REPUBLIC OF TURKEY

ANKARA UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

DEPARTMENT OF MARITIME TRANSPORTATION

LAW AND POLITICS

JOINT DEVELOPMENT AGREEMENTS AS A DISPUTE SETTLEMENT MECHANISM UNDER THE LAW OF THE SEA

Master's Thesis

ALP EREN GÜL

Ankara, 2021

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I state that all the information in my master's thesis titled "JOINT DEVELOPMENT AGREEMENTS AS A DISPUTE SETTLEMENT MECHANISM UNDER THE LAW OF THE SEA (Ankara.2021)", which I prepared under the supervision of Prof. Dr. Hakan KARAN, was collected and presented in accordance with academic rules and ethical behavior principles, I fully indicated the information I received from other sources in the text and in the bibliography, I declare that I have acted in accordance with the ethical rules, and I will accept any legal consequences in case the contrary arises.

Date: 30/07/2021
ALP EREN GUL

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ABBREVIATIONS

CCS	Convention on the Continental Shelf
CLCS	Commission on the Limits of the Continental Shelf
CS	Continental Shelf
EEZ	Exclusive Economic Zone
ICJ	International Court of Justice
ISA	International Seabed Authority
Iss.	Issue
ITLOS	International Tribunal for the Law of the Sea
JDA	Joint Development Agreement
JDZ	Joint Development Zone
JMA	Joint Management Agreement
MoU	Memorandum of Understanding
No.	Number
P.	Page
TST	Timor Sea Treaty
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea (1982)
UNCLOS I	United Nations Convention on the Law of the Sea (1956)
US	United States
Vol.	Volume

INTRODUCTION

A) SUBJECT AND PURPOSE OF THE THESIS

Throughout the history of mankind, the increasing claims over the oceans and on its governance resulted in the maritime boundary disputes which were responded with the changes in the nature of the delimitation settlement mechanisms[1]. In the 20th century, the technological advancements and increasing availability of the seas and oceans complicated the maritime disputes even more. Prior to the Truman Proclamation in 1945, aside from the differing territorial sea claims and boundaries, there was no internationally accepted or recognized maritime zone or submarine areas which were attributed to the coastal States' exclusive use. Though there was a growing interest of States especially the United States' (US)[2]. The proclamation opened new discussions and disputes over a new maritime zone, concept of the Continental Shelf (CS), which gives certain exclusive rights on seabed and subsoil to the coastal States.

The maritime law requires international cooperation, understanding and unity of the regulations, especially regarding the maritime zones and their delimitations. The increasing maritime disputes related to the maritime boundaries resulted in the first United Nations Convention on the Law of the Sea (UNCLOS I) in 1958 at Geneva. UNCLOS I also aimed to codify the international customary rules. The result of the UNCLOS I consists of four conventions: *Convention on the Territorial Sea and Contiguous Zone*[3], *Convention on the Continental Shelf*[4] (CCS), *Convention on the High Seas*[5], *Convention on Fishing and Conservation of Living Resources of the High Seas*[6]. UNCLOS I in its conventions, introduced two new zones Contiguous Zone and the CS.

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1 Irwin, P. C.: "Settlement of Maritime Boundary Disputes: An Analysis of the Law of the Sea Negotiations" Ocean Development and International Law, 1980, Vol. 8, Iss. 2, p. 106.

2 Cruger, R. B.: "Background of the Doctrine of the Continental Shelf and the Outer Continental Shelf Lands Act" National Resources Journal, 1970, Vol. 10, p. 464.

3 United Nations Convention on the Territorial Sea and the Contiguous Zone, Geneva, adopted on 29 April 1958, entered into force 10 September 1964, United Nations Treaty Series, 1966, Vol. 516, p. 205.

4 United Nations Convention on the Continental Shelf, Geneva, adopted on 29 April 1958, entered into force 10 June 1964, United Nations Treaty Series, 1965, Vol. 499, p. 511.

5 United Nations Convention on the High Seas, Geneva, adopted on 29 April 1958, entered into force 30 September 1962, United Nations Treaty Series, 1964, Vol. 450, p. 11.

6 United Nations Convention on Fishing and Conservation of Living Resources of the High Seas, Geneva, adopted on 29 April 1958, entered into force 20 March 1966, United Nations Treaty Series, 1967, Vol.

In the UNCLOS I, States focused on the definitions and limitations of the maritime areas as well as coastal States' rights and duties including the third party States. Although, the UNCLOS I did not resolve the discussions over the breadth of the territorial sea[7]. For resolving the issue, the United Nations (UN) held a second convention on the Law of the Sea in 1960 at Geneva though the UN's work did not result in any significance[8].

Another United Nations Convention on the Law of the Sea (UNCLOS) was adopted by the UN starting in 1973 and the conferences lasted until 1982 in New York[9]. The UNCLOS aimed the varying issues related to all maritime activities along with the finding a solution to the maritime disputes related to the maritime delimitation as well the compulsory dispute settlements to the maritime activities. In this regard, the UNCLOS has achieved the codification of the most of the international customary law rules relating to the law of the sea.

Part V of the UNCLOS also introduced a new maritime zone known as the Exclusive Economic Zone (EEZ) and Part XV the Compulsory Settlement Mechanisms. The establishment of the new maritime zone, EEZ, placed 87% of World's known offshore hydrocarbon resources under the coastal States' jurisdiction[10].

The States through the increasing availability of the oceans and seas in terms of the living and non-living resources, increased their maritime boundary claims resulting in overlapping claims and putting pressure to the World's peace in late 20th and early 21st century. Joint Development Regime and Agreement as an idea emerged in the US in the 1930's through various studies and judicial cases on joint petroleum, coal and gas[11].

559, p. 285.

7 Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf, United States Presidential Proclamation No. 2667 and 2668, 1945. (Truman Proclamation)

8 Bowett, D. W.: "The Second United Nations Conference on the Law of the Sea", International and Comparative Law Quarterly, 1960, Vol. 9, p. 415.

9 United Nations Convention on the Law of the Sea, Montego Bay, adopted on 10 December 1982, entered into force 16 November 1994, United Nations Treaty Series, 1998, Vol. 1833, p. 397. (UNCLOS)

10 Beckman, R. / Bernard, L.: "Framework for the Joint Development of Hydrocarbon Resources", Asian Yearbook of International Law, 2018, Vol. 24, p. 86.

11 Schofield, C.: "Blurring the Lines: Maritime Joint Development and the Cooperative Management of Ocean Resources", Issues Legal Scholarship, The Journals of Legal Scholarship: Issues in Legal Scholarship, 2009, Vol. 8, Iss. 1, p. 5.

Even before the UNCLOS compelling the disputing States to enter into a provisional arrangement through Article 74(3) and Article 83(3) when they cannot agree on a permanent delimitation line, there were examples to the Joint Development Agreements (JDA) for fishing zones and the hydrocarbon resources[12]. The agreement itself is the result of negotiation periods that can be changed depending on the needs of the disputing States. In addition, the idea of JDA later suggested and supported in an International Court of Justice (ICJ) award in 1969 relating to the "*North Sea Continental Shelf Case*"[13] and further elaborated by a separate opinion[14].

The introduction of the UNCLOS along with the provisions regarding to the maritime boundaries, especially the CS and the EEZ, gave rise to the maritime boundary delimitation disputes. Especially in case of the exploration and exploitation activities of the maritime resources in overlapping claim zones and made harder for disputing States to resolve the delimitation dispute through negotiations[15].

As one of the provisional arrangements that can fit into the scope of Article 74(3) and Article 83(3) of the UNCLOS, the JDA can present a solution for disputing States to overcome moratorium created over the resources in the overlapping claims of maritime zones by the rights and duties determined by the same articles[16]. The JDA allows disputing States to work in cooperation in the disputed and overlapping zone to jointly explore and exploit the hydrocarbon resources through differing means while postponing the final delimitation line without prejudice to the changes made during the provisional arrangement period[17].

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[12] Beckman / Bernard, 88.

[13] North Sea Continental Shelf Case Judgement on 20 February 1969, Germany v. Denmark v. Netherlands, International Court of Justice Reports, 1969, No: 51 and 52, p. 53.

[14] More information can be found in the North Sea Continental Shelf Case Separate Opinion of Judge Jessup to the Judgement on 20 February 1969.

[15] Ugwuanyi, C. S.: "Does the Use of Joint Development Agreements Bar International Maritime Boundaries Delimitation:", Dublin Legal Review, 2011, Vol. 1, p. 30.

