government Ministry in charge of petroleum affairs. Pursuant to this, Autoridade Nacional do Petróleo (ANP), being the Timor-Leste's body responsible for managing and regulating petroleum activities, automatically became the regulator of the JPDA in accordance with the Timor-Leste Petroleum

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282 Article 3
283 *Ibid.*; Article 6
286 Meaning: “The National Petroleum Authority”
Activities Law and the *Timor Sea Treaty*. The ANP was established on July 1, 2008 after the said Law was passed on June 19, 2008.

Figure 4.2: Map of the Zone of Cooperation under the *1989 Timor Gap Treaty*

Figure 4.2 has been removed due to copyright restrictions and it contains a map that shows the designated “Zone of Cooperation” between Australia and Indonesia (under which government Timor-Leste was subsumed) under the *1989 Timor Gap Treaty*. Original source: <http://www.atns.net.au/objects/Timor.JPG>

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Figure 4.3: Map of the JPDA under the *Timor Sea Treaty*

Figure 4.3 shows the map of the Joint Petroleum Development Area (JPDA) negotiated between Timor-Leste and Australia under the *Timor Sea Treaty*. It shows that a greater area falls within the JPDA (area of joint control) compared to a similar area (Zone of Cooperation) under the *1989 Timor Gap Treaty* which was negotiated between Australia and Indonesia. Original source: <http://www.dfat.gov.au/geo/east_timor/fs_maritime_arrangements.html>
The TSDA (ANP) is responsible to the Joint Commission (JC) and exercises further powers as may be conferred upon it by the JC. The JC comprises commissioners appointed by the two States provided that Timor-Leste shall have one commissioner more than Australia and has the responsibility of establishing policies and regulations relating to the petroleum activities in the JPDA. It also oversees the activities of the TSDA and meets annually or as may be required, with the chairman nominated by the Governments of Australia and Timor-Leste on alternate basis. The commissioners of the JC shall have no financial interest in the development activities of the JPDA. Apart from the general supervisory and policy roles of the JC, specific duties and powers of the JC are further contained in Annex C to the Timor Sea Treaty.

The Ministerial Council (MC) on the other hand consists of equal number of Ministers from the two Governments and decides any matter relating to the operation of the Timor Sea Treaty referred to it by either. It is only when the MC is unable to decide any matter referred to it that the dispute settlement procedure under the Timor Sea Treaty can be invoked. The MC meets at the request of either State or of the JC and their venues are alternated between the States except otherwise agreed with at least one member from each State. The meetings can be held on phones, close circuit television or other electronic means of communication as may be agreed by the members. Generally, the responsibility of the MC is as to Treaty and policy issues referred to them by either the two Governments or the JC and their role is generally supervisory in nature.

From the foregoing provisions and the distribution of powers, the Australia-Timor-Leste joint development is a model of joint development wherein the development authority is weak in terms of powers bestowed on it. It cannot take major decisions without the sanction of the JC or MC. Moreso, the TSDA (which is the ANP) is established for the sole purpose of entering into
contracts with the operators in the JPDA in accordance with the Petroleum Mining Code adopted by the two States and does not have independence of action. Indeed title to the petroleum resources of the JPDA is not vested in the TSDA but in Australia and Timor-Leste, jointly.  

4.3.1.2 Sharing Formula: Costs and Revenue

Article 4 provides that petroleum produced in the JPDA shall be shared in the ratio 90:10 in favour of Timor-Leste likewise the costs of running the JDPA, hence the fiscal arrangements and taxes as contained in Article 6 are borne accordingly. Agreeably, this is a clear departure from the 1989 Timor Gap Treaty between Australia and Indonesia in the Area A of the Zone of Cooperation which provided for a 50:50 ratio. With this 90 percent share, Timor-Leste’s revenue from petroleum activities is estimated to be more than A$7 billion over the next twenty years from 2004. The unusually uneven sharing formula may not be unconnected with the big brother posture of Australia in its economic relationship with Timor-Leste and little wonder the Preamble to the Timor Sea Treaty restates the conscious awareness of the two States of “the importance of promoting the East Timor’s economic development…”

4.3.1.3 Health, Safety and Environmental Issues

The TSDA is mandated to develop health and safety rules for persons employed on the structures in the JPDA which the operators shall be obligated to adopt and the standards which should not

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289 Article 4(a)
be any less comparable to those in Australia or Timor-Leste. The two States are also obligated to cooperate in protecting the marine environment and species from hazards that might result from petroleum development activities. In that regard, the TSDA shall issue regulations to protect the marine environment from pollution in the JPDA and establish a contingency plan for containing pollution from petroleum activities. The operators in the JPDA shall also be responsible for the damage, damages or expenses that result from their activities in accordance with the terms of their licence or the laws of the State in whose jurisdiction the claim is brought. Vessels of the nationality of Australia and Timor-Leste shall be subject to the respective laws of their nationality on safety, crewing and operational standards and vessels of other nationalities, depending on the ports they operate, are expected to adhere to the port standards on safety and crewing. The importance of health, safety and environmental laws and regulations in offshore oil and gas activities can no longer ignored, at least not in the light of incidents like the Alpha Piper discussed earlier and the relatively recent and controversial BP Oil Spill in the Gulf of Mexico with its extensive damage and associated costs.

4.3.1.4 Employment and Training

Typical of joint development agreements, the Timor Sea Treaty provides for employment and training of nationals. Understandably, however, it provides that preference shall be given to the nationals and permanent residents of Timor-Leste and that training opportunities should be facilitated by the two Governments as a matter of priority. Australia is also expected to

291 Article 12  
292 Article 10  
293 Ibid.  
294 Article 17  
295 Article 11
facilitate the visa application of Timor-Leste nationals and permanent residents employed by operators in the JPDA. It is interesting to note that the preference for employment of nationals is specific to the nationals and permanent residents of Timor-Leste and does not include nationals of Australia. This is laudable as it affords the Timorese nationals the opportunity to acquire the necessary petroleum science and technology skills that will develop their indigenous industry in the long run. In my view, it is also a way that Australia recognizes the uneven economic strength and petroleum technological knowhow between them and their neighbour by providing the latter an unmitigated opportunity to grow its own petroleum industry manpower in keeping with the spirit of joint development.

4.3.1.5 Criminal Jurisdiction

Both Countries exercise criminal jurisdiction over their nationals and permanent residents in the JPDA provided that where a person is both a national and permanent resident of both Countries, the Country which the person is a national shall have jurisdiction. A national or permanent resident of none of the two State within the JPDA shall be subject to the jurisdiction of both States for acts or omission connected with or arising from petroleum activities within the JPDA, subject however to the rule against double jeopardy. For the purpose of prosecution, investigation, determination of jurisdiction and enforcement of criminal law within the JPDA, both States shall cooperate, exchange information, assist officials of each other, taking into account the interest of the nationality of the victim and the interests of the Country most affected.

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296 Ibid.
297 Article 14(a)
298 Article 14(b)
by the alleged crime. It is noteworthy, however, that where a crime is alleged to have been committed on board vessels, seismic or drill vessels or rigs, or aircraft in flight over the JPDA, the flag State of such vessel, aircraft of rig shall exercise jurisdiction.

In Canada, when one thinks about offshore jurisdiction, the mobile offshore drilling unit, *Ocean Ranger* incident of February 15, 1982 quickly comes to mind, particularly the arguments and lessons that followed. The *Ocean Ranger* was working on the Hibernia oilfield off the coast of Newfoundland and it sank despite repeated distress calls for rescue, resulting in the loss of all the 86 lives on board. The Royal Commission on the *Ocean Ranger* Marine Disaster was set up on March 17, 1982 under Chief Commissioner T. Alex Hickman of the Newfoundland Supreme Court. The Commission found some levels of criminal negligence that contributed to the sinking and loss of lives including the fact the rig had several design flaws. The crew members were not trained on emergency involving the ballast control system; the lifesaving equipment was inadequate and the crew lacked training in its use. In the end, the legal status of the rig offshore and the prosecution of the suspected crime thereon generated a handful of conflict of law arguments and lessons as the mobile rig did not fly Canadian flag and the alleged crimes were not committed miles offshore Newfoundland, Canada. Also, for the purpose of workmen’s compensation, a lot of issues also arose, for instance the applicable compensation law—*Newfoundland Workmen’s Compensation Act* or the federal *Merchant Seamen Compensation Act*; whether offshore rig workers qualify as seamen; whether the accident occurred within the province of Newfoundland to qualify the provincial laws to apply; whether the operations of an

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299 Article 14(c)-(g)
300 Article 14(d)
302 Ibid.
oil rig constitutes an “industry” within the meaning of Newfoundland’s Workmen’s Compensation Act; whether oil rig qualifies as ship or offshore drilling and exploration contemplated within the meaning of both the available provincial and federal laws and myriad issues including conflict of law. One of the most intriguing is the question of the legislative competence of Newfoundland to make laws for offshore issues. Paraphrasing Viscount Haldane in Workmen’s Compensation Board v. Canadian Pacific Railway Co. (Princess Sophia), a writer asserts that “the Act serves only to secure a statutory contractual right of a workman within the province, and does not purport to regulate offshore activity per se”. Perhaps the most controversial of the issues generated by the incident was the international law territorial jurisdictional issues considering that the Ocean Ranger was working on the then high sea, (though offshore Newfoundland), flagged in the United States, built by Mitsubishi Heavy Industries Ltd of Japan, owned by a United States registered corporation, Ocean Drilling and Exploration International Corporation and hired out to a Canadian-owned company. In other words, did the event occur in Canada, technically speaking or in Newfoundland and if it did who had jurisdiction to prosecute the alleged acts of criminal negligence that resulted in the accident considering the intricately intertwined jigsaw relationships? Relying on the English case of R v. Keyn, where the Privy Council held that the territory of England ended at the low water mark,

304 Tosh Hayashi, supra at p. 181
305 (1919) 48 D.L.R. 218 (P.C.)
306 Tosh Hayashi, supra at p. 181
307 Considering that the incident happened in February 1982, prior to the coming into effect of UNCLOS, 1982 in November 1982, the governing international regime was the Conventions on the Continental Shelf and the High Sea, 1958. The 200 nautical mile EEZ and continental shelf rules introduced by the former did not apply what currently would have been within the Canadian EEZ/continental shelf.
309 (1876) 2 Ex. D. 63 (P.C.)
the Supreme Court of Canada had held in *Re Offshore Mineral Rights of British Columbia*\(^{310}\) that the territory of British Columbia stopped at the low water mark in the absence of any competent legislation to the contrary after or prior to the Canadian Confederation.\(^{311}\) Eventually, in November 1982, the United States Congress compounded the problem for the Canadian victims’ families by amending the Jones Act to prevent Canadians from initiating compensation suits in the United States for injury or death on the US-owned offshore rigs being operated in Canadian waters. Newfoundland equally amended its *Workmen’s Compensation Act* on July 2, 1982 to cater for the lacunae thrown up by the incident.\(^{312}\)

In Nigeria, the offshore jurisdictional question had also arisen in *Attorney General of the Federation v. Attorney General of the 36 States*.\(^{313}\) Here, the Supreme Court of Nigeria, relying on *R v. Keyn*\(^{314}\) and a couple of other US cases on similar issue, held that the littoral states of Nigeria did not have jurisdiction over the territorial waters, EEZ or the continental shelf and that their boundary was at the low water mark.\(^{315}\)

The provision of the *Timor Sea Treaty* carefully resolves the possible conflict of law issues by placing jurisdiction in such circumstance with the flag State even though such vessel or rig is not on the high sea, but technically within the EEZ of Australia and Timor-Leste. To that extent, the

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310 (1967) 65 D.L.R. (2d) 353 (S.C.C.)
311 Errol P. Mendes, *supra*, at pp. 7-8
312 Errol P. Mendes, *supra*, at pp. 20-22
313 [2002] Vol. 6 M.J.S.C 1
314 *Supra*
315 This case is infamously known in Nigeria as the *Resource Control Case*. The effect of the judgment was to deprive the littoral states (province equivalent in Canada) the right to share in the revenue accruing from the Federation Account from offshore oil and gas operations which incidentally forms the mainstay of the government revenue in Nigeria. In effect, the judgment limited the right of the states to share in the revenue to only onshore oil and gas revenue.
*Timor Sea Treaty* has made an incremental progress in state practice by obviating the associated conflict of laws challenges.

4.3.1.6 Surveillance, Security and Traffic

Both Countries retain the right to carry out surveillance activities within the JPDA, cooperate and coordinate such activities as well as exchange relevant information. Information relating to threats, likely threats or other security concerns relating to exploration or exploitation of petroleum in the JPDA shall be exchanged between Australia and Timor-Leste and both Countries shall make arrangements for responding to security incidents. On search and rescue, both Countries shall, at the request of the TSDA, assist with search and rescue efforts in accordance with internationally established maritime search and rescue operational standards, rules and procedures. In consultation with the TSDA, the two Countries shall cooperate in relation to air traffic services in accordance with internationally established air traffic control operational standards, rules and procedures.

4.3.1.7. Duration and Termination

The *Timor Sea Treaty* was originally intended to remain in force until permanent continental shelf delimitation is achieved between Australia and Timor-Leste or for 30 years from the date of entry into force, whichever is sooner, subject however to renewal by agreement of the Parties.

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316 Article 18
317 Articles 19 and 20, respectively
318 Article 21
when the permanent delimitation is yet to be achieved. The legitimate rights and interests duly acquired by the operators in the JPDA are not affected by the termination. This has been amended by the Treaty on CMATS, a subsequent agreement between the Parties and discussed hereinafter. The Treaty on CMATS in Article 3 clearly amends the Timor Sea Treaty and now provides that the duration of the latter shall be in conformity with the former without prejudice to existing petroleum activities. The new duration pursuant to Treaty on CMATS is 50 years after its entry into force, or until the date five years after the exploitation of the Unit Area to which the Treaty on CMATS relates ceases, whichever occurs earlier, subject to renewal by the Parties. The effect, it appears, is that the area of the JPDA not falling under the Unit Area (Greater Sunrise) and governed by the Timor Sea Treaty, will continue to be governed by the 30-year tenor.

4.3.1.8 Dispute Resolution

Article 23 provides for dispute resolution, except for disputes falling within the Tax Code that has its own dispute resolution mechanism. Any matter that is unresolved by the MC will be resolved by an arbitral tribunal. The procedure for arbitration is as contained in Annex B and not different from the usual arbitral provisions which provide for three arbitrators, two of whom are appointed by each State and the third, chairman, who shall not be a national or permanent

319 Article 22
320 Ibid.
322 Treaty on CMATS, Article 12
resident of either State, to be appointed by the two. In the event of the two failing to appoint a third arbitrator, the President of the ICJ shall appoint upon the request of either Party, taking into account the issue of nationality and habitual residency. The cost of any arbitral proceedings shall be borne by each Party and the decision of the tribunal is final and binding.

4.3.1.9 Treaty Structure

In all, *Timor Sea Treaty* has 25 Articles and 7 Annexes. Apart from the provisions discussed herein, the *Timor Sea Treaty* has other provisions on amendment, entry into force, fiscal arrangements and taxes, construction and operation of pipelines, hydrographic and seismic surveys, customs, quarantine and migration that are not radically different from other joint development agreements. It also has Annexes A to G that provide and expatiate on the following issues in that order: Designation and description of the JPDA; Dispute resolution procedure; Powers and functions of the Designated Authority; Powers and functions of the Joint Commission; Unitization of Greater Sunrise; Fiscal Scheme for certain petroleum deposits and the Taxation Code, respectively.

4.3.1.10 Development Activities in the JPDA

In conclusion, the *Timor Sea Treaty* is already counting its gains as petroleum activities have already commenced in the JPDA in earnest, courtesy of the *Treaty*. It is estimated that up to 34.6 million barrels of oil will be recoverable from the Kitan oil field alone and Bayu-Undan is, at the time of writing, the only operating field in the JPDA. It is estimated to contain 3.4 trillion cubic
feet (tcf) of natural gas and 110,000 barrels of condensate. ConocoPhillips operates the Bayu-Undan field in a joint venture together with Eni.

