



**JOINT DEVELOPMENT OF MARITIME RESOURCES:  
POSSIBILITIES AND CHALLENGES IN OFFSHORE ENERGY**

By

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**Abstract**

*From time immemorial, territory and how to draw borders has been a major source of conflict among states as they evolved and acquired sovereignty. From the era of the Biblical chosen race by God - the Israelites, to the contemporary states we have today; zonal dominance has been of great importance to nations. Besides the concept of territory, natural resources play a significant role in boosting political, social and economic influences of nations. Energy resources, such as oil and gas are particularly useful to most countries for their overall growth and development. However, it remains a fact that there are still undiscovered energy and fishery resources which makes it difficult to overlook the political tension raging in disputed sea zones. The possibility of the depletion of these resources over the course of time attracts even more conflict. To this end, this work through the use of articles, books and journals examines the historical development of boundary disputes, maritime legal frameworks, the jurisdictional analysis of the agreement between Nigeria and Sao Tome & Principe; as well as the inevitable pros and cons of joint development as a long-lasting solution to disputes on offshore resources. The article concludes with a set of recommendations to enhance joint*

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*development agreements which includes the improvement of bilateral relations and reduction of domestic oppositions.*

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## 1.0 INTRODUCTION

The view of the sea by the world has evolved through history. With over a third of the ocean space, close to half of the seabed under coastal state jurisdiction and more than 400 maritime boundaries around the globe, maritime boundary disputes have materialized as a critical source of tension among states.<sup>1</sup> As Europe pursued authority in sea waters outside its territory, a dispute emerged regarding the true position of seas and what rights countries could possess regarding them.<sup>2</sup> The ideology of a natural law was culled from ancient times and the Middle Ages. The idea was employed by scholars in various propositions, one of the most commonly cited being Grotious.<sup>3</sup> He was a proponent of the right to diplomatic commercial activities and natural passage at sea. He believes these are imperative to the "need of all men to ensure their survival."<sup>4</sup> Grotious contended freedom at the seas in order to resist assertions to trade monopolies in the world outside Europe.<sup>5</sup> Beforehand, neighbouring coastal states did not pay close attention to their maritime border demarcation.<sup>6</sup> Their attention was majorly drawn by the discovery of hidden biological assets such as oil and gas, mineral resources, and other hydrocarbon materials.<sup>7</sup> Conditions such as increased seaborne trade, technological developments, climate change and incessant demand for marine resources are factors that have revived the emphasis on state responsibility towards sea spaces.<sup>8</sup> However, states have still been largely unable to agree on where maritime boundary disputes lie.<sup>9</sup> Perhaps, one of the reasons why conflicts on boundary demarcation is very strenuous to resolve is that *"men, like animals, seem to be controlled by a territorial imperative and*

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<sup>1</sup> Mackay K., Collins R., (2025), "Reorienting Approaches to Maritime Boundary Disputes: A Case for Hydro-Diplomacy" A Marine Policy Publication, Volume 171, DOI 106442.

<sup>2</sup> Osthagen A., (2020) "Maritime Boundary Disputes: What Are They and Why Do They Matter?" A Marine Policy Publication, Volume 120, 104118.

<sup>3</sup> Boer R., (2021), "Hugo Grotious: On Freedom of the Seas and Human Nature" Cambridge University Press, *Chriswianity and International Law An Introduction* pp. 139-152.

<sup>4</sup> Boer R. (n.3)

<sup>5</sup> Boer R. (n.3)

<sup>6</sup> OsthagenA. (n.2)

<sup>7</sup> OsthagenA. (n.2)

<sup>8</sup> OsthagenA. (n.2)

<sup>9</sup> Cogliati-Bantz V., (2024) "The Way Forward is not Fast-Forward: Sea-Level Rise, Maritime Zones and Back to Basics" Springer, Singapore, ISBN: 978-981-97-5837-1.



*partially due to the fact that such disputes are usually the effect, instead of the origin, of the poor relations amongst the claimant states.*<sup>10</sup>”The following question then arises: What happens to the energy resources caught in the midst of this tussle?

