JOINT DEVELOPMENT OF MARINE FISHERIES RESOURCES

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Abstract

Joint development of marine resources in the disputed sea areas is a pragmatic and practical way to deal with deadlocks in negotiation over disputes of territory and maritime delimitation. There have been a number of cases of such arrangements around the world. While joint development mainly focuses on mineral resources, particularly oil and gas, there are some cases of joint development of marine living resources, particularly fisheries resources. This paper investigates joint development of marine

fisheries resources based mainly on case study and discusses its implications for the South China Sea.

Joint Development of Marine Fisheries Resources: Law and Policy

International Legal Framework for Joint Development of Marine Resources

The 1982 United Nations Convention on Law of the Sea (UNCLOS) constitutes the basic global legal framework for all uses of the oceans. It provides for the international legal principles and rules for the peaceful and sustainable uses of marine resources.

According to Articles 74 (3) and 83 (3) of the UNCLOS, pending final agreement on the delimitation of the exclusive economic zone (EEZ) and continental shelf between States with opposite or adjacent coasts, 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. These provisions are deemed as providing the major interantional legal obligation or legal basis for joint development of the disputed sea areas.

With regards to the enclosed or semi-enclosed seas within the definition in Article 122 of the UNCLOS,[1] such as the South China Sea, including the Beibu Gulf (Gulf of Tonkin) as its part, Article 123 of the UNCLOS provides that 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;

[1] Article 122 provides,"For the purposes of this Convention, 'enclosed or semi-enclosed sea' means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States."

(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to coordinate their scientific research polices 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 the furtherance of the provisions of this article. Accordingly, coordination and cooperation in the protection, exploitation and management of regional enclosed and semienclosed seas becomes an international legal obligation.

Besides the UNCLOS, a series of intenrational ducoments also provide for international cooperation in the conservation and sustainable uses of marine fisheries resources in regional seas.

The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks which was adopted on 4 August 1995 provides that States should cooperate to ensure conservation and promote the objective of the optimum utilization of those fish stocks both within and beyond the EEZ. Regarding the implementing of this Agreement in an enclosed or semi-enclosed sea, Article 15 stipulates that States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with relevant provisions of the UNCLOS. The 1995 FAO Code of Conduct for Responsible Fisheries provides that States should foster and promote international cooperation and coordination in all matters related to fisheries, including management and development [2]for transboundary fish stocks, straddling fish stocks, and highly migratory fish stocks where these are exploited by two or more States, the States concerned, including the relevant coastal States in the case of straddling and highly migratory stocks, should cooperate to ensure effective conservation and management of the resources. This should be achieved, where appropriate, through the establishment of a bilateral, subregional or regional

[2] Article 7.3.4. of the FAO Code of Conduct for Responsible Fisheries.

fisheries organization or arrangement; [3] To be effective, fisheries management should be concerned with the whole stock unit over its entire area of distribution and all removals and the biological unity and other biological characteristics of the stock. The best scientific evidence available should be used to determine, inter alia, the area of distribution of the resource and the area through which it migrates during its life cycle.[4]

In addition to the above, the Agenda 21 emanated from the 1992 United Nations Conference on the Environment and Development (UNCED), the Johannesburg Plan of Implementation adopted at the 2002 World Summit on Sustainable development, and other international documents contain a number of principles and rules for international cooperation in the conservation and management of marine fisheries resources.

The policy of "shelving disputes and ***conducting joint development"***

With regards to the conservation and protection of marine resources in the Asia-Pacific region**,** the Council for Security Cooperation in the Asia-Pacific encouraged littoral states to consult in the formulation and harmonisation of policies for the conservation, management and sustainable utilisation of marine living resources that straddle maritime zones, or which are highly migratory, or occur in the high seas.[5]

Regarding the settlement of disputes of territory and maritime delimitation, China advanced the policy of "***shelving disputes and*** conducting joint development" and has been positively promoting its implementation. In order to promote friendly relations and pursue a win-win compromise with Japan in the settlement of disputes over the Diaoyu

[3] Article 7.1.3 of the FAO Code of Conduct for Responsible Fisheries.

[4] Article 7.3.1 of the FAO Code of Conduct for Responsible Fisheries.