[16] Miyoshi, M.: "The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation", International Boundaries Research Unit Maritime Briefing, 1999, Vol. 2, p. 5. (Joint Development of Offshore Oil and Gas)

[17] Miyoshi, M.: "The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf with Special Reference to the Discussions at the East-West Centre Workshops on the South-East Asian Seas", International Journal of Estuarine and Coastal Law, 1988, Vol. 3, p. 2.

In this study the JDA will be examined. The purpose is to put forward the reasons and factors that effects the disputing States to conclude a JDA along with the historical development and legal framework presented before in the international customary law and in UNCLOS. Within the purpose, the rights and obligations of the States according to Articles 74(3) and 83(3) of the UNCLOS is also examined in detail to provide deeper understanding and give comprehensive explanation.

In addition, this research purposes itself with making a clear definition of the JDA while elaborating the elements and the scope of the agreements. It also focuses on the nature of the agreement including the involvement of the third States and organizations defining the zones where the JDA can be concluded.

The work studies the concept of the JDA in terms of the requirements of the agreement and the specific types. In line with that, the requirements for the conclusion of a JDA will also be scrutinized in order to understand how an agreement is made between disputing States. As one of its purpose, the Thesis additionally evaluates the function of the JDA as provisional or permanent maritime boundary delimitation dispute settlement. Finally, it has the aim of examining the agreed clauses of the agreement.

B) SCOPE AND AIM OF THE THESIS

The scope of the thesis is to explain and analyze the JDA in accordance with its international legal framework, application, contents, conclusion and termination of the agreement. The JDA presents a great opportunity to the disputing States whereas the unresolved maritime boundary disputes increase tension, moratorium over resources and insecurity for the investors. The JDA can shelve the maritime boundary delimitation dispute over long periods of time while enhancing the relationship between the disputing States and decreasing the tension related to the delimitation dispute. In addition to that the agreements present an opportunity to the disputing States to develop the disputed zone jointly.

Due to the advancements in the technology and the connected change in the international law, the maritime disputes related to the maritime boundary delimitations are increased. If the disputing States cannot delimit the boundary lines through the

conventional dispute settlement mechanisms, one of the prohibitions that has been set by Articles 74(3) and 83(3) of the UNCLOS is that the States should refrain from any act that may infringe the rights of the other State as well as affect the final delimitation of the boundary[18]. In the practice this results in the moratorium of the reserves in the disputed zone. The States should resort to a provisional arrangement according to the these UNCLOS articles.

As a provisional arrangement, the JDA, allows the States to explore and exploit the hydrocarbon and mineral resources on the disputed zone jointly with respect to the terms of the agreement. Also, the JDA can be used as a replacement to the maritime boundary delimitation agreement.

The Thesis aims to answer the following questions related to the JDAs:

- Why do State's conclude JDAs and what are the factors that affect a JDA agreement?
- What is the historical development of the JDAs before and after the UNCLOS?
- What is the legal framework for the JDAs before and after the UNCLOS?
- What is the definition of the JDA and what are the elements of a JDA?
- Where does the JDA can be concluded?
- What are the types of JDA and what are the differences?
- Does an agreement done in a zone where the boundaries are set can be considered as JDA?
- Does the (cross-border) unitization agreement can be considered as a JDA?
- What are the differences between a JMA and a JDA? Can they be concluded together?
- What are the requirements to conclude a JDA?
- What are the functions of the JDA? Can the JDA be permanent solution?
- What are the clauses should be in a JDA? How to terminate a JDA?

[18] Schofield, 4.

C) RESEARCH METHODS USED IN THE THESIS

On the thesis, the JDAs, along with the theoretical scope, is handled in accordance with the UNCLOS, CCS and JDAs before and after the UNCLOS. The topic is examined with respect to the international customary law, and several current JDAs are referred. Upon the review over the international resources and their provisions examined, which are the main resources for the subject, the literature review is done in order to further evaluate and illuminate the subject with the doctrinal perspectives and resources, such as books, articles, thesis. As supplementary sources international judicial decisions and reports are of use.

I. REASONS FOR JOINT DEVELOPMENT AGREEMENT

A) GENERAL

The JDA is considered as an alternative dispute resolution mechanism both in terms of permanent and provisional manner. One of the main reasons that the disputing States to refer to a JDA is that the political will to overcome the moratorium that is created by Articles 74(3) and 83(3) of the UNCLOS and jointly develop the natural resources located on the disputed area. The joint development of the zone in terms of the oil and gas resources are important for the coastal States and their economy.

Articles 74(3) and 83(3) of the UNCLOS refer to an “practical” and “provisional” arrangements of the disputing States when they cannot refer to another dispute resolution mechanism. The agreement is in a provisional nature that allows disputing States to address the dispute to JDA in line with Articles 74(3) and 83(3) of the UNCLOS.

The lack of agreement might be caused by the geographical situation of the disputing States and the natural resources being straddling through the disputed maritime zones. Therefore, the disputing States may refer to JDA.

B) MORATORIUM ON RESOURCES

The presence of hydrocarbon resources or the polymetallic nodules is not directly but implicitly considered as relevant circumstances while settling a maritime delimitation

dispute through conventional dispute settlement mechanisms[19]. On the other hand, the JDA aims the development of the natural resources and present economic benefit to the disputing States where the agreement unlocks the moratorium created by Articles 74(3) and 83(3) of the UNCLOS. Therefore, the economic factor is one of the critical topics that should be considered during the negotiations.

As an addition to the economic factors, the disputing States should also consider the technological advancements of the States and possibility of equal and joint pursuance of the exploration and exploitation activities[20]. If the availability of required technology is not close for both States, then the disputing States may prefer to refer a Single State JDA model during negotiations or technology transfer.

The contracting States can carry out the activities regarding the hydrocarbon and mineral resources in the Joint Development Zone (JDZ) through governmental institutions but may also transfer or subcontract their rights on the JDZ to a private company[21]. It should be added that the JDA aims to provide the development of the natural resources and share of the revenue to the States. Therefore, the activities in the JDZ are required to be efficient and sustainable for the States.

The disputing States might be in a need for the hydrocarbon resources located on the overlapping claims. For certain cases it is mentioned that the all the disputing States should be aware of the potential hydrocarbon resources in order to reach a JDA but the greater and extensive knowledge about the natural resources located on the joint zone is most likely to result in excessive claims and the State will be less likely to compromise for an agreement[22].

During the negotiations, the States with greater knowledge and strong claims may push for a smaller JDZ. This approach is preferable for the disputing State which has greater

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[19] Irwin, 130.

[20] Schopmans, H. R.: “Explaining (Non-)Cooperation on Disputed Maritime Resources: Joint Development Agreements, Disputed Territory, and Lessons from the Falkland Islands”, Australian Journal of Maritime & Ocean Affairs, 2018, Vol. 10, Iss. 2, p. 113 and 114.

[21] *Ibid*. 108.

[22] MacLaren, G. / James, R.: “Negotiating Joint Development Agreements”, in Beckman, R. / Townsend-Gault, I. / Schofield, C. / Davenport, T. / Bernard, L. (eds.): *Beyond Territorial Disputes in the South China Sea: Legal Framework for the Joint Development of Hydrocarbon Resources*, Edward Elgar, 2013 Northampton, p. 143.

knowledge of the natural resources in the JDZ and have particularly better and stronger claim on the zone[23]. These States especially negotiate for a limited and smaller JDZs in order to control the resources left outside of the JDZ themselves resulting in the direct exploration and exploitation. In this type of JDA negotiations, other State push for a bigger JDZ to include other potential hydrocarbon or polymetallic nodule deposits[24]. It should also be mentioned that the knowledge difference may cause disproportional share of the resources and revenues weighing against to the State with less knowledge.

C) LACK OF AGREED DISPUTE SETTLEMENT MECHANISM

The UNCLOS as of its signature, does not entitle Contracting States to reserve any of its provisions. However, its Part XV grants contracting States a right of choice regarding the disputes arising from the "interpretation or application" of this Convention. Article 279 of the UNCLOS directly refers that the disputes must be settled through the peaceful means. These peaceful settlement means should be in line with Article 2(3) of the UN Charter referring "*… in a manner that the international peace and security, and justice, are not endangered*". Also, Article 279 of the UNCLOS directly refer to the UN Charter Article 33(1):

> "The 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."

The peaceful means are listed as the *"... negotiation, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice*". According to the referrals made by the UNCLOS, the disputing States can rely on the list of peaceful means. In addition, the following paragraph of Article 33 of the UN Charter provides that if the Security Council of UN deems necessary, the disputing States may be called upon for a peaceful settlement over their dispute.