INPEX Timor Sea Ltd discovered oil in March 2008 through the Kitan-1 exploration well and the presence of oil in commercial quantity was also confirmed by the Kitan-2 appraisal well drilled subsequently. In line with the provisions of the production sharing contract (PSC) between INPEX and the TSDA, being ANP, INPEX Timor Sea Ltd made a declaration in April 2008 to ANP that an oil field of commercial scale had been found at Kitan. INPEX has also secured approval to its final development plan for the discoveries from ANP in April 2010 and at the time of writing, development work is underway at the Kitan oil field with a target production start-up in the second half of 2011. INPEX was allocated Bayu-Undan Project (JPDA03-12) and Kitan Oil Field (JPDA06-105) within the JDPA.

On the other hand, the Bayu-Undan gas field, operated by ConocoPhillips, is the largest oil and gas discovery in the JPDA and is located in a remote area of the Timor Sea. According to industry sources, the project will go a long way in establishing oil and gas infrastructure and supply chain support within the region. The Bayu-Undan Gas Recycle Project- a world class offshore gas recycling project utilizes what, according to the operators, is the world’s first multi-use separate propane, butane and condensate floating, storage and offloading (FSO) vessel. The

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324 Ibid.
326 Ibid.
gas is piped from the main offshore installation some 500km to Darwin, Australia and the ConocoPhillips LNG plant.\textsuperscript{328}

Oilex Ltd, on the other hand, as an operator, was the successful bidder for the Flamingo Trough (JPDA 06-103) in a competitive bidding round that closed on May 26, 2006.\textsuperscript{329} The PSC was subsequently signed at a ceremony in Dili, Timor-Leste on November 16, 2006 and preliminary work on the field has commenced with exploratory drilling concluded in the first quarter of 2010 with relative success already recorded.\textsuperscript{330} All these success stories would have remained imaginary if Australia and Timor-Leste failed to negotiate joint development and focused on divisive maritime boundary disputes.

4.3.2 International Unitization under the Australia-Timor-Leste Treaty

International unitization under the Timor Sea Treaty is provided for under Article 9 which reads that any petroleum reservoir which extends across the boundary of the JPDA shall be treated as a single entity requiring the cooperation and agreement of the two States in determining the most effective and efficient way of exploitation and equitable sharing of the benefits arising from the exploitation. Based on this provision, two unitization agreements have been concluded- the \textit{Sunrise and Troubadour Unitization Agreement} relating to the Greater Sunrise field\textsuperscript{331} and its subsequent amendment by the \textit{Treaty on CMATS}.

\textsuperscript{328} \textit{Ibid.}
\textsuperscript{329} “JPDA 06-103: Flamingo Trough, Joint Petroleum Development Area (“JPDA”) between Timor-Leste and Australia” available online at <http://www.oilex.com.au/index.cfm?objectid=51965D75-C09F-1F3C-C8AF03A9289DB07E> 
\textsuperscript{330} \textit{Ibid.}
\textsuperscript{331} \textit{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} (Signed at
4.3.2.1 **Sunrise and Troubadour Unitization Agreement**

The Sunrise and Troubadour fields are collectively referred to as the Greater Sunrise field under the *Sunrise and Troubadour Unitization Agreement* which relates to the unitization of the deposits found to straddle the JPDA and the Greater Sunrise lying under Australian jurisdiction and which unitization was previously agreed to under Annex E of the *Timor Sea Treaty*.\(^{332}\) Apportionment of petroleum produced from the unit reservoirs shall be in the ratio 20.1:79.9 for the JPDA and Australia, respectively, likewise receipts and expenditure, taxation, cost recovery and production sharing in relation to the unit property.\(^{333}\) The JPDA share of 20.1 percent is however shared in the ratio 90:10 in favour of Timor-Leste pursuant to the *Timor Sea Treaty*. The ‘without prejudice’ clause is present and the responsibility for administering the unit area lies with the Sunrise Commission.\(^{334}\) The Regulatory Authorities—being ANP regulates the 20.1% of the unitized fields for the JPDA and the Australian Department of Resources, Energy and Tourism regulates 79.9% of the fields on behalf of Australia. They are charged with the regulation of petroleum activities in the unit area and ensuring compliance of the ‘Sunrise Joint Venturers’ with the *Sunrise and Troubadour Unitization Agreement*.\(^{335}\) The *Sunrise and Troubadour Unitization Agreement* supersedes any agreement between the Sunrise Joint Venturers and the Regulatory Authorities or between the Sunrise Joint Ventures.\(^{336}\) The *Sunrise

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\(^{332}\) The Preamble to the *Sunrise and Troubadour Unitization Agreement*

\(^{333}\) Articles 7, 10, 11

\(^{334}\) Comprising three members, one nominated by Timor-Leste and two nominated by Australia. See Article 9(8).

\(^{335}\) Articles 2-4 and 9

\(^{336}\) Article 5
and Troubadour Unitization Agreement is a typical international unitization agreement and contains clauses on unit operator/operations, reapportionment of unit petroleum, development plan approvals, abandonment, costs and taxation, health, safety and environmental protection, employment and training, customs, security, measuring systems, provision of information, dispute settlement amongst other things.

Incidentally, Timor-Leste appeared not to be satisfied with the apportionment formula under the Sunrise and Troubadour Unitization Agreement. Other provisions were also disagreeable to them so they opted to delay the ratification.337 They also disputed the Timor Gap dimensions as set by the previous Australia-Indonesia maritime boundary agreement claiming not to be bound by it. Consequently, a subsequent delimitation negotiation ensued and the challenges were overcome with the successful signing of the Treaty on CMATS.338

4.3.2.2 Treaty on CMATS

This Treaty as earlier noted modified the tenor of the Timor Sea Treaty by aligning it with the Treaty on CMATS’s 50-year tenor from the coming into force of the latter or until the date five years after the cessation of exploitation of the unit area, whichever occurs earlier.339 It is clear however that the 50-year duration affects only unit operations of the Greater Sunrise and not the entire JPDA created by the Timor Sea Treaty. The unit area in question under the Treaty on CMATS is still the same as described in Annex I of the Sunrise and Troubadour Unitization Agreement so that the former is designed to complement the latter and the Timor Sea Treaty.

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337 Schofield on Blurring the Lines, supra at p. 21
338 Ibid.
339 Treaty on CMATS, Article 12
As usual, however, the *Treaty on CMATS* is without prejudice to the final maritime boundary delimitation between the two Countries.\(^{340}\) Apart from that, no court, tribunal or international organization shall be seized of any matter in relation to the maritime boundary between the two Countries in the Timor Sea for the duration. And neither shall the Parties be under any obligation to negotiate permanent maritime boundaries for the 50-year tenor.\(^{341}\) The Parties, by the *Treaty on CMATS*, also renounce their sovereign claims in the Timor Sea within the duration provided that any petroleum rights granted or petroleum activities undertaken under the laws of either State prior to May 19, 2002 (the signing of the *Timor Sea Treaty*), shall be recognized as valid and subsisting.\(^{342}\) It is quite clear that this was inserted to preserve the petroleum interests already created by the Australian licences under the previous Australia-Indonesia arrangement. The exchange of diplomatic correspondence between the two Countries wherein Australia admitted the existence of such prior interests and Timor-Leste confirmed its non-existence on their part, servers to illustrate the concession and express permission that existing authorizations could go on in such previously, legitimately granted areas.\(^{343}\)

Under the new arrangement, revenue derived directly from petroleum production within the unit area, insofar as the revenue relates to the upstream exploitation of that petroleum, shall be shared 50:50 between Australia and Timor-Leste and the Parties agree that there shall be no re-determination of the apportionment ratio during the whole duration.\(^{344}\)

\(^{340}\) Article 1 and 2  
^{341}\) Article 4  
^{342}\) Ibid.  
^{344}\) Article 5 and 10
EEZ rights (“water column rights”) are exercisable by Australia and Timor-Leste south and north of the dividing line, respectively as contained in Annex II of the Treaty on CMATS provided such rights are exercised in a way that does not unduly inhibit petroleum activities within the JPDA.\textsuperscript{345} Where straddling stocks exist, both States shall cooperate within the framework established by UNCLOS, 1982 in relation to highly migratory fish stock to ensure effective conservation and management of such stocks.\textsuperscript{346}

Also established by the Treaty on CMATS is the Timor-Leste/Australia Maritime Commission, consisting of one Minister or representative from each State, as a forum for bilateral consultations on the maritime interests of the two Countries. It meets annually.\textsuperscript{347} Specifically the Commission is charged with reviewing the status of the maritime boundary arrangements, consulting on petroleum infrastructural security; consulting on the management of renewable and nonrenewable natural resources and other maritime matters as may be agreed.\textsuperscript{348} Dispute resolution is by consultation and negotiation except in the case of calculation of revenue in which case both Parties are to appoint an accessor, failing which either may request the Secretary-General of ICSID to appoint.\textsuperscript{349}

In conclusion, it is good to note that eventually the Treaty on CMATS and the Sunrise and Troubadour Unitization Agreement were ratified by Timor-Leste on the same day, having become satisfied with the provisions of the former and its amendment to the latter. They came into effect on February 23, 2002. The Treaty on CMATS does not generally amend the former

\textsuperscript{345} Article 8,
\textsuperscript{346} Ibid.
\textsuperscript{347} Article 9
\textsuperscript{348} Ibid.
\textsuperscript{349} See Articles 6 and 11.
treaties, except where expressly provided. The unitization arrangements are already yielding dividends as petroleum development has also begun on the Greater Sunrise field. The commercial joint venture for the Greater Sunrise is currently led by Woodside Petroleum Limited (operator and 33.44% shareholder), ConocoPhillips- 30% equity, Royal Dutch Shell-26.56% equity and Osaka Gas- 10% equity holder. The joint venture holds two retention leases for the Australian portion of the fields and two production sharing contracts (PSC) for the JPDA portion of the fields thereby giving the joint venture exclusive rights to develop the Greater Sunrise fields. Fairly recently, on 29 April 2010, Woodside Petroleum Limited announced its preference to develop Greater Sunrise field using a floating LNG (FLNG) processing plant, thereby making it potentially the second FLNG development project in the world after the proposed Shell-owned and operated Prelude FLNG development in the Browse Basin off the Northwest coast of Western Australia.

4.4 Joint Development for Living Marine Resources

The joint development or cooperative management initiatives discussed herein are those with particular interest in the development of fisheries and other living marine resources either in the actual provisions of the treaty or in the current activity going on in the zone. The brief study of this species of joint development is intended to evidence the fact that there could also be some form of joint development for non living marine resources.

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350 Article 7
351 “Joint Petroleum Development Area and Greater Sunrise”, supra
352 Ibid.
4.4.1 Iceland-Norway Fishery Treaty

In the Preamble to the *Iceland-Norway Fishery Treaty*, the two States express their apprehension for overfishing which in particular threatens the capelin stock thereby necessitating the *Treaty*. It also recognizes the fact that their economies, especially that of Iceland, depend heavily on fisheries. It sets up a Fisheries Commission which consults on the issue of implementation of the regulatory measures for fishing. Particularly, it submits proposals and recommendations to the two Governments concerning the fishing of migrating stocks in the joint area, including recommendations in respect of the total allowable catch for such stocks and the distribution of the total allowable catch. Norway's share of the total allowable catch for capelin in the Jan Mayen zone is stipulated for the first four years of the *Treaty* at 15 per cent, likewise the Icelandic fishermen. The distribution of the capelin quota between Norway and Iceland is subject to reexamination by the Fisheries Commission latest at the expiry of a four-year period, taking into account the developments which have taken place in fishing and on the basis of

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Under this Treaty, the unanimous recommendation of the Conciliation Commission set up by the two States on their continental shelf delimitation was adopted so that the delimitation line between the two States’ parts of the continental shelf in the area between Iceland and Jan Mayen shall coincide with the delimitation line for the economic zones. It also established co-operation between the Parties in connection with the exploration for and exploitation of hydrocarbon resources in a specified area between Iceland and Jan Mayen on both sides of the delimitation line. The third is the *Additional Protocol to the Agreement of 28 May 1980 between Norway and Iceland concerning Fishery and Continental Shelf Questions and the Supplementary Agreement derived therefrom of 22 October 1981 on the Continental Shelf in the Area between Jan Mayen and Iceland* (Signed 11 November 1997, entry into force: 27 May 1998) [hereinafter referred to as the *Norway and Iceland Protocol*] available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/NOR-ISL1997FC.PDF>

This *Norway and Iceland Protocol* sets out the appropriate intersecting delimitation lines amongst Kingdom of Norway, the Republic of Iceland and the Kingdom of Denmark concerning the final delimitation of the maritime waters between Jan Mayen, Iceland and Greenland.

354 *Articles 2 and 3*

355 *Articles 5 and 6*
research findings with regard to the distribution of the capelin stock between the different zones.\textsuperscript{356} Both States shall also cooperate on the management and conservation of the fish stock within the zone.

With regard to continental shelf activities, and in connection with the exploration for or exploitation of the natural resources, the Parties agree to initiate close mutual consultations and close cooperation for the adoption and enforcement of the necessary safety regulations in order to avoid any pollution which might endanger the living resources in the joint sea areas or otherwise have a harmful effect on the marine environment.\textsuperscript{357} The States shall also submit to each other specific plans for activities connected with the development of the continental shelf resources in good time before the commencement of such development.\textsuperscript{358} Dispute resolution is by a Conciliation Commission comprising three members appointed by each State and a third by both.\textsuperscript{359} The Commission makes recommendations which are not binding on the Parties but which will guide the Parties in further negotiations.\textsuperscript{360}

While this is not a joint development in the strict sense of joint development of natural resources, it smacks more of general maritime cooperation with some element of loose joint development. The Fisheries Commission regulates the fishing activities between the two countries. This provides further evidence of how States have used cooperative maritime resources management to resolve delimitation challenges in the face of straddling fish stock.