[5] Council for Security Cooperation in the Asia-Pacific, Memorandum 13, "GUIDELINES FOR MARITIME COOPERATION IN ENCLOSED AND SEMI-ENCLOSED SEAS AND SIMILAR SEA AREAS OF THE ASIA PACIFIC", para 24, available at: http://www.cscap.org/uploads/docs/Memorandums/CSCAP%20Memorandum%20No%2013%20--%20Guidelines%20for%20Marit%20Coop%20in%20Enclosed%20and%20Semi%20Enclosed%20Seas.pdf

Islands and the maritime delimitation of the East China Sea, the late Chinese leader Deng Xiaoping proposed that the two countries seek joint development of the disputed area while shelving disputes over the ownership of them during the negotiation and signing of the Sino-Japanese Peace and Friendship Treaty in October 1978. China has also been seeking to carry out the policy of "***shelving disputes and*** conducting joint development" in the South China Sea. China National Offshore Oil Company (CNOOC), the Philippine Oil Corporation and Vietnam Oil and Gas Corporation signed an agreement on a joint marine seismic exploration in the South China Sea region in March 2005. According to the agreement, the three parties jointly gathered two-dimensional and three-dimensional seismic data and processed two-dimensional seismic data within an area which covers 140,000 square kilometers in three years. The cooperation was an important measure for the three parties to jointly implement the Declaration on the Conduct of Parties in the South China Sea and would benefit the people of the three countries and make a historic contribution to stability and peace in the region. Unfortunately, the cooperation was terminated due to domestic opposition in the Philippines and pressure from the US. However, China has not stopped pursuing joint development in the South China Sea.

International practice

Joint development zones (JDZ) and relevant mechanisms concerning marine living resources have been established in some regional seas around the world. The followings are some examples of this kind at the bilateral level.

The Senegal/Guinea Bissau joint development zone

Senegal and Bissau Guinea carried out the first joint development zone (JDZ) on the Atlantic coast of Africa thanks to a bilateral Management and Cooperation Agreement signed on 14 October 1993, which was later supplemented by a Protocol Relating to the Organization and Operation of the Agency for Management and Cooperation signed on 12 June 1995.These agreements provide for an Authority consisting of the Heads of State

or of Governments or of persons delegated by them, an International Agency, an Enterprise and a Board of Directors.

The Senegal/Guinea Bissau JDZ deals not only with mineral resources sharing, but also for living resources. The 1993 and 1995 agreements set forth a percentage of the resources to be granted to each party: the proportion is 85% for Senegal and 15% for Bissau-Guinea for the resources of the continental shelf, whereas the products derived from the exploitation of fishery resources is to be shared equally between the parties. The rationale underlying these proportions explains why they can be modified.

Regarding the applicable law, two sets of law prevail, a Senegalese one and a Guinean one: With regards to mineral or oil resource prospecting, exploration and exploitation, monitoring and scientific research in the mining and petroleum domain, it is the Senegalese law, modified according to the terms of the 1995 agreement that prevails; in matter of fishery resources, it is the law of Guinea-Bissau that prevails.

These agreements were signed for a period of twenty years. They could then be modified in 2015.

The Colombia and Jamaica joint development zone

On 12 November 1993, Colombia and Jamaica signed an agreement which deals with the partial delimitation of their maritime boundary while establishing a JDZ in the western Caribbean sea at the same time. It sets up a Joint Regime Area (JRA) of about 4,500 nm^2, which is a kind of JDZ. The Treaty covers two sectors: one is a “boundary line proceeding eastwards in the direction of the Colombia-Haiti boundary line until it is intercepted by the future Jamaica-Haiti boundary line.” The second sector is situated in the western part of the treaty area. The JRA is, in the terms of article 3(1), a “zone of joint management, control, exploration and exploitation of the living and non-living resources”, “pending the determination of the jurisdictional limits of each Party”.As to the joint development and management activities to be carried out in the JRA, article 3(2) further states as follows:

(a) Exploration and exploitation of the natural resources, whether living or non living, of the waters superjacent to the seabed and the seabed and its subsoil and other activities for the economic exploitation and exploration of the Joint Regime Area; (d) The protection and preservation of the marine environment; (e) The conservation of living resources;

The Nigeria and Sao Tome and Principe joint development zone

In the Gulf of Guinea, Nigeria and Sao Tome and Principe signed a treaty on establishing a JDZ off their coasts on 21 February 2001 after their negotiation over the delimitation of their respective economic exclusive zone facing a deadlock. The JDZ covers the whole area of their overlapping claims, that is a part of their potential respective economic exclusive zone. The treaty is the second one on the Atlantic shores of Africa. It entered into force in 2003.