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23 *Ibid*.

24 Beckman / Bernard, 99.

The disputing States should exchange views upon the disputed matter. It is an obligation that has been set under Article 283 of the UNCLOS [25]. This provision likewise sets forth the choice of procedure of the disputing States as well as informing public where a procedure failed or terminated by the disputing States.

Article 281 of the UNCLOS provisions that in case of the disputing States cannot reach an agreement through the peaceful settlement means, then Part XV of the UNCLOS is applicable. According to the Article 282 of the same, the disputing States may decide on any means of dispute settlement on disputes that may arise or already existing, that dispute can be submitted to that procedure[26].

There is a compulsory dispute settlement under Section 2 of Part XV of the UNCLOS. Upon signature, the UNCLOS obliges the contracting States to give their consent regarding to the disputes that may arise from the “interpretation or application” of the Convention[27]. Article 287(1) of the UNCLOS states that the choice of compulsory procedures as the judicial settlement mechanisms, International Tribunal of Law of the Sea (ITLOS) and ICJ, arbitral tribunal and special arbitral tribunal. According to Article 287(3), if the contracting State did not make any choice then the chosen procedure is the arbitration. The disputing States may have made the same choice of procedure, and then the dispute can only be sent to that procedure unless the disputing States agree upon a different procedure[28]. In case where the disputing States made different choices of procedure then the dispute may only be submitted to the arbitration as provisioned in Article 287(5) of the UNCLOS.

Article 287 of the UNCLOS is only applicable to the disputes related to the “interpretation and application” of itself. Under international law as expressed in the UNCLOS the contracting States are required to give their consent to go under a jurisdiction such as the ICJ, ITLOS or arbitration[29]. Therefore, while signing the

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[25] Article 283 of UNCLOS.
[26] Irwin, 111.
[27] Article 283 of UNCLOS.
[28] Kwiatkowska, B.: "Submissions to the UN Commission on the Limits of the Continental Shelf: The Practice of Developing States in Cases of Disputed and Unresolved Maritime Boundary Delimitations or Other Land or Maritime Disputes: Part One.", International Journal of Marine and Coastal Law, 2013, Vol. 28, Iss. 2, p. 236.
[29] Kwiatkowska, *236*.

UNCLOS, the contracting States give their consent for their choices of procedure and cannot refrain from that even if the States do not make any choice, the consent is given on arbitration[30]. It should be noted that, the consent given to a choice of procedure not necessarily interpreted as the contracting States are obliged to go under that choice of procedure for their dispute but may also agree upon a different choice of procedure.

If the disputing States cannot resolve their maritime boundary delimitation dispute related to CS or EEZ through peaceful settlement means they may and should refer to JDA[31]. In practice the disputing State with more defensible claim seeks to achieve a final delimitation line through compulsory dispute settlement mechanisms provided in the UNCLOS. In this case, each of the disputing State should consider the weaknesses and strengths of their claim and expect a better and advantageous final maritime boundary delimitation line compared or better share on the JDA to the equal share on the exploration and exploitation revenue[32].

D) GEOGRAPHY

The CS is defined, both in legal meaning and geographical meaning, in the UNCLOS. As a natural prolongation of the coastal State, if the geographical definition allows the coastal State up to but not exceedingly 150 nm extension to the legal definition of CS which gives right of inheritance up to but not exceedingly 200 nm[33]. In case of opposing States where distance between the baselines are more than 400 nm and the coastal States are claiming extended CS, the geographical factors should be considered during the negotiation procedures of JDA.

Additionally, the geographical factors also come into light where disputing States make CS or EEZ claim over their islands. The islands might be located on the wrong side of the equidistance line far from the mainland of the coastal State or on the seas of peculiar

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[30] Irwin, 108.

[31] Meierding, E.: "Joint Development in the South China Sea: Exploring the Prospects of Oil and Gas Cooperation between Rivals", Energy Research and Social Science, 2017, Vol. 24, p. 69.

[32] Maclaren / James, 140 and 141.

[33] Maclaren / James, 142.

nature such as Aegean Sea or Eastern Mediterranean Sea. Therefore, their maritime zones depending the circumstances of the island can be given either no effect or partial effect[34].

Another important point is the location of the island States to mainland States. The court decisions are generally favor the mainland States and give reduced maritime boundaries to the island States therefore during the JDA negotiations, the disputing States must also take the location into consideration[35]. In accordance with the location the coastal lengths of the States can also be taken into consideration where there is a reasonable difference between.

E) FACTORS

There are certain factors that affect the negotiations and contents of JDA. The agreement cannot be simply considered as the mere joint exploration and exploitation of predetermined zone and resources. There are many factors which should be considered but generally ignored in the decisions of the international courts and tribunals[36]. These factors come into life during the negotiation periods of the JDA and affects the disputing States approach to the agreement.

According to the factors, the disputing States may refer to differing types of the agreement, revenue shares, jurisdictional measures and can adjust the JDZ[37]. The factors can be listed as historical factors, geographical factors, economic factors, number of the disputing States and the involvement of third parties and States.

The UNCLOS has given importance to the historical factors regarding the delimitation of territorial waters[38], the definition of archipelago[39] and bays[40] but it does not refer to the historical usage of the seas beyond territorial waters. It should be mentioned that the States consider historical factors as relevant factor to the maritime boundary delimitation

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[34] Beckman, R. / Schofield, C.: "Moving Beyond Disputes over Island Sovereignty: ICJ Decision Sets Stage for Maritime Boundary Delimitation in the Singapore Strait", Ocean Development and International Law, 2009, Vol. 40, Iss. 1, p. 10.
[35] Beckman / Schofield, 13 and 14.
[36] Maclaren / James, 141.
[37] *Ibid*.
[38] Article 15 of the UNCLOS.
[39] *Ibid*. Article 46(b).
[40] *Ibid*. Article 10(6).

disputes. The disputing States prefer to use the historical factors as supporting means for their maritime boundary claims, CS and EEZ, during the negotiation period and concluding a JDA. The historical factors are unique on each case and the affect may differ on the JDA.

The historical factors can be the consistent military or fishing activities or any consistent and perpetual act of sovereignty or usage of sovereign rights[41]. The historical factors may as well arise from the dispute over sovereignty of certain features and islands[42]. Also the failed negotiations and the negotiation processes can be also considered as historical factor which may motivate the disputing States to settle with a JDA in order to increase the cooperation between the States and decrease the tension created by the dispute.

The form of the JDA may be chosen according to the States' technological advancements, political positions, type of the resources to be explored and exploited furthermore the States must decide on the collaboration capabilities of the States[43]. The States also prevent the disproportionality in the share of the revenue as well as the administrative responsibilities of all parts.

II. HISTORICAL DEVELOPMENT AND LEGAL BASIS

A) BEFORE THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

1- Historical Development

The emergence of the joint use of the maritime zones first conceptualized in the US during the 1930s[44]. However, the cases in the US were not in an international manner but rather suggestions to disputes between the States in the US. The use of the JDA was then limited to joint petroleum development and present in land borders and maritime borders

41 Maclaren / James, 142.
42 Schopmans, 99.
43 *Ibid*.
44 Keyuan, Z.: "Joint Development in the South China Sea: A New Approach", International Journal of Marine and Coastal Law, 2006, Vol. 21, p. 90.

of the US[45]. With the presidential decree of Truman in 1945, the US claimed sovereign rights over the CS therefore the natural resources, minerals, oil and natural gas[46]. With the increasing claims by the States in the northern and southern continents of America, the maritime disputes arise on the overlapping CSs of the States. At that point, the concept of JDA separated from its use on land territories and shifted to resolving the maritime delimitation issues.

Following the maritime boundary delimitation disputes arise in the new world, the idea of JDA later appeared in the Europe in 1950s and 1960s regarding on some cases of joint development of oil, gas and coal. As for the situation in Europe, the approach was the same for the usage of the agreement on the resources on resolving the maritime delimitation issues[47].

It should be mentioned that the JDA has three crucial turning points as for its concept and its acceptance as a provisional maritime boundary agreement. The JDA between the Bahrain and Saudi Arabia in 1958[48] is considered as the very first agreement and example of the JDA long before the introduction of obligations the States put under Articles 74(3) and 83(3) of the UNCLOS. The agreement itself is embedded in a maritime boundary delimitation agreement, where the CS between Bahrain and Saudi Arabia drawn in Arabian Gulf.

