

# Joint Development of Continental Shelves in Asia

April 14, 2009

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# What is the continental shelf system?

## *Article 76 Definition of the continental shelf*

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to 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.

# What is the continental shelf system?

## *Article 77 Rights of the coastal State over the continental shelf*

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.



# Delimitation of continental shelf

## *Article 83 Delimitation of the continental shelf between States with opposite or adjacent coasts*

- 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.**

# Joint development of continental shelf

- There have been many cases of joint development.
  - About 23 cases
  - Joint development projects in Asia include Korea-Japan (1974), Thailand-Malaysia (1979), and Malaysia-Vietnam (1992).
- The method of joint development varies. Under international law, there is no unified understanding or usage of the concept of joint development.
- Practical definition of joint development: “Establishment of a framework under international law for the development of seabed resources through cooperation between states”



# Circumstances of joint development

1. Development of common mineral deposits across the boundary of a continental shelf
2. Development in areas of a continental shelf not yet delimited

# Incentive for joint development of mineral deposits across boundaries

## North Sea Continental Shelf Case

Because it is possible to develop oil deposits “that extend to both sides of the boundary of a continental shelf” from one side of “the boundary,” other interested states could immediately undertake intrusive or uneconomical development.---*ICJ Reports* (1969) 3, at 51, para. 97.



## Incentive for joint development of mineral deposits across a boundary (cont.)

- In principle, a coastal state has exclusive sovereign rights for exploring its own continental shelves and natural resources (UNCLOS Art. 77). Therefore, even if mineral deposits to be developed lay across the boundary of the continental shelf, a coastal state may develop the mineral deposits within the boundary because the oil well exists within the boundary.
- However, as oil is extracted from one side of the boundary, the level of the oil will even out because oil is a liquid mineral. This could result in the exploitation of part of the oil in another state's part of the continental shelf.

# Joint development of mineral deposits across a boundary

## Unitization agreement approach

- In the development of mineral deposits across a boundary, the states concerned must treat the mineral deposits as one unit, appoint a single operator, and agree to distribute profits according to their respective sovereign rights.

Frigg Field Agreement (between the U.K. and Norway in 1976) (1098 *UNTS* 4)



## What is an undelimited zone?

An undelimited zone is a zone where the states concerned have equal claim on the continental shelf until the boundary is delimited.

- The seabed that extends up to 200 nautical miles from the coast of a coastal state is the continental shelf over which the coastal state has sovereign rights.
- This entitlement “does not depend on occupation, effective or notional, or on any express proclamation” (Art. 76, para. 3).
  - Entitlement by states with opposite or adjacent coasts could overlap with each other.

 Unilateral development of a continental shelf in an undelimited zone cannot immediately be deemed as the infringement of sovereign rights of the other state.

# Incentive for joint development in an undelimited zone

## UNCLOS Art. 83(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.



Prohibition of “jeopardizing or hampering the reaching of the final agreement”



# Hampering the reaching of an agreement in an undelimited zone

Hampering the reaching of an agreement = “Infringement irreversible after the final delimitation” Aegean Sea Continental Shelf (1976); Arbitration between Guyana and Surinam (2007)

Exploratory development using structures and actual acquisition and the use of resources are not allowed, these actions are considered to be the act of hampering the reaching of the final agreement.



Unilateral continental shelf development involves uncertainty

# Significance of joint development in an undelimited zone

## UNCLOS Art. 83 (3)

One example of “provisional arrangements of a practical nature” is a joint development agreement.

“...in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements...” = This is understood to require faithful negotiations toward the conclusion of provisional arrangements.



# Types of joint development

- Classification by method of operation
  - ① Single state model
  - ② Compulsory joint venture system model
  - ③ Joint authority model

## Single state model

- Only one of states concerned manages the development of oil fields in the disputed area on behalf of the other states concerned. The state in charge of development distributes profits to the other states concerned minus development costs.
- Joint development is subject to the law and jurisdiction of the state in charge of development.
- Examples of this model are Bahrain-Saudi Arabia (1958) and Kuwait-Saudi Arabia (1969).



# Compulsory joint venture system model

- States concerned agree to establish a compulsory joint venture system in a designated zone between the states concerned or their people (or designated oil companies).
- One example of this model is the Korea-Japan Agreement on the Joint Development of the Continental Shelf (mentioned later).