The JDZ deals with potential exploitation of both hydrocarbons and fishery resources. The legal principles to be applied in matter of conservation and management of ocean resources make it a necessity for the parties to that agreement to broaden their views over cooperation and to consider instead a regional framework, rather than a bilateral one, in order to efficiently meet the economic and environmental goals set out in their agreement. The newly created Gulf of Guinea Commission may serve as such a subregional framework for cooperation on maritime issues.[6]

The Barbados and Guyana Co-operation Zone

The treaty between Barbados and Guyana which was signed on 2 December 2003 deals with the EEZ and living resources, besides mineral resources.

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[6] J. Tanga Biang, "The Joint Development Zone Between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in the Gulf of Guinea – International Law", *State Practice and Prospects for Regional Integration*, 2010, at: http://www.un.org/Depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/tanga_0910_cameroon.pdf

This Treaty creates a “Co-operation Zone” and two different mechanisms to exercise civil and administrative joint jurisdiction over the living and non-living resources in this Zone. The jurisdiction is to be exercised in accordance with generally accepted principles of international law and the UNCLOS. According to Article 5, with jurisdiction over living resources shall be governed by a Joint Fisheries Licensing Agreement and evidenced by their agreement in writing, including by way of an exchange of diplomatic notes. The provisions of this Joint Fishery Licensing Agreement are enforced by each State by applying its national law against any person. The objective of joint jurisdiction through this Licensing Agreement is the achievement of “environmentally responsible management” of the Co-operation Zone and ensuring “sustainable development”.

The principle of co-ordination and consultation applies in matter communications. Under article 9 dealing with consultations and communications, Ministers of Foreign Affairs have the specific duty of handling communications between the Parties.

The “without prejudice clause” embraced in paragraphs 2 and 3 of article 1 stipulates that the treaty and the Co-operation Zone are without prejudice to the eventual delimitation of the Parties’ respective maritime zones, and the Parties agree that nothing contained in the Treaty nor any act done by either Party under the provisions of the Treaty will represent a derogation from or diminution or renunciation of the rights of either Party within the Co-operation Zone or throughout the full breadth of their respective EEZ.

Regarding dispute resolution, Article 10 of the treaty provides that normal means to settle disputes on the interpretation or application of the provisions of the treaty shall be “direct diplomatic negotiations between the Parties”. Should this fail, each Party may have recourse to the dispute resolution provisions contemplated under the UNCLOS.

The treaty enjoys unlimited period of validity. It “shall remain in force until an international maritime delimitation agreement is concluded between the Parties”.

In addition, Thailand and Bangladesh had a joint venture program for fisheries development in the Bay of Bengal.

Differing from the above mentioned JDZ for marine fisheries, more international marine fisheries cooperations take the form of joint management arrangements, the characteristics of which include setting total allowable catches (TACs) for fish stocks, allocation of quota, and cooperation in compliance control, including exchange of catch data and inspectors, law enforcement and so on.

The Joint Norwegian–Russian Fisheries Commission is another good example of joint management of marine fisheries, especially shared stocks. The Commission includes members of fishery authorities, ministries of foreign affairs, marine scientists and representatives of fishers' organizations from the two countries. The Barents Sea fisheries are managed bilaterally by Norway and Russia through their cooperation in the fields of research, regulation and compliance control. The Commission sets total allowable catches (TACs) for the three joint fish stocks of the two countries -- cod, haddock and capelin, and allocates quotas for the fish stocks according to a standard formula: cod and haddock are shared on a 50 - 50 basis, while the capelin quota is shared 60 - 40 in Norway's favor. The two countries also cooperate in compliance control which includes the exchange of catch data and inspectors, and the harmonization of various enforcement routines.

On 15 September 2010, a treaty between Norway and Russia regarding the bilateral maritime delimitation in the Barents Sea and the Arctic Ocean was concluded. Norway and Russia are aware of the importance of the traditional fisheries in the area and the special economic significance of the living resources. The treaty ensures the continuation of the extensive and fruitful Norwegian-Russian fisheries cooperation with regards to living marine resources.The bilateral marine fisheries cooperation agreements of 1975 and 1976 remain in force for fifteen years after the Delimitation Treaty has entered into force and then for another six-year terms, unless terminated by either party. The distribution of quotas will still be under management by the Joint Norwegian-Russian

Fisheries Commission. There will be stability in the quota allocation and a precautionary approach in the conservation, management and exploitation of the shared stocks.[7]

The successful joint management of straddling or shared stocks between Norway and Russia before and after maritime boundary delimitation shows that the sustainable development of the fisheries resources require long-term cooperation between neighboring coastal states. The final delimitation of maritime boundaries should not be the end of bilateral cooperation in the conservation, development and management of marine resources.