Second turning point for the JDA history is the suggestion of JDA by a Judge Philip C. Jessup in his dissenting opinion on the ICJ's North Sea Continental Shelf Case between Germany, Denmark and Netherlands[49]. As the Judge's opinion is given in detail, the creation of a JDZ in the North Sea more equitable than the "three-stage approach" taken in the ICJ's decision. This case is not only crucial for the history of JDA but also for the deportation of the judicial decisions on maritime boundary delimitation from the

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[45] Ely, N.: "The Conservation of Oil", Harvard Law Review, 1938, Vol. 51, p. 1209.

[46] See footnote 7, the Truman Proclamation.

[47] Xue, S.: "Why Joint Development Agreements Fail: Implications for the South China Sea Dispute", Contemporary Southeast Asia, 2019, Vol. 41, p. 420.

[48] Bahrain-Saudi Arabia Boundary Agreement on 22 February 1958, United Nations Treaty Series, 2000, Vol. 1733, p. 3.

[49] See footnote 13, North Sea Continental Shelf Case, Separate opinion of Judge Philip C. Jessup to the Judgement on 20 February 1969, p. 67.

"equidistance method" to "equitable solution" as important as for the development of the law of the sea.

Final turning point of the JDA's history is the agreement between the Japan and the Republic of Korea in 1974[50]. The agreement is one of the successful and long-standing JDAs. The States had maritime boundary delimitation dispute regarding a zone in the East China Sea and the negotiations for a delimitation line failed. Upon this failure to agree on a final delimitation line, the States referred to a JDA, enter into force in 1978 and valid for 50 years, shelving the dispute.

2- Legal Basis

a) General

The legal basis of JDA as an agreement dealing with the maritime boundary delimitation disputes falls under the international customary law and to the general international agreements and conventions. Related articles are provisioned for international disputes hence they are not exclusive to maritime boundary delimitation or law of the sea.

The international customary laws regarding the settlement of international disputes through peaceful means first codified in the "*Convention for the Pacific Settlement of International Disputes*" at the Hague in 1899[51]. The convention obliged the contracting States to refer to the peaceful means before appealing arms. The convention renewed in 1907 and small changes made but as for both conventions foresee negotiation, good offices and mediation as peaceful dispute settlement mechanisms.

The "*General Act for the Pacific Settlement of International Disputes*" has been signed in Geneva 1928 by 22 State parties. The act, which replaced the convention of 1907, was

[50] Agreement between Japan and the Republic of Korea Concerning the Establishment of Boundary in the Northern Part of the Continental Shelf Adjacent to the Two Countries, adopted on 30 January 1974, entered into force 22 June 1978, United Nations Treaty Series, 1991, Vol. 1225, p. 103.

[51] Pacific Settlement of International Disputes, Hague, adopted on 29 July 1899, entered into force 4 September 1900, United Nations Treaty Series, 32 Status 1779, p. 392.

deposited to the League of Nations. The act later embedded in the UN Charter and revised several times. Article 33 of the UN Charter (Part VI) is as follows[52]:

> "1. The 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.
>
> 2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."

This provision obliges States to withhold from any act that may endanger the international peace and security as for international solutions presenting the list of option firstly to be referred. The list is not *numerus clausus* and disputing States are free to choose any other means of peaceful settlement of disputes. In line with Article 33 of the UN Charter regarding the maritime boundary delimitation disputes, before the introduction of specific means of settlement of disputes such as the JDA, part XV of the UNCLOS rules that the disputing States should seek the peaceful settlement of the disputes through the conventional means listed.

b) Principles of Good Faith and Cooperation

The international customary law requires the States act in "Good Faith" and in "Cooperative" manner to seek out the resolution of the dispute as well as decreasing the tension. The definition of the "Good Faith" is rather vague and can be different to each State[53]. Article 38 of the ICJ Statute[54] sets forth that the Court shall "…*apply the general principles of law recognised by civilised nations*.". Also, the court stated that "a*ct in good faith*" is also a general principle of law.

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[52] Charter of United Nations, adopted 26 June 1945, entered into force 1945, United Nations Treaty Series, 1981, Vol. 892, p. 119.

[53] Tetley, W.: "Good Faith in Contract: Particularly in the Contracts of Arbitration and Chartering", Journal of Maritime Law and Commerce, 2004, Vol. 35, p. 563.

[54] United Nations, Statute of the International Court of Justice, San Francisco, adopted on 26 June 1945, entered into force 24 October 1945, United Nations Treaty Series, 1946, Vol. 993, p. 26.

As another principle in the face of a dispute, the States must work in cooperation with each other to achieve a peaceful resolution[55]. Several ICJ decisions before the UNCLOS, referred to the co-operation as a general principle of law in the resolutions of conflicts and disputes. The cases between the New Zealand and France[56] as well as the case between Australia and France[57], regarding the Nuclear Tests, ICJ pointed towards both the "Good Faith" and the "Co-operation" as a basic principle and essential matter for the resolution and prevention of dispute.

c) Principle of Not to Jeopardize or Hamper the Reaching of Final Agreement

The exploration and exploitation of the CS is given to the coastal State as a sovereign right and the international customary law expects the other States to be abide by the usage of these rights. In the case of an overlapping claim regarding the CS or EEZ, the disputing States should refrain from conducting any activity that may infringe the rights of other State.

In addition, the provisional arrangements do not jeopardize or hamper the final delimitation line. Essentially these agreements are made for easing the tension between the disputing States and further enhance the co-operation and understanding of the contracting States.

c) Principle of to Make Every Effort to Enter into Provisional Arrangement of Practical Nature

State practice before the introduction of the UNCLOS, consisted upon provisional arrangements such as the Memorandum of Understandings (MoU) until the disputes are resolved. The MoUs can be a provisional delimitation, a decision of a common zone or a "Agree to Disagree". The provisional arrangements listed above can also be made in the

55 Reinhold, S.: "Good Faith in International Law", Journal of Law and Jurisprudence, 2013, Vol. 2, p. 46.
56 Nuclear Tests Case Judgement on 20 December 1974, New Zealand v. France, International Court of Justice Reports, 1974, No: 401, p. 473.
57 Nuclear Tests Case Judgement on 20 December 1974, Australia v. France, International Court of Justice Reports, 1974, No: 400, p. 268.

form of an agreement. “Agree to Disagree” MoU prohibits the exploration and exploitation.

There are certain examples of JDA being used as a provisional arrangement pending the final maritime boundary delimitation agreement. Early examples of the JDAs are a great example of provisional arrangements that are also practical such as the Saudi Arabia and Bahrain agreement in 1958.

B) AFTER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

1- Legal Basis

a) General

The UNCLOS has been adopted in order to codify the rules of international customary law regarding the law of the sea and presenting a legal framework for governing all the uses of the seas and oceans[58]. The UNCLOS provides definitions, breadth and delimitations of maritime zones as well as sovereignty or sovereign rights to the coastal States, rights of third States for the maritime zones.

EEZ and CS as of the rights given by the UNCLOS, are subject to the sole exploration and exploitation of the coastal States[59]. In the CS, coastal States have the right to explore and exploit the resources on the seabed and under the subsoil for 200 nm and in some cases up to 350 nm but for the EEZ, the coastal States are granted an extra sovereign right for the living resources in the water column up to but not exceedingly 200 nm. The CS is an inherent right of a State unlike the EEZ which should be proclaimed in order to establish. The extended CS, the extension is to the 200 nm, must be submitted to the “*Commission on the Limits of the Continental Shelf*” [60] (CLCS).

Article 121 of the UNCLOS defines islands and entitles them to all the maritime zones ignoring their special circumstances and differing sizes[61]. Geographical features such as

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58 Beckman / Bernard, 87.
59 Articles 56 and 77 of the UNCLOS.
60 Article 76(8) of UNCLOS.
61 *Ibid*. Articles 121.

rocks are not given full maritime boundary entitlement. This situation brings many maritime boundary delimitation disputes into existence as well such as the Jan Mayen Island or the Snake Island[62]. In response to the disputes regarding the CS and EEZ, Articles 74 and 83 the UNCLOS are adopted. Specifically, third paragraph of each article should be elaborated further for understanding the legal basis presented in the UNCLOS for the JDAs.

The delimitation issues of opposing and adjacent States regarding the EEZ and CS are mentioned in the corresponding Articles 74 and 83 of the UNCLOS which are exactly the same in wording. The third paragraph foresees rights and responsibilities of the disputing States in case of lack of a final maritime boundary delimitation agreement as stating that[63]:

> "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."