## **2.0 MARITIME RESOURCES, OFFSHORE ENERGY AND THE MATTERS ARISING**

Maritime resources can be defined as the various substances and organisms that can be found in the ocean such as diagnostic compounds and fatty acids which are used to identify and distinguish species from marine or freshwater ecosystems.<sup>11</sup> It also means all physical forms in the seas and oceans on the globe, which can supply for human life and production.<sup>12</sup> Su Hao, in his work identifies three types of maritime resources.<sup>13</sup> These are maritime resources with absolute ownership such as islands, territorial waters and sea beds; maritime resources with exclusive ownership which may be possessed by coastal countries in the exclusive economic zone of 200 nautical miles and maritime resources with shared ownership.<sup>14</sup>

Offshore energy resources is an abundant clean energy source that includes offshore solar energy, offshore wind power, wave energy, ocean thermal energy conversion and tidal energy.<sup>15</sup> It can simply be defined as the generation of electricity sources from marine resources.<sup>16</sup> They comprise wind turbines situated offshore in the oceans, prodigious lakes and sea-based energy sources including salinity, tides, waves and geothermal properties.<sup>17</sup> Offshore energy resources is one of the quickest-rising energy causes in the world today.<sup>18</sup> This is

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<sup>10</sup> Ambassador Tommy Koh; one of the eminent personages in the modern history of the Law of the Sea, In a lecture series on “Maritime Boundary Conciliation between Timor-Leste and Australia” on September 19, 2017.

<sup>11</sup> Encyclopaedia of Archaeology, 2024, (Second Edition) Volume 2B, 2024, Pages 398-405.

<sup>12</sup> Bo-Ping T., (2007), “A Study on China's Laws and Rules Concerning Marine Resource Protection” Peoples University of China, PhD Dissertation, 2007.

<sup>13</sup> Hao S., (2013), “Maritime Resources in the South China Sea and China's Management in the International Legal Context” accessed at <https://www.swp-berlin.org> on July 26, 2022.

<sup>14</sup> Hao S. (n.13)

<sup>15</sup> Lian J, Fu Q., Cui L., Liu R. & Guo B, (2024), "Offshore Renewable Energy" Journal of Marine Science and Engineering 12(5):749, DOI:10.3390/jmse12050749.

<sup>16</sup> National Ocean Economics Program, (2022), “Offshore Renewable Energy” as accessed at <https://www.oceaneconomics.org> on September 5, 2022.

<sup>17</sup> Steinberg, P.E (2001), “The Social Construction of the Ocean.” as accessed at <https://www.books.google.com> on July 30, 2022.

<sup>18</sup> National Ocean Economics Program (n.16)



because it offers many advantages which includes its cost-effectiveness, renewability, resourcefulness, clean source and viability.<sup>19</sup> It also has several challenges such as the issue of ownership crisis, high investment costs, noise pollution and the impact on local wildlife.<sup>20</sup> These issues, among a range of others; demand lasting and effectual solutions.

### **3.0 JOINT DEVELOPMENT: MEANING AND RELATION TO OFFSHORE ENERGY RESOURCES**

Joint development refers to a legal agreement between two or more coastal states to explore and develop seabed energy resources situated in areas of overlapping maritime claims.<sup>21</sup> The term has also been defined as an inter-governmental arrangement of a provisional nature between two or more countries, intended for practical uses of joint investigation for and or utilization of “onshore or offshore” hydrocarbon resources.<sup>22</sup> Joint development is especially key in areas with conflicting or uncertain claims on ownership or in areas where countries have not realized settlement on demarcation.<sup>23</sup> The purpose of a joint development regime may be to deescalate aggravation of existing boundary disputes, safeguard the exercise of sovereign rights of joint control or to promote investment stability. Generally, there are two major relevant economic factors that encourage claimant states to trail joint development: the importance of the assets to the countries included and the level of advantage that could be obtained from classifying their attempts. Hence, possible economic comeback is ordinarily a resilient stimulating element in joint development. The cooperation between Malaysia and Thailand on the Gulf of Thailand is a key pointer to a successful joint arrangement.<sup>24</sup>

Joint development, in relation to offshore energy resources is very helpful especially due to the issue of ownership and contesting claims on maritime boundaries as earlier discussed. Agreements of this nature have also proved to yield positive results. A critical factor that affects the prospects of joint development of offshore resources is global oil and gas prices.<sup>25</sup> This is because

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<sup>19</sup> National Ocean Economics Program (n.16)

<sup>20</sup> National Ocean Economics Program (n.16)

<sup>21</sup> Yiallourides C., (2024) "Joint Development Agreements" in TS Hunter et al, Elgar Concise Encyclopedia of Oil & Gas Law (EE 2024).

<sup>22</sup> Miyoshi, M., (1999) “The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation” Maritime Briefing Vol.2 No.5 p.3.

<sup>23</sup> Miyoshi, M. (n.22)

<sup>24</sup> In the year 1979.