\textsuperscript{356} Article 5
\textsuperscript{357} Article 10
\textsuperscript{358} \textit{Ibid.}
\textsuperscript{359} Article 9
\textsuperscript{360} \textit{Ibid.}
4.4.2 Senegal-Guinea-Bissau Agreement

The Senegal-Guinea-Bissau Agreement\textsuperscript{361} is one of the many joint development and marine resources cooperative management treaties in the Gulf of Guinea and arguably the first form of joint development in the Gulf. It provides a framework for cooperation and joint development between the two States and was improved upon by a subsequent Senegal-Guinea Bissau Protocol which brought into existence the machinery for the actualization of the Senegal-Guinea Bissau Agreement.\textsuperscript{362}

The Senegal-Guinea Bissau Agreement expressly excludes the territorial seas of the States from the joint exploration zone but provides that small-scale fishing from canoes shall be authorized within the zone and in those parts of the territorial seas lying between 268° and 220°.\textsuperscript{363} On the other hand the two States shall jointly exploit a maritime zone situated between the 268° and 220° azimuths drawn from Cape Roxo which constitutes the joint exploration zone in their EEZ and continental shelf.\textsuperscript{364} Fisheries resources proceeds are shared 50:50 while continental shelf resources are shared in the ratio 85:15 in favour of Senegal, subject however to a redetermination based on the quantum of the discoveries made. Expenses incurred by the Parties for oil


\textsuperscript{363} Article 1

\textsuperscript{364} Ibid.
prospecting in the common continental shelf are reimbursable in accordance with the Party’s percentage contribution.\footnote{Articles 2 and 3, respectively}

The traditional ‘without prejudice’ clause is present with respect to the undelimited boundaries to which the zone relates and the \textit{Senegal-Guinea Bissau Agreement} is billed to remained in force for a period of twenty years subject to an automatic renewal.\footnote{Articles 6 and 8, respectively} Disputes concerning the Senegal-Guinea Bissau Agreement or the international agency (to be created under the Senegal-Guinea Bissau Agreement) shall be resolved initially by direct negotiations failing which, after a period of six months, by arbitration or by the ICJ, and in the event of cessation or expiry of the Senegal-Guinea Bissau Agreement, the Parties shall have recourse to direct negotiation, arbitration or the ICJ for the delimitation of any unsettled maritime boundaries.\footnote{Article 9}

The \textit{Senegal-Guinea Bissau Agreement} provides for the establishment of an “International Agency” for the exploitation of the zone and which will succeed the two States in the administration of the joint maritime zone.\footnote{Articles 4 and 5} Pursuant to this, the \textit{Senegal-Guinea Bissau Protocol} was concluded for the purpose of establishing the Management and Cooperation Agency (the Agency), an international corporate organization with registered office at Dakar, Senegal. It is responsible for management of the exploration and exploitation activities within the joint zone through its operating arm- the Enterprise and also charged with the promotion of cooperation between the States.\footnote{Articles 2, 3 and 4} Specifically, the Agency shall be responsible for geological and geophysical studies, drilling works, or any other activities with the aim of prospecting,
exploring or exploiting the mineral or petroleum resources in the joint zone and the evaluation and management of fisheries resources. It is also responsible for the monitoring of the marine ecosystem and the development of the fisheries in the joint zone, including marketing of both petroleum and fisheries resources. Apart from the petroleum and fisheries responsibilities, the Agency is also charged with security, surveillance, pollution prevention, marine environmental protection and general regulatory functions.\(^{370}\) The Agency is made up of the High Authority and the Secretariat. The High Authority comprises the Heads of State or their designate. The President of the High Authority, for the length of his term of office, shall also serve as Chairman of the Board of Directors of the Enterprise while the Secretary-General of the Agency shall serve as Secretariat for the High Authority and shall be responsible for organizing the meetings of the High Authority.\(^ {371}\) The responsibilities of the High Authority are policy-oriented and supervisory while the Enterprise is a corporate body with an authorized share capital in the proportions of Senegal 67.5 percent and Guinea-Bissau 32.5 percent with funds advanced in the same proportion.\(^ {372}\) For the purposes of *Senegal-Guinea Bissau Protocol*, the States Parties and the Agency undertake to cooperate in respect of scientific research, security, search and rescue, surveillance, protection of the marine environment, transportation, and so on in the joint zone. They shall also regularly exchange information they obtain in the course of any activities being carried out.\(^ {373}\)

For the purpose of carrying out its functions, the Agency has exclusive rights to mining and petroleum titles and to fishing in the joint zone and the Enterprise can carry out fishing and

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\(^{370}\) Article 5  
\(^{371}\) Articles 7-10  
\(^{372}\) Articles 12 and 14  
\(^{373}\) Articles 16-23
petroleum activities within the zone either by itself or in conjunction with other companies and shall source its own finance for running its business.\textsuperscript{374}

It is obvious from the structuring that the model of joint development authority created by the Senegal-Guinea Bissau arrangement is the type wherein a corporate body is created to undertake the functions on behalf of the governments. The body so created in this arrangement possesses title to the resources in the joint area, the States having relinquished their title to the resources to it for the period of the Treaty. While not so much information is available on the current and actual activities in this joint development, it remains the first ever marine resources cooperative management initiative and joint development in the Gulf of Guinea and demonstrates how joint development can apply to fisheries resources even while providing for possible petroleum development.

4.5 Conclusion

The aim of this chapter appears to have been accomplished in demonstrating the actual workings of joint development agreements and their practical manifestations and ongoing activities. An attempt has also been made to show that joint development and international unitization treaties have been concluded in maritime boundaries that have been fully delimited provided there are straddling resources. It has also been concluded in maritime boundaries that have not been delimited but with straddling natural resources in the area of overlapping claims of the coastal States like the Australia-Timor-Leste situation. Also discussed is the category of joint development where fisheries are the major focus or jointly with petroleum. In all these, the

\begin{footnotesize}\textsuperscript{374} Article 6\end{footnotesize}
significance of each of these agreements has been highlighted as well. All these have shown that joint development is not just merely theoretical, but state practice that has practical manifestation and also a relevant step in resolving maritime boundary conflicts caused by the prospects for natural resources control. It has also taken this work beyond a mere analysis of theoretical framework and treaty provision to the actual practice and dynamics of joint development in international law. The next chapter, therefore, will examine the Nigeria-STP model in comparison with the models already discussed and the general principles of international law with a view to highlighting its importance and success.
CHAPTER 5

The Nigeria-Sao Tome and Principe Joint Development in Focus

5.1 The Nigeria-STP Joint Development: Background Facts and Information

Nigeria is the most populous country in Africa and invariably in the Gulf of Guinea region with about 150 million citizens and counting, while Sao Tome and Principe has about 170,000 in population. The total landmass of Nigeria is approximately 923,000 square kilometres while Sao Tome and Principe has about 1000 sq. km in landmass, making it the second smallest country in Africa- only bigger than Seychelles. While the economy of Nigeria is relatively big and largely dependent on oil and gas, agriculture and fishing are the mainstay of Sao Tome and Principe’s economy. Both countries are bordered on the Gulf of Guinea with overlapping EEZ and continental shelf and potential extended continental shelf.

Apart from the recognition of the maritime geographical facts that the EEZ and continental shelf of the two Countries overlap, there is a combination of other immediate factors that led to the relatively fast and easy conclusion of this joint development initiative between the two Countries. Prior to the conclusion of the Nigeria STP JD Treaty, there was no agreed maritime boundary between Nigeria and Sao Tome and Principe. The first of the immediate factors that may have led to the conclusion of the joint development is that Nigerian government appeared to have realized the direction the Cameroon v. Nigeria case was going (especially with the

375 Supra
rejection of all the otherwise weak preliminary objections raised by the Nigerian government) and decided to preempt the judgment by quickly concluding other maritime boundary agreements with her neighbours and in the case of Sao Tome and Principe, a definite maritime boundary could not be easily concluded in view of the overlapping maritime zones. Indeed all the outstanding maritime boundaries, joint development and international unitization agreements between Nigeria and her neighbours in the Gulf of Guinea were concluded by at about the same period- 2000 to 2002. In my opinion, this was in anticipation of the ICJ judgment in Cameroon v. Nigeria and probably an attempt to preempt it. Nigeria eventually lost the Bakassi territory and had an unfavourable maritime boundary delimitation judgment in the case, but it was as a reawakening for the Nigerian Government to revisit its maritime boundaries in the Gulf of Guinea, especially on the best way of dealing with the overlapping EEZs, continental shelves and the extended continental shelves.

379 Supra
380 On May 7, 2009, the Federal Republic of Nigeria submitted to the Commission on the Limits of the Continental Shelf, in accordance with Article 76, paragraph 8, of UNCLOS, 1982, information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the Nigerian territorial sea is measured. The consideration of the Nigerian submission was included in the provisional agenda of the twenty-fourth session of the Commission to be held in New York from 10 August to 11 September 2009 and the recommendations, pursuant to Article 76 UNCLOS, 1982, is being awaited. See detailed information at <http://www.un.org/depts/los/clcs_new/submissions_files/submission_nga_38_2009.htm> last visited December 29, 2010. For a full details of the Nigerian Executive summary on the claim to an extended continental shelf, see <http://www.un.org/depts/los/clcs_new/submissions_files/nga38_09/nga2009_executivesummary.pdf>, and for the acknowledgment of receipt of Nigeria’s submission of claim to an extended continental shelf by the United Nations, see <http://www.un.org/depts/los/clcs_new/submissions_files/nga38_09/nga_clcs38_2009e.pdf>
Secondly, the increase in the activities of militants in the Niger delta area of Nigeria since early 2000s made the region generally unsafe for continued petroleum development by the oil and gas multinationals. The effect was that pressure has been brought to bear on the government to license the development of more offshore fields to keep up the reserve and maintain production. At the same time all the coastal States in the Gulf of Guinea with potentials of deepwater discoveries were converging offshore for the development of the oil and gas of their various continental shelves, more than ever before. Unfortunately, petroleum investors will be most unwilling to explore for production if there is no measure of guarantee of title to the resources or freedom to produce without adverse international claim to the petroleum resources or the licensed area. Just like some other enclosed and semi enclosed sea like the South China Sea, the Gulf of Guinea of course has its fair share of maritime boundary disputes with potential ones brewing once more petroleum discoveries are made. All these factors, coupled with the outstanding political will of the Nigerian government led by the erstwhile President Olusegun Obasanjo, paved way for the fast negotiation and signing of the Nigeria STP JD Treaty on February 21, 2001 by the two Countries.

5.2 Elements of the Joint Development

The Nigeria STP JD Treaty is not the first joint development in the Gulf of Guinea, considering the Senegal-Guinea-Bissau arrangement, however, it is the first joint development in the region with actual discoveries of oil and gas and one that has generated some generous income for the States involved. Apart from that, the size of the Parties involved in the joint development and the cordial nature of their relationship is, to say the least, amazing. The provisions of the Nigeria STP JD Treaty are quite comprehensive, lending themselves to almost every conceivable issue in
joint development of petroleum. In this segment, attention will therefore be paid to the most important provisions of the Nigeria STP JD Treaty and their possible significance in international law of joint development of petroleum. Also, some major comparisons will also be drawn from contemporary joint developments especially the ones already discussed and in particular the Australia-Timor-Leste model which is another successful joint development involving a relationship akin to the Nigeria-STP relationship, not just in terms of the sizes of the joining parties, but also in terms of the similarity of provisions, recorded successes and contemporaneousness. While the Treaty is as good as it could get, possible areas of shortcomings will also be highlighted and discussed.

5.2.1 Politics and Negotiation of the Joint Development

The administration of former President Olusegun Obasanjo of Nigeria was inaugurated on May 29, 1999, marking a successful return to democracy in Nigeria. Seeing the way the Bakassi Case was going, it decided to engage in discussions for the joint development with the Sao Tome and Principe government then led by President Miguel Trovoada and later President Fredique de Menezes. The entire period of negotiation lasted from December 1999 to August 2000- just a little less than one year thereby making it one of the fastest joint development agreements to be concluded in recent times, unlike other joint development and maritime boundary agreements that typically take years and perhaps decades to negotiate. Indeed many joint development and maritime boundary agreements have been known to be deadlocked or even aborted. In December 1999, the two Presidents had mandated the government officials and representatives to commence formal talks on their maritime boundary with a view to reaching an agreement and in
August 2000, the two Presidents agreed on a joint development.\textsuperscript{381} During the negotiations Sao Tome and Principe argued that the boundary line should be the median line between the two Aountries. According to them, this is more so given that Nigeria’s EEZ Act of 1978 recognised the median line as the limit of her maritime boundary as of national policy and law.\textsuperscript{382} Nigeria on the other hand argued that the 1978 EEZ Act being referred to had been overruled by UNCLOS, 1982 and eventually replaced by the EEZ Act No. 41 of 1998 that calls for a negotiated settlement of boundary claims rather than adherence to the median line.\textsuperscript{383} Nigeria further argued that the median line should be adjusted using the tests of proportionality and other relevant circumstances of the two Countries’ coasts and that applying these tests will give rise to the nil effect and eventually one-third-weight-effect line. However, in the spirit of friendly neighbourliness characteristic of the Nigerian foreign policy during the Obasanjo regime, Nigeria moved from the nil weight effect line to the one-third-weight effect line and the \textit{Nigeria STP JD Treaty} was eventually signed on February 21, 2001 and ratified by their various legislatures in the same February 2001.\textsuperscript{384}

\textsuperscript{381} Information available on <http://www.nigeriasaotomejda.com> (last visited on December 31, 2010), follow the link and click on “Introduction”.

\textsuperscript{382} Hassan Tukur, “Brief on the JDZ” available at <http://www.nigeriasaotomejda.com> last visited December 31, 2010 (follow the link on ‘Press release and Publicity”).

\textsuperscript{383} \textit{Ibid}.

\textsuperscript{384} \textit{Ibid}.
Figure 5.1: Map Showing the Nigerian EEZ and Continental Shelf Claim

Figure 5.1 was removed for copyright restrictions. It is a map showing the Nigerian EEZ and continental shelf claims against the equivalent claims of her maritime neighbor, Sao Tome and Principe. The red line indicates the weighted claims of Nigeria and their effects. It was within these overlapping claims that the joint development area was established. Original source: <http://www.nigeriasaotomejda.com>
Figure 5.2: Map Showing the Overlapping EEZ and Continental Shelf Claims of the Two Countries and How Joint Development Zone was agreed

Figure 5.2 was removed for copyright restrictions. It shows the overlapping EEZ and continental shelf claims of Nigeria and Sao Tome and Principe. The red line in the map indicates Nigerian maritime claims while the blue line indicated the claims of Sao Tome and Principe. The green hexagonal-shaped area of the intersecting and overlapping red and blue lines form the area of joint development between the two countries- the Joint Development Zone (JDZ). Original source: <http://www.nigeriasaotomejda.com>
5.2.2 Governance and Administration

The *Nigeria STP JD Treaty* created three levels of administration over the joint development zone (JDZ) namely the Heads of State at the pinnacle of the organogram, the Joint Ministerial Council (JMC) and the Joint Development Authority (JDA). The Heads of State settle any matters referred to it by the JMC by consensus and where they are unable to, arbitration will be resorted to. The JMC on the other hand comprises not less than two and no more than four Ministers or persons of equivalent rank appointed by the respective Heads of State. The Executive Director of the JDA acting as Secretary of the JDA shall also act as Secretary of the JMC. The quorum for a valid meeting of the JMC is at least two of the members, including at least one appointed by each of the States Parties. The JMC meets at least twice a year and as often as may be required, alternately in the States. The decisions of the JMC are consensual and meetings are chaired by the nominee of the host State. The JMC has responsibility for all matters relating to the exploration for and exploitation of the resources in the Zone, and such other functions as the States Parties may entrust to it. To that effect, they give directions to the JDA on the discharge of the JDA functions. They approve the rules, procedures and guidelines of the JDA as well as their financials, annual accounts and reports, development contracts and their termination. They also review the operation of the Treaty and make recommendations to the States on any matter concerning the functioning or amendment of the Treaty and generally

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385 *Nigeria STP JD Treaty*, Part Two and Part Three, respectively
386 Article 6
387 Article 7.1
388 Article 7.2
389 Article 7.3-7.6
390 Article 8.1
391 Article 8.2 generally
supervise the JDA.\textsuperscript{392} Notwithstanding these enormous tasks and powers, the JMC is not a legal person.\textsuperscript{393}

Article 9.1 establishes the JDA which is an international juridical person by virtue of the treaty and also under the laws of each of the States and has legal capacities as is necessary to enable it accomplish its mandate.\textsuperscript{394} The JDA is responsible to the JMC and has its headquarters and liaison offices in Abuja, Nigeria and Sao Tome and Principe, respectively.\textsuperscript{395} Pursuant to that, the Nigeria-Sao Tome and Principe Joint Development Authority was established on January 16, 2002 when its Board was inaugurated at Abuja, the Nigerian capital while the physical address of the JDA is Plot 1101 Aminu Kano Crescent, Wuse 2, Abuja, Nigeria. The JDA is responsible for the management of activities relating to the exploration for and development of the resources in the joint development zone (JDZ) subject to the direction and supervision of the JMC.\textsuperscript{396} To that effect it has all the necessary powers to actualize its mandate ranging from arranging development contracts, partitioning the JDZ, overseeing and regulating the contractors, budgets, control of movements, health, safety and environmental regulation, to all other conceivable matters associated with a joint development administration.\textsuperscript{397} The JDA consists of a qualified and experienced four-member Executive Board of Directors two of whom are appointed by the respective Heads of State and they meet on the request of the JMC, either State Party, any Executive Director, or otherwise, as often as necessary for the discharge of its functions.\textsuperscript{398} The working language of the JDA is English and quorum is formed by at least two Executive

\textsuperscript{392} Ibid.
\textsuperscript{393} Article 6.3 provides specifically that: “The Council (JMC) does not have separate legal personality”.
\textsuperscript{394} Article 9.2
\textsuperscript{395} Articles 9.3 and 9.4, respectively
\textsuperscript{396} Article 9.6
\textsuperscript{397} Ibid.
\textsuperscript{398} See generally Article 10
Directors of respective nationalities while decisions are reached by consensus, except that where consensus fails which case will be referred to the JMC. The JMC appoints one of the Executive Directors Chairman of the Board annually and decisions of the Board must always be in writing and signed. The Board determines its own procedures. In the discharge of its duties, the Board shall be accountable to the JMC. The Board members, as well as other staff of the JDA, are expected to maintain a duty of confidentiality and non-disclosure even upon conclusion of their employment services and neither shall they allow a conflict of interest situation in the course of their work. To that effect, they are expected to act impartially in the interests of the JDA alone and without favouring either of the States Parties. Also, they are not permitted to have any direct or indirect financial interest in development activities in the JDZ, except as may be permitted by the JMC.