Joint Development of Marine Fisheries Resources in the South China Sea?

The South China Sea large marine ecosystem was characterized as severely impacted in terms of overfishing – about 40% of the stocks are collapsed or overexploited, with severe socioeconomic and community consequences. In addition, excessive bycatch and discards, and destructive fishing practices which include cyanide and dynamite fishing, and the use of small-meshed nets have also caused adverse impacts on marine living resources. There are significant gaps in the available data with many fisheries that may be classified as illegal, unreported and unregulated (IUU). Moreover, about 70% of the coral reefs are heaviely depleted. These impacts show no changes. [8]

As mentioned above, the South China Sea, including the Beibu Gulf is a emi-enclosed seas within the definition in Article 122 of the UNCLOS. The littoral states bear international legal obligation to cooperate in the conservation and management of its marine fisheries resources under the UNCLOS. However, the South China Sea remains to be one of the few regional seas without regional fisheries management organizations or

[7] Treaty between the Kingdoms of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, 15 September 2010, at: http://www.regjeringen.no/upload/SMK/Vedlegg/2010/avtale_engelsk.pdf

[8] See the South China Sea large marine ecosystem, at: http://www.lme.noaa.gov/index.php?option=com_content&view=article&id=82:lme36&catid=41:briefs&Itemid=72

arrangements in the world. Although the Sino-Vietnamese Agreement on Maritime Boundary Delimitation of the Beibu Gulf and the Beibu Gulf Fishery Cooperation Agreement which were concluded on 25 December 2000 came into effect as of 30 June 2004, illegal fishing and fisheries disputes continue to happen in the area. Consequently, the marine environment and fisheries resources in the Gulf continue to decline. This indicates that the two countries still need to further strengthen cooperation in the conservation, exploitation and management of the marine living resources even after the conclusion of the above agreements.

The state of the fisheries resources in the Nansha Spratly Islands) area is even worse than that of the Beibu Gulf. Territorial and maritime boundary disputes in Nansha have long hindered international cooperation in the conservation and management of the marine environment and living resources. Obviously, the continuing degradation of the environmental resources is not in the interest of any party and there is a pressing need for the littoral states to cooperate in the conservation and management of the marine environment and resources. In this connection, the international experience of joint development and joint management of marine fisheries resources as mentioned above is ***worth borrowing.***

Conclusion

The interantional legal obligation of the states concerned to cooperate in the conservation and management of the marine environment and resources including fisheries resources in disputed sea areas, particularly the enclosed or semi-enclosed seas has well been established in international law. Many states fulfill this legal obligation by cooperatively establishing JDZs or carrying out joint management of marine resources in disputed sea areas. In the past, JDZs and joint management were mainly for mineral resources, especially oil and gas. In recent years, they have been more and more expanded into the development and management of marine fisheries resources in disputed sea areas. Successful experience of JDZs and joint management can be used in the South China Sea./.

Author's biography

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He is adjunct professor of China Ocean University, Shanghai Ocean University, and Xiamen University; research fellow of the Center for Ocean Development of China; and senior research fellow of International Center for Emergency Studies, Cape Breton University, Canada.

He earned the degree of Doctor of Law from Chinese Academy of Social Sciences, studied at World Maritime University in Sweden, and worked as a researcher at University of Lapland in Finland, postdoctoral fellow at Dalhousie University of Canada, and visiting research fellow at the Centre for International Law of National University of Singapore. He was the last student of the late Prof. Elisabeth Mann Borgese who was a renowned expert in oceans law and policy and recognized internationally as the "Mother of the Oceans".

Dr. Wang has published widely in Chinese and English, and submitted numerous consultancy reports to the Chinese central government. He was nominated by China as an expert for Special Arbitration under Article 2, Annex VIII of the United Nations Convention on the Law of the Sea, and served as a consultant to the Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office for Legal Affairs of the United Nations. He was one of the international experts appointed by DOALOS to develop teaching materials for the UN training course on Ecosystem-based Management of the Oceans. He won the highest research award of the Chinese Academy of Social Sciences for his outstanding policy advice to the Chinese central government in 2007 and 2008.