<sup>25</sup> Qi H., Xue S., (2020) “Cooperative Development in the South China Sea: Policies, Obstacles and Prospects.” A Routledge Publication, ISBN: 9780367529680.



when prices rise, nations might look forward to proposing joint development agreements. In Nigeria, for instance; oil and gas exploration, maritime transport, shipping and fisheries dominate the blue economy's contribution with oil and gas holding 90 percent of the value.<sup>26</sup> Also, in recent times, promotion of offshore energy resources has proved useful. Examples include the improvement of offshore oil and gas in the Gulf of Guinea<sup>27</sup> and the improvement of an offshore green hydrogen project ahead of 2030 between Neptune Energy and RWE<sup>28</sup> as pointers to the usage of joint development in the offshore sector.<sup>29</sup>

#### **4.0 THE LEGAL BACKING FOR JOINT DEVELOPMENT**

As time progressed, there began political and strategic attempts to make laws that would suit varying international interests towards resources across the domain's oceans. It is therefore important to analyse the present positions of the law of the sea, using the compass of the 1982 United Nations Convention on the Law of the Sea and soft laws like the United Nations Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States, the United Nations Resolution on Permanent Sovereignty over Natural Resources, and the United Nations General Assembly Resolution 3129.<sup>30</sup>

#### **5.0 THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

The United Nations Convention on the Law of the Sea is the growing upshot of years of peacekeeping and is erected on eras of applicable preparation and legal systems.<sup>31</sup> Attempts by the League of Nations in the early 1930's to resolve on outspreading state claims of control over contiguous waters created no outcomes. In succeeding years, various attempts were made to create a wide-ranging law of the sea administration. In 1956, the United Nations planned its first Conference on the Law of the Sea. Ending in 1958, the effect of the Summit was four treaties: The Convention on the Territorial Sea and Contiguous Zone, the Convention on the Continental Shelf, the Convention on the High Seas, and the Convention on Fishing and Conservation of Living Resources of the High Seas. These conventions entered into force between 1962 and 1966. Though the Conference was declared as a triumph, it miscarried in addressing some important problems such as the coverage of territorial waters over which coastal states could uphold general dominant privileges.

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<sup>26</sup> Osuji J.N, Agbakwuru J., (2024), "Ocean and Coastal Resources Components and their Contributions to Sustainable Development of Nigeria" *Journal of Applied Sciences and Environmental Management* 28(1):129-146, DOI:10.4314/jasem.v28i1.16.

<sup>27</sup> Qi H., Xue S., (n.25)

<sup>30</sup> Rheinisch-Westfälisches Elektrizitätswerk, a German multinational energy company that generates, trades and supplies electricity.

<sup>31</sup> Qi H., Xue S., (n.25)

Cameron P., Nowinski R., (2013), "Joint Development Agreements: Legal Structure and Key Issues" Elgar Publication, Chapter 6, pp. 152-178.



The United Nations convened a second Conference in 1960, but it only lasted six weeks, and no innovative pacts emanated from it. In 1966, President Lyndon B. Johnson represented the deep sea and the seabed as the legacy of all humans.<sup>32</sup> In the next year, the Diplomat to the United Nations from Malta, Arvid Pardo,<sup>33</sup> presented a pact to the United Nations General Assembly stating that the seabed should be part of the joint heritage of mankind. In 1973, the third Conference on the Law of the Sea was organized in New York. For nine years, states discussed over the bounds of the law of the sea until the Convention was settled in 1982. The United States intensely affirmed the ideology of the third Conference and guided the cooperation procedure over the sequence of three managements. Here, the United Nations Convention on the law of the Sea was birthed.

### **5.0 IS THERE AN OBLIGATION TO COOPERATE?**

Paragraph 3 of Articles 74 and 83 of the Law of the Sea provides succinctly that states have no strict obligation to cooperate but are only enjoined to do so in light of the benefits inherent in cooperating.<sup>34</sup> The Convention however covers two types of obligations that states have: the obligation to have provisional agreements and the obligation to avoid activities that may hamper final delimitation. These will be examined subsequently.

1. The Exhortation to Conclude Provisional Arrangements: States are fortified to realize substantial agreements based on paragraph 1 of Article 83 of the Convention.<sup>35</sup> Practices depict a large variety of substantial arrangements both in appearance and character. The language proposes that claimants need to take an appealing strategy to consultations. States are indulged to carry out dialogues on “provisional arrangements of a practical nature” in good faith.<sup>36</sup> Also, provisional arrangements can be entered into when consultations are being held or completely autonomous thereof. Such provisions can also be agreed easily. An example is an informal agreement on a moratorium on drilling activity.<sup>37</sup>
2. The Obligation to Abstain from Unilateral Acts That Hamper or Jeopardize Final Delimitation: By paragraph 3, Article 74 of the Convention, States are

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<sup>32</sup> Keating-Bitonti C., (2024), "United Nations Convention on the Law of the Sea (UNCLOS): Living Resources Provisions" Congressional Research Service, R47744, Version 7. Keating-Bitonti C., (31).

<sup>33</sup> A Maltese and Swedish Diplomat of Jewish origin, Scholar and University Professor.

<sup>34</sup> Dela Cruz A.P & Paige T., (2024), "Law of the Sea" DOI:10.4324/9781003451327-18, In book: Public International Law (pp.437-451).