The rights and obligations set by Articles 74(3) and 83(3) of the UNCLOS can be summarized in four parts; "*spirit of understanding and cooperation*", "*effort to enter into provisional arrangement of practical nature*", "*not to jeopardize or hamper the reaching of the final agreement*" and "*without prejudice to the final delimitation*".

b) Spirit of Understanding and Cooperation

The States that have disputes on overlapping maritime boundary claims, are required to have "*Spirit of Understanding and Cooperation*" until they reach the final delimitation agreement. The obligation is not only including the final delimitation negotiations but also include the negotiations of provisional measures and the duration of the provisional arrangements.

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[62] Acer, Y.: "Turkey's Legal Approach to Maritime Boundary Delimitation in the Eastern Mediterranean Sea", Insight Turkey, 2021, Vol. 23, p. 106.

[63] *Ibid*. Articles 74(3) and 83(3).

During the negotiations of a final maritime boundary delimitation agreement, disputing States must work in cooperation, but the understanding and cooperation is not only limited to the delimitation negotiation process but also for the time period itself[64]. During the provisional phase or in case of failure of the negotiations, disputing States are expected to either refer to "Agree to Disagree" MoU or to another provisional arrangement.

c) Provisional Arrangements of Practical Nature

In addition to the "*Spirit of Understanding and Cooperation*", Articles 74(3) and 83(3) of the UNCLOS oblige States to make every effort to enter into a provisional arrangement of any sorts[65]. Hence, the agreement on a provisional arrangement is not forced upon the disputing States. Though, the disputing States are also obliged to "negotiate in Good Faith". The purpose of obliging the disputing States to make every effort to enter into a provisional arrangement is the de-escalation of the tension caused by the maritime dispute.

Additionally, the provisional arrangement must be of "Practical Nature". The JDA has the greatest potential and is the best option of provisional arrangement since it presents a temporary solution to the deadlock created by Articles 74(3) and 83(3) of the UNCLOS[66]. The JDA presents a great potential with the freedom of choice on the management, jurisdiction and share of the revenues. The freedoms can be used on the creation of the JDZ and exploration and exploitation activities related to the hydrocarbon and mineral resources located in the JDZ. Therefore, the JDA have positive impact on the economic development of the disputing States as well.

d) Not to Jeopardize or Hamper the Reaching of Final Agreement

During the settlement of maritime boundary delimitation disputes, Articles 74(3) and 83(3) of the UNCLOS obligate contracting States "*not to jeopardize or hamper the reaching of final agreement*". This obligation prevents any unilateral activities that may

[64] Logchem, Y. V.: "Exploration and Exploitation of Oil and Gas Resources in Maritime Areas of Overlap under International Law: The Falklands (Malvinas)", Hague Yearbook of International Law, 2015, Vol. 28, p. 46.
[65] Beckman / Bernard, 94.
[66] *Ibid*. 95.

permanently infringes the rights of other States, such as exploration and exploitation of the resources which results in irreparable damage, in the disputed zone and considers it unlawful[67]. The articles exclude the joint exploration and exploitation of the disputed zone through a bi-lateral or multi-lateral agreement by that the article allows and encourages the disputing States to concluding a JDA to pursue economic development in the disputed zone.

e) Without Prejudice to the Final Delimitation

Articles 74(3) and 83(3) of the UNCLOS lay down that the any provisional measure taken, as well as the results of such agreement, by the disputing States regarding the maritime boundary delimitation is deemed to be ineffective on the final maritime boundary delimitation agreement[68]. Therefore, any compromise made by the disputing States, in order to achieve a provisional arrangement, cannot be held against in the negotiations of final delimitation line and cannot be considered as a denunciation of a right or a claim as well as it cannot legitimize any right or claim of any contracting State in the provisional arrangement.

2- Historical Development

After the codification of the international customary law to the UNCLOS, the party States have taken and considered the UNCLOS as a constitution of the law of the sea. The judgement on the North Sea Continental Shelf Case regarding the change of the principle has taken into consideration and added in to the UNCLOS as a way of delimiting the CS or EEZ of the disputing States. The settlement of the maritime boundary delimitation disputes has shifted from the "equidistance" method to the "equity and equitable solution" principle in accordance with the "three-stage approach".

The Arbitral Tribunal on the Eritrea Yemen Arbitration suggested a JDA with stating that the disputing States should consider the unitization and sharing any resources that is

[67] Lagoni, R.: "Interim Measures Pending Maritime Delimitation Agreements", American Journal of International Law, 1984, Vol. 78, p. 358. (Interim Measures)
[68] Beckman / Bernard, 96.

in the disputed maritime zone[69]. It should be mentioned that there are no JDA through a direct arbitral or tribunal award yet.

III. DEFINITION AND ELEMENTS

A) DEFINITION

Early concept and idea of the JDA presented itself in the US in 1930s over the cases related to the joint petroleum and gas resources. Following the emergence of the JDA concept in the US, in the 1950s and 1960s the European Union also had disputes related to the hydrocarbon resources and in some of the cases joint development of these resources were in place[70]. It should be noted that the legal basis for the JDA and the obligation of a provisional arrangement in lack of a negotiation or the delimitation were not set forward in any convention[71].

The concept of the Joint Development, compared to the other concepts of Law of the Sea, is rather new to the States. It emerged in accordance with the changing claims and needs of the States related to the technological advancements that allowed exploitation of offshore hydrocarbon resources over the CS[72]. The Joint Development idea was to find a solution to the maritime delimitation disputes where the States could not agree upon a final delimitation line, especially on the CS and the EEZ, through the conventional methods such as the negotiation, arbitration, conciliation etc. The JDA allows the disputing States to explore and exploit the natural resources in the disputed maritime areas without prejudice to the final delimitation[73].

Even though the concept of the JDA is tactable in terms of its objective and purposes in the application of the JDA before and after the introduction of the provision regarding the arrangements in provisional nature in Articles 74(3) and 83(3) of the UNCLOS, the definition on what falls under the scope of the JDA is rather vague and matter of

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[69] The Government of the State of Eritrea v The Government of the Republic of Yemen, Permanent Court of Arbitration, 17 December 1999, Award of the Arbitral Tribunal in The Second Stage of the Proceedings, p. 417.
[70] Miyoshi, "Joint Development of Offshore Oil and Gas", 1.
[71] Schofield, 24.
[72] Acer, Y.: "A Proposal for a Joint Maritime Development Regime in the Aegean Sea", Journal of Maritime Law and Commerce, 2006, Vol. 37, p. 52.
[73] Articles 74(3) and 83(3) of the UNCLOS.

discussion. Discussions arose as a result of lack of definition in the international conventions which in a matter of fact allows States to adjust the JDA regarding to the needs[74]. On the other hand, the lack of definition results in many different understandings and point of views by the States and the scholars.

One of the most unified and codified international law subjects is the law of the sea meaning that the definition of the terms and concepts are made in order to prevent the differing understandings of the international agreements. Despite, the definition of the provisional arrangements, especially the JDA, are not presented within the UNCLOS. The definition cannot be found in any international convention related to the law of the sea solely in the academic and doctrinal works[75]. The differences related to the definition of the JDA, present themselves in form of which resources can be the subject of JDAs in addition to the problem of whether in the existence of a boundary delimitation line JDA can be made.

In spite of the fact that there are many different definitions to the JDAs, they can be scrutinized through doctrinal views. The definition of JDA according to the Shihata and Onarato is as follows[76]:

> "… a procedure under which boundary disputes are set aside, without prejudice to the validity of the conflicting claims, and the interested States agree, instead, to jointly explore and exploit and to share any hydrocarbons found in the area subject to overlapping claims."

This definition is in accord with the provisional nature of the JDAs where the disputing States cannot conclude maritime delimitation within the conventional dispute settlement mechanisms but rather refer to the second-best option, JDAs, regarding the hydrocarbon resources[77]. Limiting the JDAs into only disputed zones and to the hydrocarbon resources with leaving the mineral resources out of the scope. The

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74 Beckman / Bernard, 100.

75 Ugwuanyi, 30.

76 Shihata, I. F. / Onorato, W. T.: "Joint Development of International Petroleum Resources in Undefined and Disputed Areas", Foreign Investment Law Journal, 1996, Vol. 11, Iss. 2, p. 299.

77 Anderson, D.: "Strategies for Dispute Resolution: Negotiating Joint Agreements", *Modern Law of the Sea: Selected Essays*, Brill-Nijhoff, 2008 Leiden, p. 491.

understanding of Gao is in line with the definition of Shihata and Onarato and Gao defined JDA as[78]:

> "… the common exercise of sovereign rights and jurisdiction based on an international agreement between governments of two or more concerned states for the purpose exploitation and apportionment of a potential natural resource in an overlapping area of territorial dispute pending a final delimitation."