The Secretariat of the Board is administered by an Executive Director appointed by the Board on a three-year rotational basis. It also carries out the administrative work of the JDA and the JMC.

The provision of the Nigeria STP JD Treaty on the regulation of activities and governance is quite detailed and comprehensive and covers basically all aspects of the administration with appropriate checks and balances. It is interesting to note that decisions are expected to be reached consensually and this typifies the spirit of friendship, cooperation and understanding that joint development stands for. When compared with the Timor Sea Treaty in terms of regulation and

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399 Articles 9.7, 10.4 and 10.5, respectively
400 Articles 10.7, 10.9 and 10.10, respectively
401 Articles 16 and 15, respectively
402 Ibid.
403 See generally Articles 11 and 14.
administration, the former appears to be more comprehensive in the functions of the joint authority and limits of its powers. Decisions of the regulatory authorities under the Nigeria STP JD Treaty are expected to be consensual and where it cannot be achieved, a higher authority resolves the impasse. Under the Timor Sea Treaty decisions are made by majority. Both models however, have supervisory bodies in JMC and JC, respectively to balance the powers conferred on the joint authority. The major difference appears to be that while the Heads of State are at the apogee of the organogram in the Nigeria-STP joint development model, the MC (Ministerial Council) occupies the equivalent position in the Australia-Timor-Leste model. However, both are models of joint development whereby a separate legal entity is created to run the affairs of the joint zone for the benefit of both States.
Figure 5.3: The Organogram of the Nigeria-Sao Tome and Principe JDA

Figure 5.3 has been removed due to copyright restrictions. It contains an organogram of the Nigerian-Sao-Tome and Principe Joint Development Authority. At the peak of the organogram are the Heads of State followed by the Joint Ministerial Council (JMC), then by the Chairman of the Board and Secretariat of the Joint Development Authority (JDA). At the lowest level and on the same level are the Executive Directors of the JDA responsible for Monitoring and Inspections, Commerce and Investments, Non Hydrocarbon Resources and Finance and Administration. Original source: <http://www.nigeriasaotomejda.com>
5.2.3 The Joint Development Zone

The JDZ is a hexagonal shaped area of the overlapping EEZ and continental shelf of the two States in the Gulf of Guinea established by Article 2.1 of the *Nigeria STP JD Treaty* which also specifies the coordinates of the JDZ. The two States exercise joint control of the development of the resources in the JDZ with the aim of achieving optimum commercial utilization. The rights and responsibilities of the States to develop the JDZ are exercised by the JMC and the JDA accordingly in supervisory and executive capacities, respectively. Petroleum development can only go on within the JDZ as may be authorized by the *Nigeria STP JD Treaty* and upon its commencement, the JDA is expected to prepare a zone plan for the approval of the JMC for the development of the JDZ resources. This has already been done as the JDZ has been laid out in development blocks and the first and second rounds of bids conducted for their licensing. The JDZ development plan is however subject to periodic review every three years, except otherwise agreed.

In all the JDZ covers an area of about 35,000 square kilometres- about 35 times the size of Sao Tome and Principe. This goes to practically demonstrate Article 121 UNCLOS, 1982 on how an island (Sao Tome and Principe by that definition is certainly an island) can generate an EEZ and continental shelf and extended continental shelf. In this case, Sao Tome and Principe is able to generate an EEZ and continental shelf roughly 35 times bigger that itself.

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404 Article 2.2  
405 Articles 3.1 and 3.3  
406 Articles 3.2 and 19 generally  
407 Article 20
5.2.4 Sharing Formula

The State Parties share all benefits and obligations arising from development activities in the proportions 60-40 per cent in favour of Nigeria.\textsuperscript{408} Costs and surpluses are also apportioned alike.\textsuperscript{409} Under the \textit{Timor Sea Treaty} the sharing is 90:10 in favour Timor- Leste and in the international unitization of Greater Sunrise under the \textit{Treaty on CMATS}, the apportionment is 50:50.

5.2.5 The ‘Without Prejudice’ Clause, Duration and Termination

The \textit{Timor Sea Treaty} and the \textit{Nigeria STP JD Treaty} are all made pursuant to the much discussed Articles 74 (3) and 83 (3) UNCLOS, 1982 as a prophylaxis pending a final delimitation. The Preambles to both Treaties restate this assertion and in order to preserve the Parties’ positions on their maritime boundary claims, they all contain the ‘without prejudice’ clauses. The \textit{Nigeria STP JD Treaty} states that the Treaty itself or acts performed thereunder shall not be construed as a renunciation of the maritime boundary positions of either Party.\textsuperscript{410} The Austro-Timorese model as amended by the \textit{Treaty on CMATS} is much more elaborate on this when it provides further in its Article 4, as discussed earlier, for a moratorium on maritime claims and prohibits parties from seeking remedies or redress in a tribunal, court, international organization or by a subsequent agreement.

\textsuperscript{408} Article 3.1
\textsuperscript{409} Article 18
\textsuperscript{410} Article 4
As amended by the *Treaty on CMATS*, the *Timor Sea Treaty* has a theoretical duration of 50 years while *Nigeria STP JD Treaty* provides for a tenor of 45 years subject to a review after 30 years.\(^{411}\) It may however be terminated where a State Party remains in material breach of an award by an arbitral tribunal constituted in accordance with the Treaty for more than 180 days and upon expiration of six months notice thereof.\(^{412}\)

5.2.6 Title to Resources

Article 3.1 provides *inter alia*, that “…there shall be joint control by the State Parties of the exploration for and exploitation of resources…” and that the “…the rights and responsibilities of the States Parties to develop the Zone shall be exercised by the Council and the Authority in accordance with this Treaty.” This provision is quite unclear on the nature of title to the resources of the JDZ. However, in my opinion, they imply that title to the resources is in the control of both States jointly while the JDA and the JMC are mere delegates carrying out responsibilities in respect of the development of those resources. This provision sharply contrasts, in terms of clarity, with the *Timor Sea Treaty* which provides in Article 4 (a) that: “Australia and East Timor shall have title to all petroleum produced in the JPDA”.

5.2.7 Commencement of Work

No development activities can be conducted or permitted in the JDZ except by a licensed contractor. Pursuant to the power of the JDA to make rules and regulation for the development of
petroleum, and the *Petroleum Regulation* made pursuant thereto, bids are opened for acquisition of development licences in the JDZ periodically. Upon a successful bid, the contractor submits a development plan to the JDA for approval before development commences in any contract area within the JDZ.

This is not radically different from the position under the *Timor Sea Treaty* and the *Petroleum Mining Code* governing the JPDA and made pursuant to the former.

### 5.2.8 Rights and Duties of the Contractors

A contractor has the exclusive rights to carry out the development activities authorised under its petroleum development contract for the duration provided it complies with its terms and the applicable laws. A contractor may dispose of any petroleum to which it is entitled under the relevant development contract, subject to any non-discriminatory restrictions the JDA may impose on landing, identity of the purchaser and verification of the volumes concerned.\(^\text{413}\) The petroleum is exempt from customs and duty payment.\(^\text{414}\) If a jointly held development contract is cancelled out of the fault of one of the holders, the JDA shall offer the non defaulting party a new contract, without prejudice to any existing obligation in the cancelled contract.\(^\text{415}\) A contractor’s rights and obligations under a petroleum development contract cannot be transferred without the consent of the JDA and which consent must not be unreasonably withhold where the

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\(^{413}\) Article 25  
\(^{414}\) Article 22  
\(^{415}\) Article 26
proposed transferee is financially and technically qualified and otherwise meets all the relevant criteria.\textsuperscript{416}

\textbf{5.2.9 Financial and Tax Provisions}

These are contained in whole in Article 24 and the contractor is expected to comply with the fiscal and tax regulations under the applicable laws, regulations and the terms of the development contract. The JDA on the other hand is authorized to impose financial conditions on the petroleum development contracts, bearing in mind the need to balance the interests of the parties.

\textbf{5.2.10 Inspection Rights and Information Sharing}

The JDA has the right to inspect petroleum activities, related installations and pipelines situate in the JDZ either by itself or through a third party and shall decide on the certification standard or procedure.\textsuperscript{417} Where, in the opinion of a State Party, it appears to it, following an inspection, that applicable laws are not being observed in the JDZ, that State Party may, by written notice, request the JDA to remedy the situation.\textsuperscript{418} In deserving circumstances, the JDA may order the immediate cessation of any or all petroleum operations in the contract area if it appears necessary or expedient to avoid accident, loss of life, pollution of the environment or any other undesirable event.\textsuperscript{419} The State Parties are also expected to exchange relevant information between them as

\textsuperscript{416} Article 27
\textsuperscript{417} Article 30
\textsuperscript{418} \textit{ibid.}
\textsuperscript{419} \textit{ibid.}
may be related to the JDZ. The *Timor Sea Treaty* also has equivalent provisions with respect to rights of inspection and information sharing.

5.2.11 Immunities and Privileges

The JDA is immune from all forms of taxation in respect of its activities except for fees or charges for services with respect to activities in either State.\(^{420}\) The JDA is also immune from the jurisdiction of any court or tribunal of a State Party except as concerns:

(i) commercial transactions entered into on the territory of the State Party in question

(ii) non-discretionary decisions which would be reviewable if they were made in equivalent circumstances by a national authority on the territory of the State Party in question.

The nature of immunity provided for the JDA is a restrictive form of immunity well accepted in contemporary international law and which does not exclude a sovereign from immunity where commercial contracts and non governmental functions are involved as against governmental duties *stricto sensu*.

The Executive Directors and staff of the JDA who are nationals of a State Party shall be subject to taxation in respect of any remuneration only by the State Party of their nationality, irrespective of where the services in question are performed.\(^{421}\) Under Article 6 of the *Timor Sea Treaty*, the TSDA (JDA equivalent) does not enjoy any form of immunity except as is necessary to obviate double taxation.

\(^{420}\) Article 12.1
\(^{421}\) *Ibid.*
5.2.12 Other Natural Resources

The JDA is expected to develop a regulatory regime for non petroleum activities in the JDZ for the approval of the JMC but before it does that, the laws of the various States will regulate non petroleum activities in the JDZ and each State is entitled to license nationals and non nationals to undertake such non petroleum activities within the JDZ. Such licensee shall be subject to the laws of the licensing State. Each State Party shall, through the JDA, periodically inform the other of the outcome of applications made, whether by nationals or non-nationals, in respect of non-petroleum development activities in the JDZ and the JDA may request further information as to the consequences of development activities carried out for non petroleum activities. The State Parties are to comply with all reasonable requests in this respect.

Non petroleum activities principally comprise fishing activities, scientific research and the exploitation of other marine living resources. The lack of copious provisions in this aspect and the relative lack of enthusiasm in designing a development regime from the JDA, point to the fact that the major focus of this joint development is petroleum development and understandably so. Under the Timor Sea Treaty as amended by the Treaty on CMATS, little attention is also devoted to ‘water column jurisdiction’. Australia and Timor-Leste exercise sovereign rights over the water column north and south of the ‘line’, respectively, subject to the conservation and management of straddling stock. Such EEZ rights in the area within the JPDA can also be carried out insofar as they do not affect petroleum activities.

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422 See generally Articles 33 and 34.  
423 Articles 35.1 and 35.2  
424 Treaty on CMATS, Article 8
5.2.13 Environment, Health and Safety Provisions

The petroleum and other resources of the JDZ must be developed efficiently having due regard to the protection of the marine environment, and in a manner consistent with generally accepted good oilfield and fisheries practices.\(^{425}\) To that end, the JDA shall take all reasonable steps to ensure that development activities in the JDZ do not cause or create any appreciable risk of pollution or other harm to the marine environment.\(^{426}\) The JDA has the duty to monitor the environmental impact of petroleum activities in the JDZ and the States shall immediately inform the JDA of any spillage or activity likely to cause pollution, discharge from installations into the sea, collision at sea and evacuation of personnel.\(^{427}\)

The JDA shall take all reasonable steps to secure the health and safety of personnel engaged in petroleum development activities and the safety of the installations and pipelines in the JDZ. It shall also promptly propose to the JMC, for adoption as part of the applicable law, laws, regulations and guidelines for health and safety in relation to offshore development activities.\(^{428}\) The *Timor Sea Treaty* on the other hand, like every other contemporary joint development agreement, contains similar provisions for safety of lives and the protection of marine environment as discussed earlier in chapter four.

Needless to mention how seriously environmental concerns, especially those of the sea, are treated in contemporary times by the international community. Prior to UNCLOS, 1982, the

\(^{425}\) Article 3.4  
\(^{426}\) Article 38.1  
\(^{427}\) Articles 38.2 and 38.3  
\(^{428}\) Article 37.1
United Nations Conference on Environment and Development\textsuperscript{429} in its Declarations of Principles and precisely in Principle 7 declared that States must “take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm the living resources and marine life, to damage amenities or to interfere with legitimate uses of the sea”. Based on this general framework, UNCLOS, 1982 specifically provides that States have the obligation to protect and preserve the marine environment and that “States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.\textsuperscript{430} Article 194 UNCLOS 1982 further copiously provides on the requirement of costal States to adopt measures to prevent, reduce and control the pollution of the marine environment. Costal State responsibility for environmental protection of the sea from pollution and environmental harm resulting from oil and gas activities is beyond argument. There are various other Conventions imposing this duty on States like Nigeria and Sao Tome and Principe and Australia and Timor-Leste as well as other States engaged in individual or joint offshore petroleum activities not just to mind the marine environment but also to take positive measures to protect it from the negative consequences of oil and gas development. It is therefore not surprising that robust provision for environmental protection of the marine environment has become a common feature of basically all contemporary joint development and international unitization treaties.

The ICJ had in the \textit{Case Concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia)}\textsuperscript{431} highlighted the importance of sustainable development in international law and reinforced the

\textsuperscript{429} Stockholm, 5-16 June 1971

\textsuperscript{430} UNCLOS 1982, Article 192 and 193, respectively

importance of taking into consideration new environmental standards and norms. According to the ICJ:

“…such new norms have to be taken into consideration and such new standards given proper weight, not only when states contemplate new activities but also when continuing with activities which began in the past. Such new standards emerge due to scientific development and also due to growing awareness of the risks to mankind.”

Therefore, an effective environmental protection regime for offshore petroleum development should include elements like prevention, reporting of spill and follow up, environmental impact assessment, operational discharges, marine support, contingency plans, clean up strategy, fisheries aspects and compensation regime among others.

While there has not been any known major event in this regard on the parts of Nigeria-Sao Tome and Principe and Australia-Timor-Leste joint developments, the recent events in the Gulf of Mexico oil spill where British Petroleum in its operation inadvertently spilled millions of barrels of crude oil into the sea for about four months; causing colossal damage to the aquatic environment and having to incur cost in billions of dollars on compensation, will serve as a horrific lesson for offshore contractors and their regulators not only to provide stringent rules, but also to enforce them with equal strength. In the suit, U.S. v. BP Exploration & Production

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Inc., et al.\textsuperscript{434} ensuing from the BP Gulf of Mexico oil spill from the mobile offshore drilling unit (MODU), \textit{Deepwater Horizon} resulting in the death of eleven people on the MODU, issues of safety and environmental protection standards are beginning to emerge.\textsuperscript{435} In this incident that requires little or no introduction, crude oil flowed into the Gulf of Mexico (within the outer continental shelf and EEZ of the United States and offshore the State of Louisiana), unstoppable for months until the Macondo Well was successfully sealed on September 19, 2010, almost five months after the blowout began. By that time, millions of barrels of oil had been discharged into the Gulf of Mexico and upon adjoining shorelines, causing immense environmental and economic harm to the entire region. Even though the matter is currently \textit{sub judice} but for academic purposes it is difficult to see how BP and the co-defendants will wiggle out liability under the US \textit{Oil Pollution Act} or the \textit{Clean Water Act} and even under the common law torts doctrine of \textit{res ipsa loquitur} or negligence in maintaining environmental and safety requirements and standards.