<sup>35</sup> Dela Cruz A.P & Paige T., (n.34).

<sup>36</sup> Dela Cruz A.P & Paige T., (n.34).

<sup>37</sup> Weil P., (1984), “The Law of Maritime Delimitation: Reflections.” Cambridge University Press, ISBN-10 0949009407.



not to jeopardize or hamper the reaching of a final agreement even though types of actions meant to be included by this responsibility are not enumerated.<sup>38</sup> The purpose of the drafters of the Convention was not to veto the behavior of all actions from the area of overlying nautical claims. However, maritime delimitation in a region is relevant in determining the maritime limits of the regional states, identifying resources located in the maritime region and resources with the potential of being shared.<sup>39</sup> Therefore, by the outline of a rule restraining activities within maritime areas of overlapping claims, States' economic development would be lessened. Still, arrangements can be made for the examination of independent acts limits. This will help restrict both the range of actions and how States react to activities separately assumed in maritime areas of intersection.

## **6.0 SOFT LAWS ON THE SEA**

Apart from the Convention, there are other cogent laws on the sea that are regarded as “soft laws” and are in the form of Declarations and Resolutions.<sup>40</sup> Soft laws are generally international agreements that are not lawfully obligatory. The key “soft laws” on the sea will now be analysed.

### **A. THE UNITED NATIONS DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES.**

The United Nations Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States is in accord with the United Nations Charter on the diplomatic settlement of issues.<sup>41</sup> On the obligation to collaborate, it states that regardless of alterations in political, economic and social spheres, states are under the duty to sustain global harmony and safety, the overall well-being of nations and to endorse international economic steadiness and development in an environment free from judgement based on their disparities. The Declaration also largely criticizes acts of invasion, antagonism and aggression by states. Over the years, this Declaration has proved useful in the establishment of state obligations to maintain and preserve peaceful relations ahead of delimitation.<sup>42</sup>

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<sup>38</sup> Dela Cruz A.P & Paige T., (n.34).

<sup>39</sup> Akware E., (2022), “Sharing of Transboundary Resources: An Analysis of Joint Development Options for Transboundary Hydrocarbon Resources between Kenya and Somalia” accessed at <https://www.un.org> on July 26, 2022.

<sup>40</sup> Most of which are attributed to the United Nations.

<sup>41</sup> Resolution 2625 (XXV), 24 October 1870.

<sup>42</sup> Evidenced in Paragraph 3 of Articles 74 and 83 of the 1984 Law of the Sea.



**B. THE UNITED NATIONS RESOLUTION ON PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES.**

The above Resolution<sup>43</sup> determined that the open and advantageous employment of the superiority of persons and countries over their resources must be groomed by the joint respect of states dependent on their state independence and also improves global collaboration for the economic improvement of developing nations. Indeed, the whole Resolution implores cooperation from all countries for the achievement of the ambition of natural resources. This Resolution has been deemed to be vital to the improvement of natural resources, for example; petroleum resources among oil-producing countries.

**C. THE UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 3129.**

The above resolution<sup>44</sup> obliged the United Nations Environmental Program to enact a “Guideline for Cooperation in the Field of Environment Concerning Natural Resources Shared by Two or More States.” The Guideline also beckoned on States to cooperate in the equivalent employment of mutual natural reserves and in the defence of the environment from damage. The General Assembly retorted by compelling States to approach bilateral and multilateral treaties concerning shared natural assets in good faith and in the spirit of respectable neighbourliness.

Pursuant to the above resolutions, there have been several advances in successive legislations towards joint development arrangements. International law emboldens States to liaise in the controlling and growth of communal resources and the most effective way of doing this is by joint development. It may be contended that resolutions do not have any compulsory force in international law, but the fact subsists that they show the drift in state practice and, especially when they are undisputed; could be potent. In a way, they set intercontinental canons of best practices for States to assume and in recent times, resolutions have presumed a major role in adding influence and authenticity to the notion of joint development.

**7.0 A CASE STUDY OF THE JOINT DEVELOPMENT TREATY BETWEEN NIGERIA AND SAO TOME**

In a cooperative attempt to resolve the conflict between Nigeria and Sao Tome and Principe over the overlying oceanic perimeter, both countries on the 21st of

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<sup>43</sup> G.A.Res. 1803 (XVII), 17 U.N GAOR Supp. (No.17) at 15, U.N. Doc. A/5217 (1962)

<sup>44</sup> Resolution 3129 (XXVIII) of December, 1973.