All the definitions above fail on the JDAs where the final delimitation line has been drawn but the neighboring States conducts a JDA in order to utilize and exploit the straddling natural resources. As to address the issue with the maritime boundary line delimitation existing Lagoni defined the JDA as[79]:

> "… the cooperation between states with regard to the exploration for and exploitation of certain deposits, fields or accumulation of non-living resources which either extend across a boundary or lie in an area overlapping claims."

The definition presented by Lagoni is accepted by many other academics such as Robson, Bundy and Ong with a separation to leaving out the maritime zones with a boundary delimitation line[80]. Another definition and perspective given upon the JDA by Miyoshi is[81]:

> "… an inter-governmental arrangement of a provisional nature, designed for functional purposes of joint exploration for and/or exploitation of hydrocarbon resources of the sea-bed beyond the territorial sea."

In Miyoshi's definition, the JDA is limited with the "… *joint exploration for and/or exploration of hydrocarbon resources of the sea-bed beyond territorial sea*". The definition does not include other natural resources resides either on the seabed or under the subsoil. Additionally, the limitations also limit the JDAs to a provisional time period. The definition given by Miyoshi even though it is widely accepted, is very restrictive and

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78 Gao, Z.: "The Legal Concept and Aspects of Joint Development in International Law", Oxford Yearbook, 1998, Vol. 13, p. 112.

79 Lagoni, R.: "Oil and Gas Deposits across National Frontiers". American Journal of International Law, 1979, Vol. 73, p. 215.

80 Marshall, J. B.: "Joint Development of Offshore Oil and Gas in the Gulf of Guinea: A Case of Energy Security for Nigeria and Cameroon", Journal of Law, Policy and Globalization, 2014, Vol. 32, p. 142.

81 Miyoshi, "Joint Development of Offshore Oil and Gas", 3.

limiting in terms of the contents and the nature of the agreement itself. The definition made by Townsend-Gault with pointing out that the area must be beyond national jurisdictions of other States' claims is that[82]:

> "… 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 purpose of exploring for and exploiting offshore minerals."

Definition given by the Townsend-Gault is rather vague on the defining JDZ as to a degree that the disputing States can conclude a JDA in uncontested maritime zone and additionally another question arose whether the JDA can be concluded by a single State. Compared to Miyoshi and Townsend-Gault, Fox defines the JDAs thoroughly and more extensively as[83]:

> "… 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 of the seabed and subsoil of the continental shelf to which both or either of the participating states are entitled in international law."

Fox's definition excludes the offshore minerals on the seabed and subsoil though it regards the JDA as an intergovernmental bi-lateral or multi-lateral agreement. For this definition, the JDAs are not restricted as provisional arrangements which allows the agreement itself being either a permanent dispute settlement mechanism if the disputing States agrees upon when it is concluded in absence of the maritime boundary delimitation line furthermore the JDA can be made in a maritime zone where the final delimitation boundary line is drawn.

There are discussions relating to the legal status of an agreement which defines a JDZ where the final maritime boundary delimitation line already made[84]. The discussions focus on whether these agreements can be considered as a JDA or (cross-border)

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[82] Townsend-Gault, I.: "Joint Development of Offshore Mineral Resources-Progress and Prospects for the Future", Natural Resources Forum, 1988, Vol. 12, Iss. 3, p. 286.

[83] Fox, H. (ed.).: *Development of Offshore Oil and Gas: A Model Agreement for States for Joint Development with Explanatory Commentary*, British Institute of International and Comparative Law, 1989 London, Vol. 1, p. 48.

[84] Ong, D. M.: "Joint Development of Common Offshore Oil and Gas Deposits: "Mere" State Practice or Customary International Law", American Journal of International Law, 1999, Vol. 93, p. 779 and 780. (Common Offshore Oil and Gas)

unitization agreements. In the thesis, the JDA definition of Fox will be used with the addition of offshore minerals to the hydrocarbon resources.

B) ELEMENTS

1- General

JDAs, as of their nature, provide a practical solution to the maritime delimitation disputes related to the overlapping CS and EEZ claims. The disputes mostly arise from the economic factors but in some cases geographical, political, and historical factors as well[85]. Whatever the reason it can be mentioned that the reaching to a settlement or agreement through the conventional dispute settlement mechanisms is either costly or take very long time periods[86]. The overlapping claim zone is the dimension that the JDZ is going to be established by the disputing States.

The dimensional aspect is crucial for the agreement though the agreement cannot be concluded in a disputed CS or EEZ which lacks the hydrocarbon resources and minerals in the discussed zone. In case the dispute cannot be resolved because of the existence of non-living resources over the zone, the agreement introduces a possible provisional solution to the moratorium created by Articles 74(3) and 83(3) of the UNCLOS which facilitates the exploration and exploitation of the hydrocarbon and mineral resources while pending the final delimitation agreement[87].

Therefore, the JDA is subjected to dimensional restrictions of overlapping claims and the subject of the agreement is limited to the non-living resources which hold potential economic value. The economic gains, depending on the agreement, can directly go to the

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[85] Østhagen, A.: "Maritime Boundary Disputes: What Are They and Why Do They Matter?", Marine Policy, 2020, Vol. 120, p. 1 and 2.

[86] Hasan, M. / Jian, H. / Alam, W. / Chowdhury, K. M. A.: "Protracted Maritime Boundary Disputes and Maritime Laws", Journal of International Maritime Safety, Environmental Affairs and Shipping, 2018, Vol. 2, p. 90.

[87] Beckman, R.: "International law, UNCLOS and the South China Sea", in Beckman, R. / Townsend-Gault, I. / Schofield, C. / Davenport, T. / Bernard, L. (eds.): *Beyond Territorial Disputes in the South China Sea: Legal Framework for the Joint Development of Hydrocarbon* Resources, Edward Elgar, 2013 Northampton, p. 73.

States or can be distributed completely or partially and in some cases part of the revenue can be deposited to a bank pending the final delimitation agreement[88].

The agreement itself, of which provides the joint exploration or exploitation of the disputed zone, brings the question of jurisdictional rights as well. Depending on the type of agreement concluded between the JDA States, jurisdictional rights over the joint zone may differ[89].

2- Agreement

When there is no agreed maritime boundary delimitation line, it is considered to be more problematic circumstance than the presence[90]. The complexity is caused by the failure of the disputing States to agree on certain limitations and excessive claims due to their fundamentally differing positions on the disputes. In this manner, States may agree upon the concept of JDA hence shelf the issues of maritime boundary delimitation disputes for long period of times hence the results of such agreement are in interest of disputing parties in terms of both de-escalation of the tension created by the delimitation dispute and the economical and practical nature of the agreement itself. There are in total of sixteen JDA has been made where the maritime boundary delimitation line of CS or EEZ does not exist[91].

The JDA between Japan and Republic of Korea has been made in 1974. The delimitation line between the States were existent in the southern part in the East Sea and Korean Strait however the maritime boundary regarding the limits of the CS could not be delimited in the parts of East China Sea because of the differing delimitation perspectives of States. For the facilitation of exploration and exploitation of natural resources on the seabed and under the subsoil, especially oil and gas, Japan and Republic of Korea made the "*Agreement between Japan and the Republic of Korea Concerning the Establishment of Boundary in the Northern Part of the Continental Shelf Adjacent to the Two Countries*"

[88] Okafor, C. B.: "Joint Development: An Alternative Legal Approach to Oil and Gas Exploitation in the Nigeria-Cameroon Maritime Boundary Dispute?", International Journal of Maritime and Coastal Law, 2006, Vol. 21, Iss. 4, p. 510 and 512.

[89] Yusuf, Y. M.: "Is Joint Development a Panacea for Maritime Boundary Disputes and for the Exploitation of Offshore Transboundary Petroleum Deposits?", International Energy Law Review, 2009, Vol. 4, p. 133 and 134.

[90] Miyoshi, "Joint Development of Offshore Oil and Gas", 5.

[91] Schofield, 5.

(Japan-Korea agreement) in 1974. The Agreement is in provisional nature and the States preferred a Joint Authority model for the management of the JDZ. Through the Japan-Korea agreement, the States shelved their maritime boundary delimitation dispute for 50 years starting from the entering into force in 1978[92].