On the other hand, if there is anywhere that health and safety of personnel is to be taken much more seriously, it should be in the oil and gas sector, and even much more seriously offshore—where personnel are helpless in the face of immediate danger or threat to their health or lives. An effective health and safety regime for the offshore oil and gas activities should be able to provide for not just activities directly related to petroleum development like drilling, pipelines and installations but also ancillary activities like aviation for helicopter services, shipping, welding

\textsuperscript{434} The case is \textit{U.S. v. BP Exploration & Production Inc.}, 10-04536, U.S. District Court, Eastern District of Louisiana (New Orleans) while the combined case is \textit{Re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010}, 2:10-md-2179, U.S. District Court, Eastern District of Louisiana (New Orleans)

\textsuperscript{435} See paras. 47-56 (especially at para. 56) of the Complaint filed by the US Government at the Eastern Louisiana District Court available at \url{http://www.justice.gov/enrd/ConsentDecrees/r_BP_Deepwater_ComplaintDec15-2010.pdf} last visited December 31, 2010.
and so on with the high standard of the industry in mind. Health and safety measures usually take the form of standardization of procedures and processes, qualifications, construction standards and certification as well as constant monitoring to ensure compliance.\footnote{Brenda Barrett, “Occupational Health and Safety in Joint Development of Offshore Oil and Gas” in Hazel Fox, \textit{et. al.} eds \textit{Joint Development of Offshore Oil and Gas, Vol. II, supra} 187-201 at pp. 194-195.} Basically all known joint development agreements and cross border unitization agreements contain provisions on health and safety. The \textit{Ocean Ranger} incident at St John’s offshore Newfoundland, Canada; the \textit{Piper Alpha} disaster in the North Sea; the \textit{Alexander L. Kielland Rig} collapse off the continental shelf of Norway; the \textit{Seacrest Drillship} disaster of November 3, 1989 in the Platong gas field in the Gulf of Thailand,\footnote{Kevin Guthrie, “Oil Rig Accidents: The Worst Offshore Oil Exploration Disasters” available at <http://www.suite101.com/content/oil-rig-accidents-a139903> last visited on December 31, 2010.} and their horrific memories and associated losses of lives and property, all provide incontrovertible evidence of how seriously activities relating to health and safety of offshore petroleum activities should be taken by the operators, regulators and the international community.

\textbf{5.2.14 Criminal and Civil Jurisdictions}

Each Party exercises civil and administrative jurisdiction in the JDZ as they would in their respective EEZ and continental shelf.\footnote{Nigeria \textit{STP JD Treaty}, Article 42} However, in criminal matters, the \textit{Nigeria STP JD Treaty} and the \textit{Timor Sea Treaty}, have similar provisions with respect to criminal jurisdiction. Criminal jurisdiction within the JDZ is determined by nationality and where nationality and permanent residency conflict, the former prevails.\footnote{Nigeria \textit{STP JD Treaty}, Article 40.1} A national of a third party State will be subject to the criminal jurisdictions of both States subject to the rule against double jeopardy.\footnote{Article 40.2}
This provision restates the fundamental human right to fair hearing enshrined in almost all the jurisdictions of the world so that a person cannot be tried and punished twice for the same offence.\textsuperscript{441} In determining criminal jurisdiction of a third State national, the effect and the victim of the crime should be taken into account while the two States are required to consult to determine who exercises criminal jurisdiction. And where the offender is in detention in the jurisdiction of either State, arrangements should be made to facilitate access to the offender by the officials of the other State in the course of investigation and where necessary or requested hand over the offender.\textsuperscript{442}

The reason criminal jurisdiction should be provided for in joint development agreements is to avoid an unpleasant conflict of law experience between the States. To a large extent, the \textit{Nigeria STP JD Treaty} has been able to resolve that. However, the problem is not entirely resolved as possible international law of the sea issues are still likely to arise in the arrangement as it is. The \textit{Nigeria STP JD Treaty} while it provides for criminal jurisdiction within the JDZ failed to provide for the treatment of offences on board a vessel, aircraft or offshore drilling rig or platform within the JDZ which in international law have different regimes of jurisdiction. In international law a vessel (including offshore oil rigs and drilling platforms and aircraft) on the high sea is subject to the jurisdiction of the flag State.\textsuperscript{443} For instance, where an offence is committed on a drilling rig in the JDZ, flagged in another country, by citizens of yet another

\textsuperscript{441} It is well known in common law jurisdictions as \textit{autrefois acquit} or \textit{autrefois convict} and meant to prevent injustice to the individual who would be occasioned by a requirement to litigate afresh matters already determined by the courts. The maxim, \textit{nemo debet bis vexari pro una et eadem causa} (it is the rule of law that a man shall not be twice vexed for one and the same cause), is a rule of common law criminal justice system as way back as the \textit{Sparr's Case} (1589) 5 Co Rep 61a [77 ER 148].

\textsuperscript{442} Articles 40.3-40.5

\textsuperscript{443} Article 92 (1) \textit{UNCLOS, 1982} which provides \textit{inter alia} that “Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas…” Those exceptions are restrictive and involve international crimes like piracy and slave trade.
different country, can any of the two States- Nigeria or Sao Tome and Principe assert jurisdiction? History has shown that this is not just a hypothetical situation as this was actually experienced in the Canadian *Ocean Ranger* incident. Canada and Newfoundland were rudely awakened to the reality that they could not prosecute the alleged criminal negligence that contributed to the sinking of *Ocean Ranger*. In the current *Re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010* before the US District Court, Eastern District of Louisiana, the oil rig, *Deepwater Horizon* is flagged under the laws of the Republic of the Marshall Islands and is either owned, operated or demise chartered by Transocean Offshore incorporated in the State of Delaware, United States. It will be interesting to how this will be dealt with by the US Court, and even so more interesting considering that the United States is yet to ratify UNCLOS, 1982.

In this respect, the *Timor Sea Treaty* appears to be more insightful as it goes ahead to provide in Article 14 (d) that “...The criminal law of the flag State shall apply in relation to acts or omission on board vessels, including seismic or drilling vessels in, or aircraft in flight over, the JPDA” -thereby raising the possible conflict of law issues beyond argument and confusion.

### 5.2.15 Third Party Rights

The State Parties are expected to take into account the rights and freedom of other States to the uses of the sea in relation to the JDZ as recognized under the general principles of international law. Where a third State’s purported right is inconsistent with that of Nigeria and/or Sao Tome

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444 Supra
445 Article 45.1
and Principe over the JDZ, both States are expected to consult with a view to coordinating a response. Such rights of third party States should expectedly be the generally recognized freedom of the sea rights in international law applicable in the EEZ of States like the rights and freedoms of navigation, transit, overflight, laying submarine cables and pipelines and marine scientific research. This principally underscores the reason coastal States, in their EEZ and continental shelf, can only exercise sovereign rights as is necessary to enable them exploit the resources therein, and not sovereignty as they do on the land territory and on the territorial waters. Another possible claim of right by a third State may likely be the claim of the other coastal States bordering the Gulf of Guinea to the JDZ on the possible issue of appropriate maritime boundary delimitation between that third State and the JDZ. So far, no such known claims have arisen.

**5.2.16 Previous Interests**

This area appears to be one of the few problematic areas in joint development that requires to be carefully handled by the States, not just for continued friendly relationship in the joint zone but also to enable them maximize their joint revenue. The challenge posed here is whether an interest or right, say petroleum licence, granted by a State over the overlapping or disputed continental shelf resources can subsist upon a joint development arrangement over the same area. And my response to that proceeds from the nature of States’ rights over the natural resources of the continental shelf discussed earlier and which has been successfully argued to dismiss the possible application of the rule of capture to continental shelf petroleum resources. The ICJ in

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446 Article 45.2
447 *UNCLOS, 1982*, Articles 38, 56, 78, 79, 87, 125 and so on
the North Sea Continental Shelf\textsuperscript{448} cases decided based on customary international law that sovereign rights of coastal States over their shelf resources exist \textit{ipso facto} and \textit{ab initio} by virtue of its sovereignty over the adjacent land territory. Article 77 UNCLOS, 1982 further clearly provides that the said sovereign right is exclusive to the extent that no other State may undertake development activities thereon without the express consent of the coastal State. It goes on to assert that the sovereign rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation and neither is it lost by estoppel. Indeed the position of international law is that shelf resources are sacrosanct and invariably, a State can sue for inadvertent or willful depletion of its shelf resources. Having said that, where a State grants rights over the continental shelf resources of another, such grant is void against the rightful State- \textit{nemo dat quod non habet}. The same situation is similar to where an international court or arbitral tribunal holds or awards a territory to another or decides on the maritime boundary of disputing States as happened in \textit{Cameroon v. Nigeria}\textsuperscript{449} where the ICJ handed the territory of Bakassi Peninsula to Cameroon. All the previous interest or petroleum licence granted by the Nigerian government over the area to multinational oil and gas companies come to naught.

In a joint development however, the situation is a bit different and probably more difficult considering the practical requirement for delicate balancing of interest in a joint development, though not radically different considering the issue of title. As has been observed elsewhere, though a long while ago, state practice is of little assistance on the available options in this kind

\textsuperscript{448} \textit{Supra}
\textsuperscript{449} \textit{Supra}
of situation so that a speculative approach is resorted to.\textsuperscript{450} It is however clear that if the non-granting State decides and takes a step to repudiate the previous grants, it will be acting well within its rights but such hard-line approach may only complicate or sour the friendly joint development relationship. This issue usually will be expected to have been dealt with during the negotiation stage of the joint development and may be the deal breaker if a compromise is not reached. Whichever way, it is left for the States to decide whether to cancel the earlier grants or to accommodate and condone them.\textsuperscript{451} If the previous grants are repudiated, the granting State may be liable to the licensee in damages for breach of contract and for failure of consideration and this will likely erode the confidence of petroleum investors in that State and a possible speculation or insinuation of fraudulent intentions on the part of the granting State.

My opinion is that in the spirit of give-and-take and tradeoffs associated with joint development, such previous grants should be accepted, either as part of the joint development or as deemed valid grant of the granting State, where the granting State insists, in the interest of all the stakeholders. However, such previous grants should be strongly taken into account in deciding or reaching a sharing formula in the interest of equity and fairness and for balanced revenue accrual. In the case where it is accepted as part of the joint development, the grant should be deemed to have been made by the joint development authority and all subsequent revenue and authorisations channeled through the joint authority.

Fortunately, in recent times however, state practice in this area is gradually beginning to emerge. The \textit{Nigeria STP JD Treaty} does not specifically and substantively provide on what should be

\textsuperscript{450} Ian Townsend-Gault, \textit{“The Impact of Joint Development Zone on Previously Granted Interests”} in Hazel Fox, \textit{et. al. eds Joint Development of Offshore Oil and Gas, Vol. II, supra}, 171-186 at p. 183

\textsuperscript{451} \textit{Ibid.}
done to any existing right over the JDZ but merely provides a framework for cooperation between the State Parties with a view to resolving between them, in an equitable manner, any issue arising from previous dealings with third parties by either of them with respect to the area now coming within the JDZ. But then, such previous dealings must have been disclosed during the negotiations. Where any previous dealings are not disclosed in the course of the negotiation of the *Nigeria STP JD Treaty*, the non disclosing Party shall not be entitled to the cooperation or assistance of the other Party in resolving such issues arising from prior dealings with any third party in respect of any area coming under the JDZ. Even though it is not clearly stated, it appears that the State to whom such prior dealings were not disclosed is at liberty to decide whether to accommodate or repudiate such prior third party ‘rights’. This is the general position for previous interests under the Nigeria-Sao Tome and Principe model. However, with respect to certain a certain oil Block already licensed by Nigeria and falling within the JDZ (which was clearly disclosed in the course of negotiations), the Block was specifically excluded from the JDZ and called the ‘Special Regime Area’. This will be discussed separately in greater details to show how this previous interest was treated by the Parties.

On the other hand, the *Timor Sea Treaty*, as amended by the *Treaty on CMATS* is a paragon in its provisions concerning the treatment of prior third party rights and provides a new direction of state practice in this area that was hitherto largely unavailable, likewise the *Nigeria-STP JD Treaty* in its ‘Special Regime Area’ provision. Perhaps because of the peculiarity of the Australia-Timor-Leste relationship in the Timor Sea, such situation was cleverly anticipated and adequately provided for. Article 4 (2) of the *Treaty on CMATS* provides that the Parties can

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452 Article 46.1
453 Article 46.2
continue petroleum activities (including the regulation and authorisation of existing and new activities) in areas in which such Party’s domestic legislation as at May 19, 2002 (the signing of the Timor Sea Treaty) authorised the granting of permission for conducting activities in relation to petroleum or other resources of the continental shelf. This provision, beyond controversy, lays to rest the manner the Parties wish their previously granted interest to be treated upon the joint development. While Australia has previously granted interests in the area coming under the JPDA, Timor-Leste does not, which probably shows that this provision in the Treaty on CMATS may have been inserted for Australian benefit. And to show that this is a fresh thinking or an afterthought of 2007, there was no equivalent provision in the original 2002 Timor Sea Treaty.

5.2.17 The Special Regime Area

Article 5 Nigeria-STP JD Treaty created a Special Regime Area (SRA) as defined in the Appendix and which area should be treated as if it were within the exclusive jurisdiction of Nigeria.\(^{454}\) It is a triangular area at the edge of the JDZ with coordinates and lines set out in the Appendix. Notwithstanding any provision in the Nigeria-STP JD Treaty, Nigeria shall, throughout the duration of the joint development, have the exclusive right to administer the Special Regime Area and exercise jurisdiction over it, including the right to exploit and develop its resources for its own benefit.\(^{455}\) However, Nigeria is expected to safeguard the interest of Sao Tome and Principe by undertaking some development projects that will be governed by a separate Memorandum of Understanding (MOU) that will form an integral part of the Nigeria-

\(^{454}\) Article 31.5
\(^{455}\) Appendix
The SRA represented 10 percent of the acreage of Block 246 exploited by Nigeria prior to the negotiations of the Nigeria-STP JD Treaty. In compensation for the exclusion of the SRA from the JDZ, Nigerian government promised Sao Tome and Principe several projects in the MOU signed together with the Nigeria STP JD Treaty including a refinery and crude oil allocation, working interest in a block, the establishment of a port, the equipping and training of coast guards, and the grant of university scholarships. The MOU is however vague and does not include any details, quantities, dates and other specifics, rather everything is left open to future negotiations. It is therefore believed that future implementation of the MOU may pose some challenges for the two Countries considering that there is no strong and binding force in the commitments carried by the MOU, from a disinterested point of view and probably a Nigerian perspective too.

However, from a pragmatic perspective, this arrangement typically and empirically exemplifies the tacit requirements for tradeoffs and the spirit of give-and-take with which a successful joint development is usually associated just like the regime for previous interests in the Australia-Timor-Leste model. And in conclusion, it will recalled that earlier opinion was that there is dearth of state practice in this area. Even though state practice is beginning to appear in this direction, the assertion appears to still hold true considering that the evidence of state practice is not yet strong enough to constitute a remarkable body of state practice and consistent pattern of state behaviour in the treatment of previously granted interests in a joint development. My
opinion is that the peculiarities of the joint relationship and the States involved will largely determine future state practice in this area and this area is one better approached on a case-by-case basis.