February 2001 took part in a treaty on the mutual arrangement of petroleum and other assets, in reverence of Areas of the Exclusive Economic Zone of the two States.<sup>45</sup> The treaty was endorsed by the two Heads of States and sanctioned by their Legislatures.<sup>46</sup> It provides for "shared administration by the States Parties of the probe for and development of resources" within the joint development zone aimed at realizing maximal economic usage. Nigeria was given 60 percent and Sao Tome 40 percent of "all advantages and duties coming from growth actions" in the joint development zone.<sup>47</sup> The agreement provides for the parties' privileges and duties under the treaty to be implemented by a Joint Ministerial Council (JMC) with complete accountability for actions within the joint development zone, and a Joint Development Authority (JDA) answerable to the Joint Ministerial Council (JMC), accountable for the administration of undertakings within the joint development zone.<sup>48</sup> The treaty is to subsist for a period of 45 years and can be sustained afterwards if both states are in agreement.<sup>49</sup>

In addition, there is a provision for an evaluation of the treaty by the states after 30 years.<sup>50</sup> In the event that the treaty is at a standstill, provision is made for the joint development structure to be maintained in effect so that "development contracts with an expiry date after such termination" are not impacted. The Treaty further provided that nothing in it shall be interpreted as a denial of any privilege or duty in relation to part or whole of any aspect of the zone by either state party or as identification of the other State Party's stance with respect to any privilege or obligation to the zone or any part thereof. It also made arrangements on the resolution of any issue which may commence in the management of the area.

The agreement establishing the joint development zone between Nigeria and Sao Tome has been realized through a method and bestows a legitimate framework. In the performance of the joint development agreement between Nigeria and Sao Tome, many measures have been taken to guarantee the accomplishment of its

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<sup>45</sup> Agbu, A. & Akpan, B., (2023), "Legal Appraisal of the Nigeria and Sao-Tome and Principe Joint Development Zone Agreement." CULJ Vol 3.

<sup>46</sup> The treaty has been ratified by both countries pursuant to the provisions of Article 50.1, 50.2 and 50.3 of the Treaty.

<sup>47</sup> As contained in a statement by His Excellency, Rafael Branco, Minister of Public Works, Infrastructure, Natural Resources and Environment, DRSTP, "JDZ Road Show" (Houston; TX: June 2003) at JDA Website, Treaty Article 2.

<sup>48</sup> Okaphor E.F, (2019) "Joint Development of Nigeria and Sao Tome and Principe: An Assessment." accessed at <https://www.ezenwaohaetorc.org> on July 20, 2022.

<sup>49</sup> Article 51.2 of the Treaty.

<sup>50</sup> Article 51.1 of the Treaty.



core intentions. There has been the formation of important elements to supervise the larger objectives. These include the Monitoring & Inspection Department, the Commercial & Investment Department, the Non-Hydrocarbon Resources Department and the Finance & Administration Department to organize the rights and duties of the two state parties with regard to the safety and reservation of the oceanic resources and environment.<sup>51</sup>

## **8.0 DRAWBACKS OF THE NIGERIA & SAO-TOME TREATY AND WAY FORWARD**

Over the years, the problems and concerns surrounding the joint development treaty between Nigeria and Sao-Tome have been very diverse. On one hand, constant political interference by State Parties and their officials in the Joint Development Authority's (JDA) daily operations has led to pressure to sway the bidding process in favour of certain corporations which in turn led to the pull out of international oil companies (IOCs).<sup>52</sup> On the other hand, inadequate funding and lack of transparency makes it difficult to implement the activities of the Zone.<sup>53</sup> With other issues such as contract inflation, spiteful operational acts, long-term bickering amongst top executives, inconsideration in the administration of internal operations, human resource issues, high operating cost, over-staffing,<sup>54</sup> un-dealt with defects in treaties<sup>54</sup> and the allocation of contractor rights,<sup>55</sup> there is an urgent need to ensure corporate and fiscal transparency in its operations while increasing funding to realize its aim and objectives.

## **9.0 BENEFITS OF SUCCESSFUL JOINT DEVELOPMENT AGREEMENTS**

It has been established that in the absence of a proper boundary line or maritime delimitation, energy investments are largely unsecured. The popular Bakassi Case<sup>56</sup> is a call to action to salvage what is left of energy resources in disputed maritime areas. The case not only had a tribal settlement but there was suspected massive oil and gas deposits. It is evident that there is a continuous tendency for unilateral activities towards the exploration of every resources. Hence, the need for joint development. A successful development agreement would inevitably

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<sup>51</sup> Biang J.T, (2010) "The Joint Development Zone between Nigeria and Sao Tome & Principe: A Case of Provisional Agreement in the Gulf of Guinea International Law, State Practice and Prospects for Regional Integration." as accessed at <https://www.un.org> September 5, 2022.