## Joint authority model

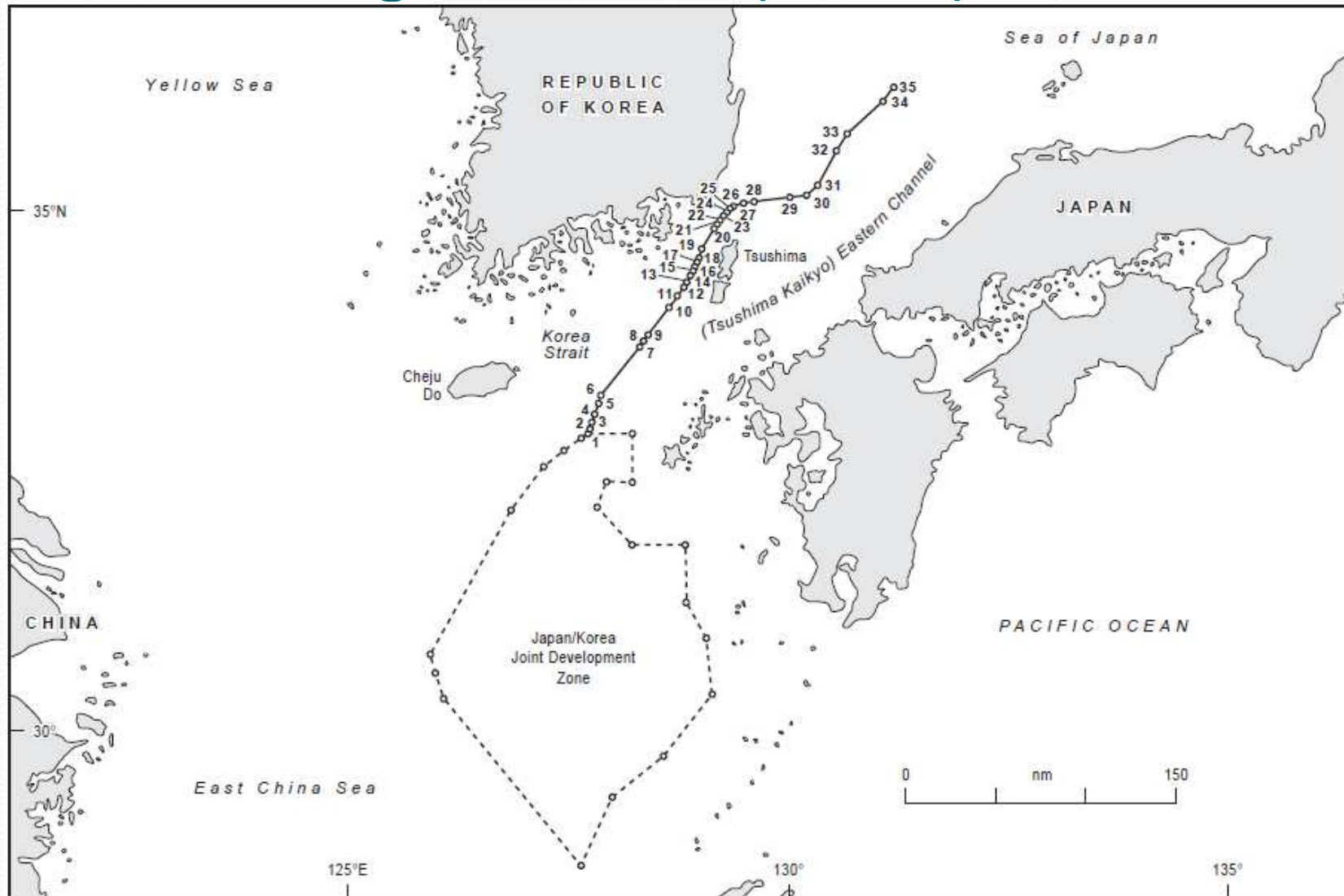
In this model, states concerned agree to establish a joint authority or organization. The established joint authority has juridical personality under the domestic laws of both states and exercises licensing rights such as concessions and rights of regulation and supervision.

Compared with the other two models, this model requires a higher degree of cooperation and more extensive delegation of authority between states concerned.

Examples of this model are the agreement between Thailand and Malaysia, the agreement between Nigeria and Sao Tome and Principe, and the Timor Sea Treaty between East Timor and Australia.



# Korea-Japan Joint Development Agreement (1974)



# Korea-Japan Continental Shelf Agreement (cont.)

- **Target sea area**
- The target sea area of the Agreement is specified in Article 2, paragraph 1 of the Agreement as the sea area surrounded by, counterclockwise from the northern tip, 1) the median line between Japan and Korea, 2) the median line between Japan and China, 3) the median line between Korea and China (that would be drawn if Japan is ignored), and 4) the limit claimed by Korea by reason of the natural prolongation of its continental shelf. Therefore, the sea area of joint development is only on the Japanese side of the median line between Japan and Korea.



# Korea-Japan Continental Shelf Agreement (cont.)

- **Details and method of joint development**
- Under this Agreement, the target zone of joint development is divided into small zones, each of which is explored and exploited by one or more developers approved by both States (Art. 3 and 4).
- The approved developers of both States conclude a joint venture agreement and appoint an operation manager by agreement. The operation is conducted only by the operation manager (Art. 5 and 6).
- The Japan-Korea Joint Committee is established, but is only a body for consultation about matters concerning the performance of the Agreement (Art. 24 and 25).

# Korea-Japan Continental Shelf Agreement (cont.)

- **Distribution of joint development profits**
- Each approved developer of both States is entitled to an equal share of the natural resources exploited in the joint development zone as profits earned from the joint development (Art. 9, para. 1).
- Reasonable costs for exploration and exploitation are equally allocated to the approved developers of both States (Art. 9, para. 2).



# Korea-Japan Continental Shelf Agreement (cont.)

- **Jurisdiction over joint development**
- Both States deem the part of the natural resources to which the approved developer of each State is entitled as natural resources exploited on the continental shelf over which the State has sovereign rights for the application of its domestic law (Art. 16), and tax only their respective approved developer (Art. 17).
- Both States apply their respective laws and regulations related to the exploration and exploitation of natural resources to small zones where their respective approved developer acts as a designated operation manager (Art. 19).
- It has been confirmed that no provision of this Agreement “shall be deemed to settle the issue of sovereign rights over the whole or part of the joint development zone or to harm the position of each contracting State with respect to the delimitation of the continental shelf” (Art. 28).

# Future issues

- **Merits of joint development**
  - **Effective use**
  - **Fostering of a cooperative relationships**
- **Demerits of joint development (if the boundary has not been delimited)**
  - **Prolonged and fixed postponement of delimitation**
  - **Friction intensified by joint development (either party's attempt to delimit the boundary)**



# Delimitation and agreement on joint development between Japan and China