5.2.18 Unitization

Speaking practically, there has not been any known unitization activity in the Nigeria Sao Tome and Principe JDZ unlike the Australia-Timor-Leste model. That is not to say that the Nigeria-STP JD Treaty does not provide for it, but I would want to discuss the Timor Sea Treaty first, and which provides for international unitization in Article 9 and the obligation to reach a unitization agreement in good faith. This unitization clause has been implemented by the signing of the Sunrise and Troubadour Unitization Agreement which earlier provided for apportionment ratio 20.1:79.9 between the JPDA and Australia, respectively among other things. This has been subsequently adjusted by the Treaty on CMATS which provides for 50:50 apportionments of proceeds of upstream revenue of the Greater Sunrise fields (area under the unitization) between the two States.

Unitization in the Nigeria-Sao Tome and Principe JDZ should be expected as soon as production peaks. Indeed the Nigeria STP JD Treaty prepared for possible unitization as it readily and traditionally provides:

If any single geological petroleum structure or petroleum field exists, verified by drilling to extend across the dividing line between the Zone and an exclusive maritime area of one of the States Parties, and part of such structure or field which
is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the said dividing line, either of the States Parties may give notice thereof to the other, whereupon the States Parties shall endeavour to reach agreement upon a fair and reasonable basis for the unitisation of such structure or field, having regard to the principles set out in Article 3 and the respective proportion of the petroleum located on each side of the dividing line…

Where an agreement is not reached within nine months following the giving of such notice, a fair and reasonable apportionment shall be made taking into account the petroleum to be taken from the structure or field. The apportionment shall be with retrospective effect to the beginning of production provided that the State Party which has given notice did so within reasonable time after the verification by drilling.

Under the Nigeria-Sao and Tome Principe model, four possible scenarios of unitization can be imagined. The first is between the JDZ and a State Party highlighted above. The second is possibly between two contract areas within the JDZ; the third between the JDZ and a third party State and the fourth between the JDZ and the Special Regime Area.

Negotiation of unitization for all the scenarios is done by the JDA and approved by the JMC or done by the JMC itself. Unfortunately, the Nigeria STP JD Treaty does not provide for the obligation on the parts of the operators or contractors in the JDZ to agree on unitization in the case falling under their contract areas within the JDZ. Rather, it simply provides that the JMC shall seek to reach an agreement as to the manner in which the structure or field can most

461 Article 31.1
462 Ibid.
463 Ibid.
464 Ibid. The Special Regime Area will be explained subsequently and shortly.
effectively be developed and the manner in which the fiscal returns should be apportioned, having regard to the respective proportion of the resource located on each side of the dividing line.\textsuperscript{465} The obligation to unitize however may be inserted in the subsequent development contracts between the operators and the JDA. It also does not provide for the supremacy of the \textit{Nigeria STP JD Treaty} over any unitization agreement between the operators or an obligation to insert this clause supremacy in a subsequent unitization agreement. It may however be implied.

\textbf{5.2.19 Dispute Resolution}

Disputes between the JDA and a contractor or between joint contractors and/or operators concerning the interpretation or application of a development contract or operating agreement, except otherwise agreed between the parties, will be subject to binding commercial arbitration pursuant to the terms of the relevant development contract or the operating agreement. Unless otherwise agreed, the arbitration shall be held in Lagos pursuant to the \textit{UNCITRAL Arbitration Rules}\textsuperscript{466} and administered by the AACCL Centre for International Commercial Dispute Settlement, Lagos, Nigeria. The JDA is immune from suit in any court in respect of the merits of any dispute referable to arbitration.\textsuperscript{467}

As to the functions or functioning of the JDA, any dispute arising therein shall be sought to be resolved by the Board having regard to the objects and purposes of the joint development and its

\textsuperscript{465} See Articles 31.2 and 31.3. The principle on apportionment also runs through all the scenarios of unitization contemplated under the \textit{Nigeria STP JD Treaty}.


\textsuperscript{467} Articles 47.1-47.3
guiding principles. Where the dispute cannot be resolved by the Board and the continuance of the dispute affects or threatens to affect the actual or future implementation of the *Nigeria STP JD Treaty*, it shall be referred to the JMC and the latter shall make every effort to resolve the dispute in the spirit of compromise, and without prejudice to any underlying position of either State Party. Where the dispute remains unresolved by the JMC within 12 months of referral, the JMC or either State Party may refer it to the Heads of State for their decision.

Where the Heads of State do not agree on a matter of policy or administration and the dispute has not been resolved by the Heads of State within 12 months, the *Nigeria STP JD Treaty* may be terminated with six months’ notice by either Party. In other cases not being matters of State policy, the matter will be referred to arbitration and each Party is entitled to appoint an arbitrator within 60 days and the two so appointed shall appoint the third who will be the Chairman, taking into account the habitual residence or nationality of such person. In the event that the two or either State Party fails to appoint, either State Party can apply to the President of the International Court of Justice (who must not be a national or resident of either State or if he is, the next ranking Judge) to appoint. Unless otherwise agreed, *UNCITRAL Arbitration Rules* will apply to the arbitral proceedings. The Tribunal shall sit at The Hague subject to the agreement of the Parties and the administering authority for the arbitration shall be the Secretariat of the Permanent Court of Arbitration. The award is final and Parties are expected to comply with same in good faith.

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468 Article 48 generally
469 Ibid.
470 Article 49 (1)
471 Articles 49.2-49.3
472 Articles 49.4-49.5
The provisions on dispute resolution are quite detailed and cover basically all areas of expected conflicts in the joint development. While the ambit is wider than most other joint development agreements, the provisions on international arbitration are not radically dissimilar to other joint development treaties’ provision on international arbitration, for instance the *Timor Sea Treaty* and the other Treaties made pursuant thereto.

### 5.2.20 Other Laws and Regulations Governing the JDZ

Apart from the *Nigeria STP JD Treaty* there are other laws governing development activities or prospective development activities in the JDZ. Pursuant to the powers of the JDA conferred by the *Nigeria STP JD Treaty* and the approval of the JMC, the following regulations and guidelines have been made by the JDA and approved by the JMC to govern the various aspects of petroleum development activities as the names suggest:

- The *JDZ Petroleum Regulations*: This governs conduct of petroleum activities in the entire JDZ.
- The *JDZ Tax Regulations*: This is the regime for the taxation of all the petroleum activities in the JDZ.
- The *JDZ Model PSC*: This provides the template to be used when a PSC is to be executed between the JDA and a contractor or a prospective contractor within the JDZ.
- The *JDZ Guidelines for Prospective Investors*: The general technical, legal, financial and other necessary requirements for becoming a contractor within the JDZ are contained therein.
• The JDZ Environmental Guidelines: It provides petroleum contractors with the expectations of the JDA on environmental management and standards to be complied with in order to avoid harmful consequences like pollution.

5.2.21 Nature of Rights in the JDZ

Pursuant to the Nigeria STP JD Treaty and the Petroleum Regulation 2003 made pursuant thereto, only companies incorporated in Nigeria or Sao Tome and Principe can acquire rights for any petroleum activities in the JDZ and the available rights and the nature of those rights corresponds to their names namely:

(a) An Exploration Licence (EL)
(b) An Oil Prospecting Licence (OPL)
(c) An Oil Mining Lease (OML)
(d) Production Sharing Contract (PSC)

5.2.22 Miscellaneous

There is also the requirement for joint policing to ensure the security and defence of the JDZ by the two States taking into consideration their respective defence and police needs and the costs of such activities shall be borne by them in the usual proportions. This is also necessary to protect the pipelines and installations in the JDZ from vandalism, sabotage and damage.

473 Regulations 5-9
474 Article 43
For the purposes of employment and training, the JDA may issue guidelines in respect of the relevant policies to be followed by contractors in the JDZ for the purposes of:

(a) enhancing the employment opportunities of nationals of the States Parties;
(b) assisting to the extent possible the equitable division of employment and training benefits between the States Parties.\textsuperscript{475}

To realize these objectives, the development contracts between the JDA and contractors in the JDZ contain terms embodying those policies and guidelines necessary to secure employment and training for the nationals of the State Parties and both States shall co-operate in the administration of their immigration and employment laws so as to facilitate the issue of visas and work permits for the purposes of development contracts in relation to the JDZ.\textsuperscript{476} Indeed the \textit{Petroleum Regulations 2003} not only provides for the approval of the periodic training of nationals of State Parties and approval of a detailed programme for their recruitment, but also scholarship for the nationals of States Parties.\textsuperscript{477} This is one of the positive sides to a joint development. It presents the Parties the opportunity to develop indigenous capacity especially in a situation where the petroleum development manpower is short in supply. By entrenching this requirement in the \textit{Nigeria STP JD Treaty} and also in the development contracts, Nigeria and her counterpart have succeeded in securing the much-needed employment opportunities for their

\textsuperscript{475} Article 36.1
\textsuperscript{476} Article 36.2 and 36.3, respectively
\textsuperscript{477} \textit{Nigeria-Sao Tome and Principe Joint Development Authority Petroleum Regulation 2003} (approved and adopted by the JMC on April 4, 2003), Regulations 67 and 68. This requirement for training, employment and scholarship is akin to the \textit{Nigerian Petroleum Regulations, 1969} which governs the conduct of upstream petroleum activities in Nigeria.
nationals and also laid foundation for indigenous manpower development in their respective petroleum sectors.

5.3 The Success Story of the Nigeria STP Joint Development

The JDZ has already been divided into oil blocks by the JDA pursuant to its powers under the *Nigeria STP JD Treaty* and development activities have also commenced in earnest. In 2004 there was a licensing round for the JDZ blocks based on an open competitive tender with applications evaluated on the basis of standard technical and commercial criteria.\(^{478}\) In the 2004 round, the JDA made a total of 5 blocks available for licensing. After the 2004 Licensing Round, Block 1 known as Obo-1 was awarded in April 2004, and is operated by ChevronTexaco following its successful bid of US$123 million.\(^ {479}\) The licensed area is about 700 square kilometers and in water depths ranges from 1,600 to 1,800 meters. Within this licensed area, a discovery was made in 2006 (Obo-1 well).\(^ {480}\) The investors in the Block 1 are:

- ChevronTexaco- 51% equity
- ExxonMobil- 40% equity
- Dangote-Energy Equity Resources- 9% equity

On July 15, 2010 however, Total announced the signing of an agreement to acquire Chevron’s 45.9% interest in Block 1 in the JDZ.\(^ {481}\) Dangote-Energy Equity Resources with 9 percent equity holding in the Block is a budding Nigerian indigenous oil company to which the JDZ has


\(^{479}\) *Ibid.*


\(^{481}\) *Ibid.*
provided an opportunity to participate in upstream petroleum development. The level of manpower skill and experience that will be garnered by the company speaks volume of the benefits of joint development. It also provides an amazing opportunity for direct and indirect petroleum technology transfer for the company to harness- thanks to the Nigeria-Sao Tome and Principe joint development.

In May 2006 the JDA announced receiving payments for signature bonuses totaling US$145,649,647.00 received from the contractors in respect of Blocks 2, 3, & 4 after the 2004 Licensing Round. Addax Petroleum is the operator for Blocks 3 & 4.  

With respect to development and production activities in the JDZ, currently all the blocks and wells are still at the exploratory stages. However, drilling and exploratory activities are well advanced. The first exploration well to be drilled was Block 1 (Obo-1) by ChevronTexaco, using Transocean Corporation’s deepwater *Discovery* drillship. The drilling operation was completed within 63 days on March 15, 2006 with no accidents or environmental incidents and the well is expected to be producing by 2010. *Aban Abraham* drillship is currently being repositioned for deepwater exploration in Blocks 2, 3 and 4 and five exploratory wells were expected to be drilled in 2010- three by Addax Petroleum in Block 4, one by Anadarko in Block 3 and one by Sinopec in Block 2.

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482 <http://www.n-stpjda.com>  
483 <http://www.n-stpjda.com> (from homepage click on “Development” or “Production”) last visited January 6, 2011  
484 <http://www.n-stpjda.com> (from homepage click on “Drilling”) last visited January 6, 2011  
In terms of expected downstream petroleum development in the JDZ, reliable petroleum infrastructural network already exists in the Gulf of Guinea to support the production in the JDZ when it eventually peaks, especially in Nigeria. The historical levels of oil and gas production in Nigeria have led to a network of onshore oil pipelines linking various oilfields and the main oil refineries. Petrochemicals are produced at a number of places in Warri and Port Harcourt in Nigeria and major oil services companies have offices in the region while new oil support services centres, such as the Onne Oil and Gas Free Zone and the Luba Freeport (all in Nigeria) are being developed speedily.\textsuperscript{486} Gas pipelines also exists and are expected to transport natural gas possibly from the JDZ through other West African coastal countries to Ghana under the West Africa Gas Pipeline Project (WAGP) and to Algeria under the anticipated Trans-Saharan Gas Pipeline Project.\textsuperscript{487} A feasibility study is also being done for a gas-to-liquids (GTL) plant at Escravos, Nigeria and current developments at the Bonny Island LNG plant in Nigeria will increase output capacity to 17.3 million tons per year of LNG, 2.5 million tons per year of LPG and 1 million tons per year of condensates while new LNG plants are planned at Brass River in Nigeria and Bioko Island in the Equatorial Guinea.\textsuperscript{488} These entire downstream infrastructures are expected to accommodate the productions in the JDZ when it fully commences.

In order to create activity for other resources of the JDZ, the JDA, with the approval of the JMC, has created the Non Hydrocarbon Resources Department in the JDA whose function is to explore and develop other marine resources in the JDZ.\textsuperscript{489} The Department comprises two units the first of which is the Fisheries Resources Unit charged with superintending the development and

\begin{footnotesize}
\textsuperscript{487} Ibid.
\textsuperscript{488} Ibid.
\textsuperscript{489} Information available at <http://www.n-stpjda.com/nonhydro.asp> (from homepage click on “Non Hydrocarbon Resources in the JDZ”) last visited January 6, 2011
\end{footnotesize}
conservation of all living marine resources in the JDZ, focusing on living marine resources such as fish, shrimps, lobsters, sea plants and so on. It is also responsible for developing the relevant regulatory framework for the sector.\textsuperscript{490} Periodic assessments of fisheries stock will also be conducted and the Unit will coordinate close surveillance of the fisheries area to minimize illegal, unreported and unregulated fishing. The second unit is the Mineral Resources Unit whose function is the environmentally friendly and sustainable development of non-oil mineral deposits such as gold, silver, diamonds, quartz, copper, polymetallic nodules and so on if discovered.\textsuperscript{491} The Department is currently working on a project called “Marine Resources Survey of the Joint Development Zone” which will provide information on the distribution of fisheries and non-oil mineral resources in the JDZ. This will be done in three phases- the third and last phase will involve the formulation of policies, guidelines and regulations on fisheries and mining comparable to the Food and Agricultural Organization’s (FAO) and international standards, respectively.\textsuperscript{492}

\textsuperscript{490} Ibid.  
\textsuperscript{491} Ibid.  
\textsuperscript{492} Ibid.
Figure 5.4 has been removed for copyright restrictions. It is a map showing how the JDZ has been subdivided into petroleum blocks. It also shows the area of the blocks in square km. The blocks in yellow are already licenced while the blank ones are yet to be licensed. Original source: <http://www.nigeriasaotomejda.com>
Figure 5.5: Map Showing Downstream Petroleum Infrastructure in the Gulf of Guinea

Figure 5.5 has been removed for copyright restrictions. It is a map showing a network of midstream and downstream petroleum infrastructure in the Gulf of Guinea like oil and gas pipelines, refineries, LNG terminals, deepwater ports and so on. It is used to demonstrate that ready infrastructure exists to accommodate petroleum development in the JDZ. Original source: <http://www.nigeriasaotomejda.com>
5.4 Could there have been a Joint Development in the Bakassi Peninsular?