<sup>52</sup> Agbu, A. & Akpan, B., (n.45)

<sup>53</sup> Agbu, A. & Akpan, B., (n.45)

<sup>54</sup> For example, Art. 10.1 provides that the Executive Directors shall hold office for such period as the appointing Head of state shall determine, normally for a period of six years once renewable or until a substitute is appointed. This may encourage inefficiency.

<sup>55</sup> Article 27 of the Treaty.

<sup>56</sup> ICJ Reports of Judgements, 2002; pages 303-602.



have several benefits, some of which will now be discussed.

1. Promoting World Peace and Unity: A lot of disputes in the world are activated by borderline disputes.<sup>57</sup> Another fraction of global clashes are assets related. Where domination of geological resources is the generating cause of divergence and the excuse of control over a province is a deception, joint development would be most applicable to rub the ego of such countries.
2. Sustainable Development of Maritime Resources: Where there is a maritime dispute, the situation of prior notice may occasion partisan problem for a ship moving on the waters.<sup>58</sup> Joint development has been, and can be used to prevail over these issues by realizing maritime directional security, environmental defence of the oceans and maintainable growth of the marine living resources with conforming joint state responsibility.
3. Prevents Loss of Natural Resources: Joint development also averts loss of natural resources as clearly demonstrated in the Cameroon and Nigeria case which led to the creation of the "Green Tree Agreement."<sup>59</sup>
4. Human Resource Management and Development: Joint development has also been used as an opportunity for the states to involve in exchange of resources enhancement and organization ideas and information.<sup>60</sup> In addition, the human capital of the countries occupied in joint development is groomed in the progression of joint development.
5. Technology Transfer and Promotion of Local Human Laws: Joint development also proposes prospects for countries involved in it to help each other in the ownership of petroleum development technology.<sup>61</sup> The association stimulated by the joint development will make this scheme and its possible agreement unofficial.

## 10.0 CHALLENGES MILITATING AGAINST JOINT DEVELOPMENT AGREEMENTS

1. Lack of Political Will: Political will among countries is a key element to the success of the joint development negotiations.<sup>62</sup> Joint development, as a politically motivated international cooperation, can therefore be affected by

<sup>57</sup> Kleinsteiber M., (2013) "Nationalism and Domestic Politics as Drivers of Maritime Conflict" SAIS Review of International Affairs, DOI: 10.1353/SAIS 0027.

<sup>58</sup> Kleinsteiber M. (n.57)

<sup>59</sup> Lloyd C., (2018), "A Critical Appraisal of the Green Tea Agreement between Nigeria and Cameroon" International Journal of Innovative Research and Advanced Studies (IJIRAS), Volume 5, No. 1 (2018):27-33.

<sup>60</sup> Kleinsteiber M. (n.57)

<sup>61</sup> Kleinsteiber M. (n.57)

<sup>62</sup> Ferse SCA., (2023), "Grand Challenges in Marine Governance for Ocean Sustainability in The Twenty-First Century" Front. Ocean Sustain. Sec. Marine Governance Volume 1, DOI 10.3389.



the political will on both sides. The importance of political will can more easily be seen in the example of the Japan–Korea Agreement of 1974.<sup>63</sup> While these two states easily agreed where to delimit the continental shelf in the Tsushima Strait and Sea of Japan, their positions in relation to the southern part of the continental shelf in the East China Sea were different and irreconcilable. After a lot of tough negotiations, they were able to put aside the boundary delimitation and work out on a compromise formula for joint development of the disputed water.<sup>64</sup>

2. **Low Oil Prices and Energy Dependence:** States enter into joint development agreements in order to nurture their energy autonomy.<sup>65</sup> Many countries sought to elaborate their energy security in the outcome of the universal oil crisis.<sup>66</sup> The joint agreement between Japan and South Korea in 1974 is an instance as both countries were motivated by the need to oppose the global oil crisis by using new sources of energy.<sup>67</sup> However, the trial comes when oil prices fall generally and there is a decline in the financial gain, or where a country is majorly in need of the other for energy. States will unavoidably lose the motivation to enter into joint development schedules of energy resources.
3. **Domestic Law:** Domestic law can also change development agreements.<sup>68</sup> Many national laws are not in reassurance of the need to reciprocally develop energy resources, and others openly struggle with the existing ones. However, so far as there is enough time to alter the law, the issue of domestic law is manageable. For example, the Malaysia-Thailand agreement was opposed by the issue of two varied contract structures. Protracted arrangements ultimately produced helpful results in 1990 when the Malaysia-Thailand Joint Authority (MTJA) was created, indicating the launch of the execution of the 1979 agreement.<sup>69</sup>
4. **Domestic Opposition:** The concession of a collaborative agreement usually involves manifold national agencies, and the issue of attaining a compromise among domestic participants can inhibit the effective completion of the

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<sup>63</sup> Miyoshi M., (1998) “Is Joint Development Possible in the South China Sea?” 13 *Ocean Year Book* 610, 615.