East Timor, after gaining independence from Indonesia and not recognizing precedent maritime delimitations, have made an agreement for the natural resources located on the seabed and under subsoil of Timor Sea[93]. The new agreement was to replace the old Timor Gap JDA and called Timor Sea Treaty (TST) in 2003. TST is also a JDA and the agreement established a JDZ on the oil resources in the Timor Sea between Australia and East Timor where the maritime boundary delimitation line between the States was unclear.

The Agreement itself was signed the very first day East Timor became independent and rather referred even before conventional means of maritime boundary dispute settlement mechanisms. On the TST it has been decided that 90% of revenue from the JDZ, unlike equal share on the old agreement between Indonesia and Australia, goes to the East Timor. As a result of the involvement of the companies' existence in the JDZ, which added more complexities to the maritime boundary dispute, the States had to re-negotiate the term of the TST[94]. The negotiations have been settled in 2006 with a new agreement, Certain Maritime Agreements in the Timor Sea. According to this settlement, East Timor and Australia has agreed upon an equal sharing of revenues and settled their maritime boundary delimitation dispute for 50 years.

3- Geographical Scope

a) General

Articles 56(1)(a) on EEZ and 77(1) on CS of the UNCLOS introduce sovereign rights to coastal States over the resources on the seabed and under the subsoil. As of their

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92 Schofield, 13.

93 Ong, D. M.: "The 1979 and 1990 Malaysia-Thailand Joint Development Agreements: A Model for International Legal Co-Operation in Common Offshore Petroleum Deposits", International Journal of Marine and Coastal Law, 1999, Vol. 14, p. 237. (Legal Co-Operation in Common Offshore Petroleum Deposits)

94 Abrahamson, J.: *Joint Development of Offshore Oil and Gas Resources in the Arctic Ocean Region and the United Nations Convention on the Law of the Sea*, Brill, 2018 Leiden, p. 71.

definition, breadth of EEZ can be up to but not exceedingly 200 nm from the baseline according to Article 57 of the UNCLOS, whereas the CS as its legal definition can be up to 200 nm but depending on the geographical availability of a coastal States can be extended up to but not exceedingly 350 nm from the baseline if the conditions set in Article 76 of the UNCLOS are met[95]. The joint zone must include the overlapping CS or EEZ claims of the disputing States.

Overlapping claims of CS and EEZ should be settled through peaceful means such as negotiation, conciliation, enquiry and judicial procedures according to the Part XV of the UNCLOS[96]. Except for the negotiation and conciliation, the disputing States lose their control over the final delimitation agreement since in the judicial mechanisms listed in the Part XV, the award given by the court or arbitration is binding on the disputing States[97]. Therefore, in some cases the disputing States may refrain from leaving the matters to a court which may be favorable or unfavorable to the States and the States may prefer to delimit their own maritime boundaries.

The JDAs can be done beyond the territorial seas[98] up to the start of the Area[99] [100]. The JDA, being an agreement, does not necessarily requires States to have a maritime boundary delimitation dispute hence the States with a maritime boundary delimitation line in case of a common will to conduct joint exploration and exploitation hydrocarbon and mineral resources may refer to the JDA.

Over the territorial seas the States have sovereignty and the delimitation of the territorial seas clearly defined under Article 15 of the UNCLOS. Territorial Sea can be up to 12 nautical miles (nm) from the baselines determined. As for the delimitation issues with the Territorial Seas UNCLOS prefers "median line" from the disputing States' baseline while taking into consideration of "historic title" and "special circumstances".

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[95] Details on the conditions of Continental Shelf can be found in UNCLOS Article 76.

[96] Articles 279 - 299 of the UNCLOS.

[97] *Ibid*. Article 296. It should be noted that the award given by a tribunal or arbitration, is only binding to the disputing States and particular to the dispute therefore the rights of third states are reserved in that matter.

[98] *Ibid*. Articles 2 - 16.

[99] *Ibid*. Articles 133 - 191.

[100] Kingston, K. G.: "Complexities and Sustainability of Joint Development of Maritime Oil and Gas Resources: The Case of Nigeria and Sao Tome and Principe Treaty", The Journal of Property Law and Contemporary Issues, 2019, Vol. 11, p. 105.

Due to the limitations on delimitations and the sovereignty given to the coastal States over the territorial seas the JDAs or JDZs cannot be made and created in the territorial seas.

First article of the UNCLOS clearly defines the Area as any "*seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction*". Along with this description Article 136 of the UNCLOS treats the Area "*Common Heritage of Mankind*", and Article 140 of the same obliges States to explore and exploit the Area for the "*Benefit of the Mankind*". Since the Area does not fall under any sovereign right or jurisdictional right of a State the JDAs cannot be made over the Area.

Disputes inevitably arose due to the increasing maritime zone claims by the certain coastal States that are in proximity to each other up to but not exceedingly 200 nm of EEZs and CSs and for some cases even the territorial seas up to 12 nm[101]. The nature of such dispute can be varied but the unilateral activities regarding the hydrocarbon resources or polymetallic nodules by any disputing State, in waters above the seabed, on the seabed or under the subsoil, in the disputed zone will provoke a response and infringe the rights of other disputing States[102].

For further elaboration of the zone created by the JDAs first the maritime zones between the territorial seas and the Area should be examined. There are only three zones defined by the UNCLOS between the territorial seas and the Area: Contiguous Zone[103], EEZ[104] and CS[105].

The EEZ and CS grant sovereign rights to coastal States over the certain maritime zones regarding the resources on the seabed and under the subsoil therefore both zones may be subject to a JDA whereas the Contiguous Zone, up to but not exceedingly 24 nm from the baselines, gives rights to the coastal States solely related to the prevention of infringement regarding the State's law on the customs, fiscal, immigration and

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[101] Logchem, Y. V.: "The Rights and Obligations of States in Disputed Maritime Areas: What Lessons Can Be Learned from the Maritime Boundary Disputes between Ghana and Côte d'Ivoire?", Vanderbilt Journal of Tribunal Law, 2019, Vol. 52, p. 127.
[102] *Ibid*. 128.
[103] Article 33 of the UNCLOS.
[104] *Ibid*. Articles 55 - 74.
[105] *Ibid*. Articles 76 - 85.

sanitation[106] therefore the Contiguous Zone cannot be ground of a JDA by itself. It should be mentioned that the area covered by the Contiguous Zone is also included in the CS.

For negotiations, the States must designate their maritime zone claims clearly and must be able to address the natural resources in the disputed zones. Existence of natural resources can complicate the negotiation period while rising the tension between the disputing States as well as prolonging the reaching of a final maritime boundary delimitation line[107]. As an alternative, the States may see JDA can be done in the disputed zone with to explore and exploit the natural resources located in the joint zone while easing the tension between the disputing States and enhancing the cooperation between them[108].

b) Continental Shelf

CS as a concept emerged in 1945 with the US President Truman's Proclamation[109]. The executive purpose of the Proclamation was the extending the US's jurisdictional right over the submerged extension of the CS with the interest of the seabed and the subsoil. Following US, States in the South America have also claimed CSs with differing breadths[110]. With the increasing interest to the CS and the extensive claims of CS overlapping claims were made by the States resulting in new maritime boundary delimitation disputes. The definition and international regulation of the CS is taken into consideration on UNCLOS I in 1958 and at the end of the conferences the "*Convention on the Continental Shelf*" entered into force in 1964. Article 1 of the Convention describes CS as follows[111]:

> "For the purpose of these articles, the term 'continental shelf' is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the

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106 *Ibid*. Article 33(1)(a).
107 Johnstone, D.: *Theory and History of Ocean Boundary-Making*, McGill-Queen's University Press, 1988 Montreal, p. 227.
108 Lagoni, "Interim Measures", 358.
109 See footnote 7, the Truman Proclamation.
110 Kingston, 103.
111 Convention on the Continental Shelf, 2.

> natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands."

The CS is the inherent right of the coastal States and considered as the natural prolongation of the State thorough the understanding of being natural continuation of the continent where the coastal State[112]. Therefore, the definition in the UNCLOS I was built upon the geographical description of the CS and was more advantageous for the oceanic States. Also, in Article 1 of the UNCLOS I the sovereign rights over the CS were limited to the natural resources on the seabed and under the subsoil. The CS does not include the water column above it as well as the superjacent air space[113].

Article 6 of the UNCLOS I, require the adjacent or opposing States to make an agreement regarding the maritime boundary delimitation. In absence of such agreement, Article 6 refers equidistance method to be used to determine the final delimitation line with honoring special circumstances if there is any. The approach of the UNCLOS I to the CS was limiting for the States that has shorter geographical CS in addition the settlement of disputes was left to the negotiations and judicial means, which makes both sides equally unhappy.