This question is certainly academic having been overtaken by events and considering that some Nigerian writer has also reasoned in this perspective. On March 29, 1994, Cameroon instituted proceedings at the ICJ against Nigeria in a territorial dispute over the Bakassi Peninsular on one hand and for the determination of the maritime boundary between the two countries as set by the Declarations of Yaoundé I & II and The Maroua Declaration so that it was both a land territory and maritime boundary dispute culminating in the Case Concerning the Land and Maritime Boundary between Nigeria and Cameroon (Equatorial Guinea Intervening). In The Maroua Declaration the two Countries had agreed to extend their maritime boundary in the Akwayafe River - Point 12 to Point G on the British Admiralty Chart No. 3433 annexed to the Declaration. Cameroon therefore called on the ICJ to set the maritime boundary in accordance with the Declaration. Basically almost all the technical preliminary objections of Nigeria as to jurisdiction of the ICJ, the interest of Equatorial Guinea, admissibility of evidence and so on, were rejected by the ICJ. The ICJ accepted Cameroon’s submission by upholding the validity of the Declarations of Yaoundé I & II and The Maroua Declaration and also adopted the equidistance line between the two States which, in the ICJ’s view, produced an equitable result. The ICJ also reasoned that negotiations between the two countries on their maritime boundary stated way back as at 1970 and that the requirement for negotiation of maritime boundary pursuant to Articles 76 and 84 UNCLOS 1982, which Nigeria argued had not been fulfilled, could not have been better fulfilled following the decades of maritime boundary negotiations.

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493 See for instance Chidinma Bernadine Okafor, “Joint Development: An Alternative Legal Approach to Oil and Gas Exploitation in the Nigeria-Cameroon Maritime Boundary Dispute?”, supra

494 Yaoundé Declaration I of August 14 1970 and Yaoundé Declaration II of April 4 1971 which were adopted by the Cameroon-Nigeria Frontier Commission [and hereinafter jointly known as the Declarations of Yaoundé I &II] and The Maroua Declaration (1 June 1975) (meeting held at MAROUA from May 30 to June 1, 1975) available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/CMR-NGA1975MD.PDF>

495 Supra, also known and used interchangeably with Cameroon v. Nigeria in this work and elsewhere.
Upon the drawing of the line as fixed by the ICJ, the oil-rich lacustrine territory of the Bakassi Peninsular, thitherto administered by the Nigerian government fell on the Cameroonian side.

Perhaps a little history will be necessary to appreciate the deep-rooted Nigerian emotions towards the Bakassi Peninsular. The Bakassi community was a part of the Old Calabar Kingdom of the present day Cross River State (the equivalent of a Province in the Canadian federal structure) of Nigeria. The Bakkasi chiefs paid tribute to the Obong (King) of Calabar in recognition of the latter’s pre-colonial sovereignty. As a fishermen settlement in the 18\textsuperscript{th} Century, the inhabitants speak Efik, which is the language of the Calabar people of Nigeria.\textsuperscript{496} It is no controversy that colonialism has been a constant source of boundary conflicts and in Africa particularly and played its part in the Nigeria-Cameroon dispute over the Bakassi.\textsuperscript{497} Boundary delimitation over the Bakassi started with the Anglo-German Agreement of 11 March 1913\textsuperscript{498} between the two colonial masters wherein the former transferred title to the Peninsular to the latter without paying any attention to the fact that communities through which the boundary traversed were one and the same, thereby effectively dividing the community into two countries. The subsequent post colonial Agreements between the two Countries did not rectify this probably because the implications of boundary line were largely unclear to the leaders.


\textsuperscript{497}A. T. Aghemelo and S. Ibhasebhor, \textit{supra} at p. 179.

Eventually oil was discovered by Nigeria in the Bakassi. Cameroon, probably for the first time contested Nigerian sovereignty over the Bakassi and resisted Nigerian activities in the area when oil and gas were discovered and Nigerian government started the licensing of petroleum activities in the area. Matters eventually came to a head when, in 1994, Nigerian troops on the orders of the military government occupied the Bakassi peninsular to demonstrate Nigerian sovereignty over the territory and protect her citizens from the purported Cameroonian incursion. Both countries recorded considerable civilian and military casualties before Cameroon decided to submit the dispute over the Bakassi and the entire land and maritime boundaries it shares with Nigeria to the ICJ.

Upon the ICJ judgment, it became necessary for the Nigerian government under the then President Olusegun Obasanjo to demonstrate goodwill and exemplary leadership in Africa and provide a blueprint on boundary dispute settlement and peaceful conflict resolution in Africa by dismantling the Nigerian government apparatus in the Bakassi. This initiative did not go down well with the people of Nigeria and the Bakassi ‘Nigerians’ who saw themselves as having been betrayed by the Obasanjo government. This withdrawal was preceded by intense political and diplomatic activities brokered by the United Nations and witnessed by Britain, France, Germany and the United States and eventually culminated in the signing of the infamous (from an average Nigerian perspective) *Green Tree Agreement* between Nigeria and Cameroon on June 12, 1999. 

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2006 in which both countries agreed on the modalities for the transfer of Nigerian administration in the territory to Cameroon.  

Article 1 of the *Green Tree Agreement* provides:

Nigeria recognises the sovereignty of Cameroon over the Bakassi Peninsula in accordance with the judgement of the International Court of Justice of 10 October 2002 in the matter of land and maritime boundary between Cameroon and Nigeria. Cameroon and Nigeria recognise the land and maritime boundary between the two countries as delineated by the Court and commit themselves to continuing the process of implementation already begun.

Cameroon on the other hand, after the transfer of sovereignty of Bakassi, guaranteed to the Nigerian nationals living in Bakassi Peninsular the exercise of fundamental rights and freedoms enshrined in international human rights law and in particular Cameroon undertook not to force the Nigerians living in Bakassi to change their nationality. Cameroon further guaranteed to respect the culture, language, and beliefs of the Nigerians, their continued fishing rights, their customary land rights and property and to take every measure necessary to protect them from harassment, harm or discrimination.

To demonstrate the popular opinion in Nigeria and disapproval for the ICJ judgment over the Bakassi Peninsular, the Nigerian National Assembly refused to ratify the *Green Tree Agreement* arguing that Section 12 of the Constitution of the Federal Republic of Nigeria requires the ratification of the National Assembly failing which the *Green Tree Agreement*

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501 *Green Tree Agreement*, Article 3
502 Ibid.
503 The National Assembly is the federal legislative arm of government in Nigeria.
would be unconstitutional, null and void. This position was canvassed against the popular arguments of renowned constitutional and well informed international law writers in Nigeria. However, the National Assembly position notwithstanding, on August 14, 2006, Nigerians tearfully and nostalgically watched as the Nigerian green, white and green flag was lowered and the Cameroonian flag hoisted in the Bakassi Peninsular and Nigerian military withdrawn. Two year later, August 14, 2008, the remaining Nigerian administration and police in the Bakassi Peninsular were finally dismantled marking the conclusive resolution of the Bakassi conflict between Nigeria and Cameroon. Nevertheless, in the final analysis, the consequences of *Cameroon v. Nigeria* evidence some of the many unsavory relics of colonialism in Africa. 

Be that as it may, in conclusion it would have been possible for Nigeria and Cameroon to jointly develop the Bakassi Peninsular considering the proximity of the peninsular and the Nigerian borders and the conflicting claims to the Bakassi. It would, without doubt, have been a suitable candidate for joint development in lieu of outright land and maritime delimitation between the two Countries, at least speaking from a Nigerian perspective. Even then, notwithstanding the ICJ decision and the *Green Tree Agreement*, at least an international unitization between Nigeria and Cameroon may be inescapable when petroleum production kicks off in the Bakassi if a petroleum reservoir is found to straddle the territory of Nigeria and Cameroon’s Bakassi. Another possibility that could have been considered before proceeding to the ICJ would have been the establishment of a tripartite joint development among Nigeria, Cameroon and Equatorial Guinea in the Gulf of Guinea considering the positioning of the Bioko Island- an

506 Francis Menjo Baye, “Implications of the Bakassi Conflict Resolution for Cameroon”, *supra* at p. 11
island capable of generating an EEZ and probably an extended continental shelf on the criteria set by Article 121 UNCLOS, 1982. As a matter of fact, the three States could have fixed a tripoint in the Gulf of Guinea. It may be recalled that Equatorial Guinea was an intervener in the *Cameroon v. Nigeria*\(^{507}\) in order to protect its maritime boundary interest in the Gulf. And yet a third possibility is a quadripartite joint development amongst Nigeria, Cameroon, Equatorial Guineas and Sao Tome and Principe in the Gulf of Guinea. All these may be hypothetical having been overtaken by events but a close look at the map of these coastal States abutting into the Gulf of Guinea reveals that this was a major probability that could have materialized if it was explored. However, it would have depended on how strongly and vigorously those States were able to assert their maritime boundary claims and the collective political wills of their respective leaders. Finally, to prove that these possibilities are not merely fictitious or academic, the maritime boundaries of these States in the Gulf of Guinea have been resolved in different ways. First, that of Nigerian and Cameroon has been resolved, sadly, by the ICJ in 2002 in *Cameroon v. Nigeria*\(^{508}\) while that of Nigeria and Sao Tome and Principe has been resolved, ideally, by the *Nigeria-STP JD Treaty* that ushered a joint development between them in the Gulf of Guinea. And finally, that of Nigeria and Equatorial Guinea has been resolved, not just by a maritime boundary agreement concluded at about the same period, but also by a joint international exploration and international unitization agreement between the two Countries in the Gulf of Guinea.\(^{509}\)

\(^{507}\) Supra  
\(^{508}\) Supra  
Figure 5.6: Map of the Bakassi Peninsular

Figure 5.6 has been removed for copyright restrictions. It is a map showing the Bakassi Peninsular- an area with proven oil and gas deposits and disputed between and Cameroon. It borders the two countries to the south. The map show a complex web of rivers and tributaries to the Atlantic Ocean which could have engendered the disputed boundaries of the two countries. The ICJ had ruled that the territory is part of Cameroon. Original source: <www.un.org/Depts/Cartographic/map/profile/bakassi.pdf>
Figure 5.7: Map Showing a Possible Tripartite or Quadripartite Joint Development in the Gulf of Guinea

Figure 5.7 has been removed for copyright restrictions. It contains a map of the intersecting maritime relations and boundaries in the Gulf of Guinea. It shows the effect of the ICJ decision in *Cameroon v. Nigeria* on the Gulf of Guinea maritime boundaries. It further evidences the intersecting of maritime boundaries amongst Nigeria, Sao-Tome and Principe, Cameroon and Equatorial Guinea (through the Bioko Island). The writer uses the map to demonstrate that there could have been a possible tripartite or quodrupatite joint development in the Gulf of Guinea amongst the four countries bounded on the Atlantic Ocean. Original source: <http://www.alleventsgroup.com/archives_presentations.php?id=42>
Figure 5.8: Map Showing the Maritime Boundary Effects of the ICJ Judgment

Figure 5.8 has been removed for copyright restrictions. It is a map which demonstrates the maritime boundaries in the Gulf of Guinea amongst Nigeria, Sao-Tome and Principe, Cameroon and Equatorial Guinea (through the Bioko Island). The dotted red line shows Cameroon’s claimed boundary while the straight red line shows the boundary fixed by the ICJ. The blue line however shows the Nigerian-Equatorial Guinea Treaty boundary line. Original source: <http://www.alleventsgroup.com/archives_presentations.php?id=42>
CHAPTER 6

Conclusions- Counting the Gains

In concluding this research work, at this juncture, it is just necessary to restate the thesis statement forming the fulcrum of this research- that delimitation is not a panacea to maritime boundary dispute in the face of straddling natural resources or overlapping claims to a resource-laden area. In the earlier part of the work, a study of delimitation, its values, methods and current challenges was undertaken and in the end it became clear that delimitation whether by agreement or third party settlement does not resolve resources development challenges where resources extend the boundary line or where the boundaries are disputed. The subsequent chapter further attempted to explain in details the general concept of joint development; all the international law challenges and controversies surrounding the practice and its status. The next chapter further dealt with specific examples of joint development not just as mere theoretical concept but as a concept already being demonstrated by state practice. The chapter also demonstrated the working details and significance of the joint development arrangements studied. And finally, the detailed provisions of the Nigeria-Sao Tome and Principe joint development were discussed, not just as reflection of the writer’s sentiments for the Gulf of Guinea maritime resources cooperation arrangements, but also a model of a peaceful and successful joint development. Those were necessary not just to dissuade outright delimitation where resources are involved, but to highlight the tantalizing merits of joint development and to recommend same in deserving circumstances.
While preponderance of state practice points towards joint development as a temporary measure pending delimitation, joint development or a hybrid of it is not uncommon as a permanent solution to intractable resources development challenges in the maritime borders. In all, what has been discussed so far demonstrates how joint development can be used to achieve economic, socio-cultural and political objectives of neighbouring States so that instead of meaningless maritime boundary delimitation either by agreement or some form of third party dispute resolution, a joint development initiative should, in deserving circumstances, be pursued *ab initio*. The same argument goes even much more strongly for natural resources areas of disputed or overlapping maritime claims. In the final analysis, the specific reasons and merits highlighted hereunder are the more compelling reasons opposite or adjacent costal States should rethink maritime boundary delimitation and promote joint developments where the circumstances call for it. These points therefore underscore the inherent advantages of joint development and shall be examined carefully.

### 6.1 The Importance of Joint Development to World Peace and Security

The underlying principle for the settlement of disputes as mandated by the United Nations and based on which it was formed is the pacific settlement of international disputes amongst nations. Unfortunately, however, many conflicts in the world are engendered by boundary disputes. Another proportion of international conflicts are resources related- usually minerals and oil and gas related- either for the control or for some other causes close to that. Where control of natural resources is the underlying source of conflict and the pretext of sovereignty over a territory is a mere façade, joint development would be best suited to assuage the sovereign ego of such countries. For instance, in the Nigeria-Cameroon circumstance, there would have been no need
for the military casualties that were recorded in the Bakassi Peninsular over the control of the oil-rich zone if joint development were resorted to *ab initio*. Nigeria and Cameroon decided to engage themselves militarily in the Bakassi peninsular at the outset and up to mid 1990’s, there were skirmishes that claimed both military and civilian lives. Underlying this quest for sovereignty over Bakassi was however the struggle to control the natural resources of the area. And come to think of it, there were really no arguments about the ownership of the territory until oil and gas were discovered in the region and licences were being awarded to the oil majors by the Nigerian government. It was only when this potential wealth was unearthed that the relevance of title to Bakassi became contentious. Otherwise, prior to that period, Nigerian government had administrative presence and control of the area. However as noted earlier, all the years lost to adjudication and the military and civilian casualties recorded in the Bakassi would have been very easily eschewed if joint development were opted for by Nigeria and Cameroon from the outset. Indeed even now, after the ICJ judgment, there is still the prospect of joint development by way of international unitization where the resources are found to straddle the boundaries. A close look at the boundary set by the judgement reveals this possibility. That joint development helps avoid resources conflict and maintain peace and friendly neighbourly relations amongst nations is evident in the preambles of basically all known joint development agreements.

6.2 Maritime Security and Sustainable Development of Marine Resources

Part XII UNCLOS, 1982 provides a general framework for the regulation of environmental aspects of the sea. It also imposes obligations on States to ensure that international standards and rules on environmental protection of the ocean are maintained. Prior to the coming into effect of
UNCLOS 1982, the *1972 United Nations Conference on Environment and Development* also created a framework for states to ensure that human activities like pollution do not cause harm to the marine environment. Likewise the *1973 International Convention for the Prevention of Pollution From Ships (MARPOL 73/78)* which prohibits ships from polluting the marine environment for the benefit of the entire mankind. Coastal, port and flag States have various responsibilities towards the practical implementation of these Conventions. Unfortunately, where maritime jurisdiction is in dispute, it will be difficult to enforce these environmental standards considering the nature of state responsibility in international law. The lawlessness in the South China Sea is an instance. Also, the navigational regimes provided for and recognized by UNCLOS 1982 and other conventions may be compromised if there are no clear maritime jurisdictions within the area of navigation especially with the requirement of prior notification under UNCLOS 1982, and which is much more prevalent amongst the East Asian coastal countries like Cambodia, China, North Korea, Philippines, Indonesia and Vietnam. Where there is a maritime dispute, such requirement of prior notification may create a political dilemma for a vessel navigating the waters.