<sup>64</sup> Seta M. & Becker-Weinberg V., (2024), “What Next for Japan and the Republic of Korea in the East China Sea? The Law of the Sea Perspective.” *International Law Studies*, Volume 103, ISSN 2375-2831.

<sup>65</sup> Ferse S. (n.62)

<sup>66</sup> The global crisis which occurred in the year 1970.

<sup>67</sup> Schofield C.H, (2009) “Blurring the Lines? Maritime Joint Development and the Cooperative Management of Ocean Resources” 8 *Issues in Legal Scholarship*, 2-4.

<sup>68</sup> Ferse S. (n.62)

<sup>69</sup> Wen-bo, H. (2015), “Analysis of Nigeria- Sao Tome and Principe Joint Development and Suggestions for China’ *International Journal of Energy and Power Engineering*, 4 (3), 123-128.



agreement.<sup>70</sup> For example, where a state is politically weak, it can be greatly influenced in its national policies. In unitary states, where there is one central leadership system; the status quo is the same.

5. Deterioration of Bilateral Relationships: Worsened bilateral dealings could disturb effective development agreements.<sup>71</sup> For example, due to the Thai-Cambodia border dispute, near the Preah Vihear temple and Cambodia's election of ousted Thai Prime Minister – Thaksin Shinawatra as a financial consultant, the Thai government was supposedly bearing in mind the independent cancellation of the 2001 Cambodia-Thailand Memorandum of Understanding concerning overlying continental shelf claims in the Gulf of Thailand.<sup>72</sup> The agreement between Malaysia and Thailand was also disturbed adversely by joint disputes over fishing rights.<sup>73</sup>
6. Third-Party Intervention: Third-party intervention may stem from the weak political position of the leader.<sup>74</sup> Under this condition, political opponents would assess the joint development agreement for causes such as energy safety, superior benefits and local legislations. Facing stern accusations and the risk of legal action, the functioning management is expected to lack the ability to finish off the joint development project. A typical example is the 2005 Philippine-China-Vietnam Joint Marine Seismic Undertaking (JMSU) which led to years-long disagreement due to the host of interventions from various stations.<sup>75</sup>
7. Bilateral Disagreements over the Details of Joint Development Agreement: The discussion between China and Japan is a case in point.<sup>76</sup> The compromises were brutally disapproved by Chinese nationalists which meant that Beijing and Tokyo were not able to side-line its boundary claims when detailing the terms of the agreement with Tokyo. China, in order to evade the border issue later insisted on calling the treaty a “cooperative development.”<sup>77</sup> Also, Beijing and Tokyo were disastrous in accomplishing an agreement concerning the limitations of the joint development zone. The above opinions were tried against 19 joint development projects in Europe, Africa, the Asia Pacific and Latin America; and it is realized that the declining consensual associations is a constant factor.<sup>78</sup>

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<sup>70</sup> Ferse S. (n.62)

<sup>71</sup> Ferse S. (n.62)

<sup>72</sup> Sothearak S., Sovitou L., (2024), “Cambodia-Thailand Joint Development in the Overlapping Claims Area: The Ways Forward” Centre for South Asian Studies CSEAS Policy Brief #5/July 2024.

<sup>73</sup> The agreement between Malaysia and Thailand was reached in 1979.

<sup>74</sup> Ferse S. (n.62)

<sup>75</sup> Lin K. and Chuanyu, L., (2018) “China–Philippines Joint Development of South China Sea Hydrocarbon Resources: Challenges and Future Priorities” 73 *China International Studies* 133, 145.

<sup>76</sup> Ferse S. (n.62)

<sup>77</sup> Peterson A.M, (2009) “Sino-Japanese Cooperation in the East China Sea: A Lasting Arrangement” 42 *Cornell International Law Journal* 35.

<sup>78</sup> The test covered the years between 1958 to 2008.



## 11.0 RECOMMENDATIONS TO BOOST JOINT DEVELOPMENT AGREEMENTS IN THE MARITIME SPACE

1. Negotiation in Good Faith:<sup>79</sup> Perhaps, an important element in joint development agreements is good faith. Many agreements fail because states have other intentions during the negotiation process. Hence, coastal countries must not enter into collective development as a ploy for secret consolidation of their maritime boundary claims. States should also avoid using joint agreements as a means of confirming the status of a dispute.
2. Multi-Stakeholder Engagement: According to the UN Environment Program's 2017 report on regional ocean governance, public-private partnerships and multi-stakeholder participation in sustainable management of maritime resources are essential for joint development.<sup>80</sup> In the context of the governance and management of disputed waters and the exploration and exploitation of natural resources in these areas, non-state stakeholders could be a key element of a successful resource management system. They can make joint development arrangements sustainable, less political and environmentally friendly. A partnership with many stakeholders may involve regional and international organizations, non-governmental organizations, academics, marine companies, fishermen and coastal communities.<sup>81</sup>
3. Improvement of Bilateral Relations: The status of the relationship between or among the concerned counties is important in determining the result of the agreement.<sup>82</sup> Good bilateral relationships will not only ensure that negotiation processes are speeded up but also that they are effectively carried out. It is indeed safe to assert that to achieve effective agreements, improved bilateral relations is the primary criteria and not the other way around. Transboundary cooperation can also help improve bilateral relations and the development of maritime policies as featured by the Organisation of Eastern Caribbean States (OECS).<sup>83</sup>