Joint development has been, and can be used to overcome these challenges by achieving maritime navigational security, environmental protection of the oceans and sustainable development of the marine living resources with corresponding joint State responsibility. On the contrary, where the areas of the ocean are disputed and there has been no agreement on joint development, the level of chaos or indifference that may exist will leave no State with the

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responsibility to ensure and safeguard any of those virtues of the ocean. For instance, unconventional means of fishing may be adopted, piracy, dumping and massive degradation of the marine environment may as well thrive. Under the Nigeria-Sao Tome and Principe, Australia-Timor-Leste models of joint development already discussed and other joint developments, there are provisions for environmental protection, conservation of the living marine resources, policing and maintenance of security within the joint zones.

6.3 Joint Development as a Veritable Alternative to Outright Delimitation

Articles 74 and 83 UNCLOS, 1982 generally recognize that a voluntary maritime boundary agreement entered into by the Parties remain the best method of delimiting their maritime boundaries and for the purpose of determining maritime boundaries, the court or tribunal will first have recourse to the agreements between the parties on their maritime boundaries. This was demonstrated in Cameroon v. Nigeria\textsuperscript{512} and a host of other cases. In a situation where the maritime boundary has already been delimited and a reservoir is found to straddle the boundary line, delimitation cannot effectively resolve such situations and that is why international unitization clauses (like the famous Article 4 of the UK-Norway Treaty) have become a common feature of basically all contemporary maritime boundary delimitation agreements. Hence, where wealth generating natural resources like petroleum or fisheries are involved, this expectation could be utopian considering their character. That is why in the same breath the Articles provides in (3) that pending such agreement, the States concerned, in a spirit of understanding and cooperation, “shall make every effort to enter into provisional arrangements of a practical nature

\textsuperscript{512} Supra
and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”

Even though Articles 74 (3) and 83 (3) UNCLOS, 1982 contemplate a “provisional measure”, there is nothing in international law or state practice that prohibits a perpetual joint development which does not have provision as to tenor or termination like the Saudi Arabia-Bahrain model. It is also possible for Parties to tie the joint development to the life of the resources after which it becomes a buffer zone, common park or anything of their choice. In either situation or in any case, joint development can serve in lieu of outright delimitation depending on what the Parties agree. Furthermore, the cost and time involved in international adjudication, coupled with the unpredictability of outcome, should make joint development more attractive than outright delimitation where natural resources are the centre of attraction.

### 6.4 Example of Political Maturity and Good Neighbourliness in International Law

Joint development is a practical demonstration of goodwill and a sense of international political responsibility between neighbouring coastal countries especially where they are of manifestly unequal economic and political strengths. Two joint developments may serve to illustrate this point- the Nigeria-Sao Tome and Principe model and the Australia-Timor-Leste model. These bigger countries in their relationship with their relatively smaller partners clearly demonstrated good attitude in treating their economically and politically less advanced neighbours, first of all by refraining from browbeating and imposition of political will on their smaller neighbours. Between Nigeria-Sao Tome and Principe for instance, the negotiations were conducted on the basis of mutual respect and the sharing of revenue and cost is ratio 60:40 respectively.
notwithstanding Nigeria with the highest population in Africa; her relative economical strength and geographical size against Sao Tome and Principe- the second smallest country in Africa. On the part of Australia and Timor-Leste as well, the level of economic, geographical and political disparity is so very evident when the two Parties are juxtaposed. This did not reflect any imbalance in the negotiations and revenue sharing on the part of the stronger Sovereigns. Indeed under the *Timor Sea Treaty* Timor-Leste gets an lion’s share of the revenue from the joint development in 90 percent to Australia’s ridiculous 10 percent. Under the recent *Treaty on CMATS* relating to the international unitization of the Greater Sunrise field, revenue from upstream activities is unbelievably shared equally between the ‘unequal’ States.

Joint development in these two instances has therefore been used to demonstrate the principles of equality of nations entrenched in *United Nations Charter* and other international instrument as the guiding principle for relations amongst nations and also as a means of demonstrating the spirit of give-and-take in international relations and friendship amongst States.

### 6.5 Joint Development as an Effective Prophylaxis to Delimitation

From state practice, typically, joint developments are tenured to last for a long time ranging from 40 to 50 years- a time when it is reasonably anticipated that the meaningful life of the natural resources will last. The *Nigeria-STP JD Treaty* has a tenor of 45 years while the *Timor Sea Treaty*, as amended by the *Treaty on CMATS* is billed to last for approximately 50 years. This way, the political tension associated with the discovery of natural resources like petroleum over an overlapping or disputed area (like Nigeria and Cameroon over the Bakassi Peninsular), will be effectively defused by a joint exploitation of those resources by the lacustrine neighbours. Indeed
this appears to be the intendment of Articles 74 (3) and 83 (3) UNCLOS, 1982 when they contemplate and enjoin States to adopt a “provisional measure” pending the final delimitation of their contentious maritime boundaries. It is very likely that upon the depletion of the disputed resources (particularly non renewable ones like petroleum) the Parties will be more comfortable to make meaningful tradeoffs without incurring the wrath of their citizens who would generally view an unfavourable delimitation as a gifting away of their God-given resources by their leaders. At any rate, considering the relatively long duration of a joint development, the eventual negotiations of a permanent maritime boundary may well be a matter for the next generation of political leaders to worry about. Maybe at that time, the political awareness and sophistication of the subsequent generation of political leaders of such coastal States will make a permanent maritime boundary much easier to negotiate, coupled with the probably much less economic value derivable from and attached to the area.

6.6 Joint Development is preferred to Loss of Citizenry and Natural Resources

In Cameroon v. Nigeria\textsuperscript{513} the ultimate effect of the ICJ judgment was to cede the territory of Bakassi Peninsular to Cameroon and make the people Cameroonians, except they choose to abandon their ancestral homes. It was only with the grace and understanding of the Cameroonian government and the tactical diplomatic negotiations of the Obasanjo-led Federal Government of Nigeria that the \textit{Green Tree Agreement} was signed by the two Countries after the ICJ judgement thereby giving the ‘Nigerians’ living in the Bakassi the choice of opting for either nationality of their choice. Even then, the transition story has not been all that palatable for the Nigerians in the quondam Nigerian-governed territory. This is not quite surprising considering the nature and

\textsuperscript{513} Supra
subject matter of the emotive *Green Tree Agreement* which in practical effect partially attenuates Cameroonian sovereignty over the Bakassi and its inhabitants. Dealing with the displaced Nigerians in the Cameroonian Bakassi promises to be a sensitively tricky situation especially if Cameroon decides to negate or disregard the *Green Tree Agreement*. This emotive situation would not have arisen if the Nigerian and Cameroonian governments thought better of joint development; sheathed their swords and refrained from approaching the ICJ.

Apart from that, using *Cameroon v. Nigeria*\(^{514}\) as a further instance, all the petroleum and other living resources of the Peninsular were handed over to Cameroon, leaving Nigeria with nothing after all the years of administration and preservation of the Bakassi Peninsular. As a matter of fact some areas of the peninsular are already the subject of Nigerian oil and gas prospecting and development licences and most, if not all of these, were lost to Cameroon in the judgement. The winner-takes-all character of judicial decisions remains one of the major disadvantages of a third party dispute resolution in boundary matters- they are largely unpredictable and the consequences more overreaching and unsavoury than was contemplated by the Parties, especially for the losing Party.

### 6.7 Development of Human Resources and Exchange of Ideas in Resources Management

Joint development has also been used as an avenue for the Parties to engage in exchange of resources development and management ideas and information not just to enhance their joint development initiative but also for them to improve their domestic fronts. Also, the human

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\(^{514}\) *Supra*
capital of the countries engaged in joint development is developed in the course of work on the joint development as this will also be imported for use domestically.

A good number of petroleum joint development agreements contain clauses on the obligations of the contractors in the joint development zone to employ the nationals of the State Parties in the development of the zone. Ready examples exist in the Australia and Timor-Leste joint development and in Article 36 of Nigeria-STP JD Treaty which provides:

The Authority may issue guidelines in respect of the employment and training policies to be followed by contractors in the Zone for the purposes of:

(a) enhancing the employment opportunities of nationals of the States Parties consistent with the safe and efficient conduct of petroleum and other development activities;
(b) assisting to the extent practicable the equitable division of employment and training benefits between the States Parties.

There are provisions relating to training and scholarship schemes for nationals of Nigeria and Sao Tome and Principe by the contractors engaged in the development of the JDZ obviously made pursuant to this mandate. In this way these Countries are able to expose their petroleum professionals to the best skills and training available in their various fields. Even where all these are not expressly contained in the policy or contracts, the petroleum experience gained by the interaction of the nationals involved in the development of the zone will be invaluable back home especially where the local industry of either or both are less developed in terms of

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515 Petroleum Regulation 2003, Regulations 67 and 68 (made pursuant to the powers of the JDA in the Nigeria-STP JD Treaty)
petroleum industry technology, management and policy experience like in Timor-Leste versus Australia and Sao Tome and Principe versus Nigeria.

6.8 Transfer of Technology and Development of Municipal Petroleum Laws and Policy

Apart from the development of human resources in petroleum technology, management and policy issues, joint development also offers opportunities for countries engaged in it to help each other, where necessary, in the acquisition of petroleum development technology either as demonstration of goodwill or at friendly cost. The interaction encouraged by the joint development will make this initiative and its possible negotiation much less formal. For instance, Timor Lester and Sao Tome and Principe will be better placed to obtain petroleum technology transfers from their partners or the contractor now that they are engaged in a joint development that if they were not. In the latter case, the negotiations will be distant, arms-length commercial transaction. Even without a formal transfer of technology, the interactions and exchanges alone will empower them to reform and improve their domestic processes.

In the same vein, the Party with less developed petroleum governance and policy strategies will be able to upgrade their municipal ideas with the experiences of their joint development partner. Also, they will be a possible improvement of the joint development strategies with the advanced municipal experience of the more developed Party. For instance, apart from the Nigeria-STP JD Treaty, the rest of the laws, regulations and guidelines applicable to the JDZ are prototypes transplanted from their Nigerian municipal equivalents, only mutatis mutandis.
6.9 Avoidance of Competitive Drilling and its Consequences

Even though the popular scholastic opinion is that the rule of capture does not apply in international law, in some quarters it is widely believed to apply in the absence of an agreement expressly to the contrary or a decision eliminating the rule. Some States with straddling or overlapping resources may, without complaints from either side, engage in the exploitation of the straddling resources or resources in their disputed boundaries. It is also very possible for States in these scenarios to agree expressly or tacitly that each Party has the right to take whatever resources it is able to produce. In this kind of situation, the States will be replicating the situation in the United States prior to their experience of oil and gas unitization. For each State from either side of the boundary line, it will be an unbridled scramble for the resources and neither State would likely care less, understandably so. The economic life of the resources will be jeopardized and possibly wasted just like the duplication of the resources from both sides of the boundary. The marine environment will also be another likely casualty of the resultant competitive drilling and production by the States.

Joint development and international unitization can be used to eschew these unpleasant consequences of competitive drilling of straddling or overlapping resources. This will most likely be welcome in the event that development is prohibited by the States or either State in such overlapping areas of interest. Joint development or cross border unitization as the case may be, more than accommodates their diverse interests in the natural resources. It will also be better for States to jointly develop their resources than to expose themselves to the risk of an international action in damages for the breach of sovereign integrity by interfering with the sacrosanct continental shelf resources of their coastal neighbour.
6.10 Guarantees Investors’ Title to the Licensed Resources

Investors need a guarantee that their investment is safely insulated from politics and possible erratic national and international policies of their host country where they invest. In a situation where the certainty of investment is not guaranteed, foreign investors will certainly be repulsed. Their financiers will be less forthcoming with the funds to enable them invest in precarious offshore petroleum exploration and production that is replete with potentially protracted international litigation. Where the boundary resources are disputed, a State may go ahead and issue licences covering those areas as evidence of exercise of sovereignty in the disputed area as a show of consistent state practice before a court or a tribunal. Such oil exploration licensee stands the risk of losing all the exploration expenses and investments made in the disputed area in the event of an unfavourable decision or award. One of the aftermaths of *Cameroon v. Nigeria* is the resultant loss to some of the oil majors that have already been licensed by the Nigeria government in the disputed Bakassi Peninsular before and after the dispute had begun. Such affected companies may have to persuade the government and appeal to their sense of reason to issue them fresh licences in different areas considering the amount of cost and effort wasted in the Bakassi and no investor would enjoy to find itself in that kind of situation. It is for this reason that investors would and should be scared to invest in the resources of troubled waters. In the Timor Sea, Woodside Energy Ltd put off its Sunrise fields project in 2005 and indicated their unwillingness to proceed with the venture in the absence of legal and fiscal certainty occasioned by the refusal of Timor-Leste government to approve the *Sunrise and Troubadour Unitization Agreement* between Timor-Leste and Australia. This is

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516 Supra
517 Clive Scofield on Mind the Gap, *supra*, at p. 197
notwithstanding that they had committed about A$ 200 million.\textsuperscript{518} Woodside eventually resumed work on the field following the successful negotiation and ratification of the subsequent \textit{Treaty on CMATS}.\textsuperscript{519}

Fortunately, joint development is a mechanism that can be used not just to guarantee offshore petroleum investment but also to pass a valid title to the licensees as the case may be. In the \textit{Timor Sea Treaty}, title to the joint development area rests with the two States jointly while the joint development authority issues licences on behalf of the two Governments. The same situation exists under the \textit{Nigeria-STP JD Treaty} and the contractor’s title to the resources is recognized upon production which entitles the contractor to dispose of the petroleum in any manner it pleases.\textsuperscript{520}

\section*{6.11 Joint Development Guarantees Fair and Equitable Results}

Finally, but certainly not the least in importance is the role of joint development in achieving fair and equitable results in the boundary relations of neighbouring States. At the root of maritime boundary delimitation jurisprudence is the concept of equity. Specifically, the determination of maritime boundaries in the territorial seas of opposite or adjacent States is determined by several factors and principles cardinal of which is equidistance.\textsuperscript{521} On the other hand, opposite and adjacent coastal States are also enjoined to delimit their EEZs and continental shelves by agreement on the basis of international law \textit{“in order to achieve an equitable solution.”}\textsuperscript{522} The

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{518} Supra at p. 197
\item \textsuperscript{519} Clive Scofield on Mind the Gap, supra, at p. 206
\item \textsuperscript{520} Nigeria-STP JD Treaty, Article 25.2
\item \textsuperscript{521} UNCLOS 1982, Article 15
\item \textsuperscript{522} See Articles 74(1) and 83(1), UNCLOS 1982 for the EEZ and the continental shelf, respectively.
\end{itemize}
\end{footnotesize}
jurisprudence of the ICJ in maritime boundary delimitation from the *North Sea Continental Shelf*\textsuperscript{523} cases to the *Black Sea*\textsuperscript{524} case is consistently driven by the desire to achieve an equitable result between the Parties, amongst other considerations, likewise international arbitral awards on maritime boundary delimitation.

However, while the Courts and Tribunals take these equitable considerations into account in deciding how and where to fix the maritime boundaries of Parties, there cannot be a better fairness and equity achieved than that willingly negotiated and settled by the Parties themselves and who are in a better position to determine what is best for their various national interests. Fairly recently, state practice has also shown that in a joint development, where a Party believes that fair and equitable result has not been achieved, it is very possible to reopen negotiations on the joint development arrangements between them until a middle ground is found. A good example of this scenario is the Australia-Timor-Leste joint development where some of the terms of the originally negotiated and agreed *Timor Sea Treaty* were modified by the *Sunrise and Troubadour Unitization Agreement*. The latter was also eventually modified by the *Treaty on CMATS*. The *Treaty on CMATS* introduced some far-reaching changes to the initial arrangements on fundamental issues like duration, sharing formula, and so on following series of negotiations and renegotiations between the Countries. This shows how joint development can be used to achieve a balance in the interests of the Parties and equity of situation amongst them. This can be contrasted with an ICJ judgment or an arbitral award that leaves no room for such possible maneuverability or amendment regardless of the consequences or equity of the situation.

\footnote{\textsuperscript{523} \textit{Supra}}
\footnote{\textsuperscript{524} \textit{Supra}}


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