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<sup>79</sup> The Manila Declaration on the Peaceful Settlement of International Disputes, 15 November 1982, A/RES/37/10, para 10.

<sup>80</sup> Spalding, A. K., Grorud-Colvert, K., Allison, E. H., Amon, D. J., Collin, R., de Vos, A., et al. (2023). "Engaging the Tropical Majority to Make Ocean Governance and Science More Equitable and Effective." *Ocean Sustain.* 2, 8. DOI: 10.1038/s44183-023-00015-9.

<sup>81</sup> Ferse S. (n.62)

<sup>82</sup> Partelow, S., Hadjimichael, M., and Hornidge, A.-K. (2023). "Ocean governance for sustainability transformation," *Ocean Governance: Knowledge Systems, Policy Foundations and Thematic Analyses*, Cham: Springer International Publishing, p. 1-21.

<sup>83</sup> Mahadeo S and Del Savio L, (2023), "Transboundary Maritime Cooperation: The Case of the Eastern Caribbean Region." *Front. Mar. Sci.* 10:1251911, doi: 10.3389/fmars.2023.1251911.



4. Reduction of Domestic Opposition: Domestic opposition can affect the compromise of a collective improvement agreement. It is suggested that the many stakeholders who may have overwhelming impacts in the reaching and implementation of joint development agreements should be enlightened on the necessity of those agreements.<sup>84</sup> Conflicting interests and opinions should also be solved earnestly and totally to achieve successful implementation.
5. The Joint Examination of Terms of Agreements: It is important that all parties are present or represented in the course of negotiations for joint development of marine resources.<sup>85</sup> Therefore, a joint development agreement should be the end result of multiparty deliberations and understandings. No clause or condition should be filtered out or removed without just cause or the mutual consent of the concerned parties. This will foster a good environment for the agreement to flourish and thrive.
6. Balanced Provisions: The expressed aims of participants to mutual cooperative agreements needs to be balanced and outlined to suit their interests.<sup>86</sup> Each party should be equally represented in terms of benefits and obligations. One significant example of a territorial dispute resolved through a joint development agreement is the treaty between Malaysia and Vietnam with respect to the Malay Basin in the southern part of the Gulf of Thailand where both states adopted a practical diplomatic understanding to address their issues peacefully.<sup>87</sup>

## 12.0 CONCLUSION

The increasing importance of the sea space in recent times has propelled the critical examination of joint development of maritime resources in this paper. By carefully observing the historical evolution and the current status of maritime disputes, this work has revealed that energy resources in the maritime space will continue to suffer without a well-mapped out plan on how to manage and develop those resources jointly. Conversely, in view of possible hindrances such as lack

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<sup>84</sup> Keyuan Z., (2006), "Joint Development in the South China Sea: A New Approach" 21(1) *The International Journal of Marine and Coastal Law*, 96.

<sup>85</sup> Xiao J., (2006), "Joint Development of Offshore Oil & Gas Across the International Maritime Boundaries" Ocean Press, 50.

<sup>86</sup> Buchan P.M, Evans L.S, Pieraccini M., & Barr S., (2023), "Marine Citizenship: The Right to Participate in the Transformation of the Human-Ocean Relationship for Sustainability" *PLoS ONE* 18, e0280518, DOI: 10.1371, *Journal Pone* 0280518.

<sup>87</sup> Abd Razak M.F, Jusoh S., Ab Wahab A., (2023), "Malaysia-Vietnam Joint Development Agreement" *Chinese Journal of International Law*, Volume 22, Issue 1, March 2023, Pages 177–184, <https://doi.org/10.1093/chinesejil/jmad013>.



of good faith towards agreements and third-party interventions, joint development agreements may as well fail. This calls for a constant evaluation of the intentions behind those agreements and their efficient execution. The terms of these agreements should be fair and balanced, and the state parties should maintain a coordinated standing. This will not only afford operative application of the arrangements but also the overall development of energy resources habitually in the maritime world. Mutual development of energy resources by neighbouring states in disputed maritime zones is a seamless solution that should be consistently explored, reviewed and improved upon to advance the status of our global economy.