In 1982, the third UNCLOS was adopted and there were certain changes in the definition of the CS. The new definition CS is made in Article 76(1) of the UNCLOS, and the rest of Article 76 regulates the limitations and requirements for the extended CS. Article 76(1) of the UNCLOS is as follows[114]:

> "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."

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[112] Jennings, R. Y.: "The Limits of Continental Shelf Jurisdiction: Some Possible Implications of the North Sea Case Judgment", International and Comparative Law Quarterly, 1969, Vol. 18, p. 822.

[113] Ong, Common Offshore Oil and Gas, 774.

[114] Article 76 of UNCLOS.

The new definition of CS presented in the UNCLOS is the combination of legal and geographical descriptions. Article 76(1) of the UNCLOS considers the CS as the "*natural prolongation of its land territory*" which is makes the CS inherent right of the coastal State. In addition to the geographical definition, the legal description is also giving the States' right to claim up to but not exceedingly 200nm of CS.

Article 76(4)-(10) of the UNCLOS focuses on the geographical circumstances where the CS can extend beyond 200 nm. If the requirements set in the paragraphs are met, then the States can submit their claims to the CLCS. Even though the differing requirements are met the extended CS cannot exceed 350 nm. Both the claims of basic CS 200 nm and extended CS up to 350 nm give rise to maritime boundary delimitation disputes if the adjacent or opposing States cannot agree upon the final delimitation line[115]. The issue also concerns the all States in a manner that the extended claims of CS constituting contraction of the Area that is given the status of "*Common Heritage of Mankind*" and belongs to all States even if they are land-locked[116].

The subject of a JDA is the natural resources, especially hydrocarbon resources under the subsoil and polymetallic nodules over the seabed. Thereof the disputes related to the CS delimitation can be solved either provisionally or permanently by concluding a JDA. In this manner, Article 83 of the UNCLOS provides that[117]:

> "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

115 Young, R.: "The Geneva Convention on the Continental Shelf: A First Impression", American Journal of Law, 1958, Vol. 52, p. 734.

116 Article 136 of UNCLOS.

117 Article 83 of UNCLOS.

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."

Article 83(1) of the UNCLOS considers a negotiation and agreement period for the CS delimitation disputes. If a maritime boundary agreement cannot be reached within a reasonable time, according to Article 83(2), the disputing States must address the dispute to a dispute settlement mechanism listed in Part XV (Settlement of Disputes) of the UNCLOS.

Article 280 in Part XV of the UNCLOS allows disputing States to settle the dispute arose from the UNCLOS by any peaceful means chosen by themselves[118]. This Article also enables the JDA, which can be included in the negotiations, to be chosen by the disputing States as a permanent solution to a maritime boundary delimitation disputes related to the delimitation of CS.

Article 83(3), in accordance with Article 280, foresees States to make provisional arrangements in case the States cannot agree upon a final boundary delimitation line through the negotiations and the disputing States refraining from taking the dispute to the compulsory dispute settlement mechanisms. The provisional arrangement is to cover and protect the rights of disputing States until they reach the final delimitation agreement either through negotiations or by a judicial decision. Therefore, the JDA acts as a catalyst during the long negotiation periods while resolving the moratorium caused by the requirement of Article 83 to "*make every effort to ... not to jeopardize or hamper the reaching of the final agreement*".

c) Exclusive Economic Zone

The UNCLOS followed the perspective of UNCLOS I on the contents of CS and grant only sovereign rights to coastal States on the seabed and under the subsoil hence leaving the suprajacent water column and air space out. The UNCLOS presented a new maritime

[118] *Ibid.* Article 280.

zone EEZ to cover some sovereign rights of the coastal States in the water column, over the seabed and under the subsoil up to but not exceedingly 200 nm. Article 56(1) of the UNCLOS sets forth as of its definition of EEZ and rights given to the coastal States as[119]:

> "1. In the exclusive economic zone, the coastal State has:
>
> (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
>
> (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
>
> (i) the establishment and use of artificial islands, installations and structures;
>
> (ii) marine scientific research;
>
> (iii) the protection and preservation of the marine environment;
>
> (c) other rights and duties provided for in this Convention."

This provision clarifies the activities and sovereign rights of the coastal States in the EEZ. Regarding the rights mentioned on the EEZ, "*the economic exploitation and exploration*" are the same as on the CS. Difference between the EEZ from the CS is that the rights listed in Article 56(1)(b) and the rights on the living resources in addition to the "*conservation and management*" of the living and non-living resources on the water column[120]. Also, it should be mentioned that unlike the CS, the EEZ is not an inherent right thus the coastal States must proclaim it and deposit the boundaries to the UN Secretariat[121].

Just like the CS, EEZ also creates maritime boundary disputes between the opposing or adjacent States with the EEZ claims. The settlement of these maritime disputes also falls under Part XV of the UNCLOS if the disputing States cannot agree upon a final delimitation line. Additionally, the wording chosen in the Article 74, dealing with the

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[119] Article 56(1) of the UNCLOS.
[120] Abrahamson, p. 71.
[121] Article 175 of the UNCLOS.

delimitation of the EEZ, is exactly the same as the CS delimitation provision in Article 83[122]:

> "1. The delimitation of the exclusive economic zone 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 exclusive economic zone shall be determined in accordance with the provisions of that agreement."

The delimitation of EEZ at first left to the agreement of the disputing States and if the States cannot reach to a final maritime boundary delimitation agreement then they have to refer to the settlement mechanisms set under Part XV of the UNCLOS[123]. At any point before the final delimitation line is drawn between the disputing States, they may use the JDA either as a permanent dispute settlement replacing the final delimitation agreement or the judicial decision, or as a provisional measure pending the final delimitation line.

4- Seabed and Subsoil

The CS grants certain exclusive and inherent rights over the resources, located on the seabed or under the subsoil, to the coastal States without the requirement of proclamation as indicated in Article 77 of the UNCLOS[124];

> "1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

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[122] *Ibid*. Article 83.
[123] Beckman / Bernard, 77.
[124] Article 77 of UNCLOS.

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."

By Article 83 of the UNCLOS, the rights over the natural resources located in the CS of coastal States is absolute, inherent and exclusive to the coastal State. In case of an overlapping claim of CS, the resources cannot be explored and exploited.

On the other hand, Article 56(1)(a) of the UNCLOS states that[125];

> "1. In the exclusive economic zone, the coastal State has:
>
> (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds."

The rights of coastal States given by the provision regarding the EEZ is in wider range and includes the same rights with CS of the coastal States. Though, providing same rights over the exploration and exploitation of the resources on the seabed and under the subsoil, does require proclamation[126].

It should be mentioned that there aren't only non-living resources on the seabed and under the subsoil, but there are also living resources such as the microorganisms[127]. The living resources cannot be a subject of JDA but their exploration and exploitation depending on the agreement and the nature of the activity, can be done through a Joint Management Agreement (JMA) or through a separate joint venture agreement.

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[125] *Ibid.* Article 56(1)-a.

[126] Friedman, S.: "The Concept of Entitlement to an Exclusive Economic Zone as Reflected in International Judicial Decisions", Israel Law Review, 2020, Vol. 53, Iss. 1, p. 102.

[127] Mossop, J.: "The Relationship between the Continental Shelf Regime and a New International Instrument for Protecting Marine Biodiversity in Areas Beyond National Jurisdiction", International Council for the Exploration of the Sea Journal of Marine Science, 2017, Vol. 75, Iss. 1, p. 444.

5- Resources and Revenue Sharing

The subject of the JDA is the exploration and exploitation of the non-living resources in the overlapping claims zone. These natural resources can be either polymetallic nodules which mostly resides on the seabed, and the hydrocarbon resources which are under the subsoil[128]. Due to the natural resources that are going to be jointly developed in the joint zone, the dimension is locked to the seabed and under the subsoil excluding the airspace and water column. The resources can be located either in the internal waters or territorial waters of a State, or in the Area but the JDA cannot be concluded for the resources located in these zones. The JDA can be concluded for the resources in CS or EEZ of a coastal State therefore the location of the resource and the type of resources is crucial for determining the type for the agreement.

For the internal waters and the territorial seas, the sovereignty of the maritime zones is granted directly to the coastal State hence, the exploration and exploitation is directly up to the State[129]. The delimitations of these zones are strictly provisioned in UNCLOS[130] and there is no possibility of concluding a JDA, but the disputing States may refer to a unitization agreement regarding the hydrocarbon resources, minerals, or polymetallic nodules.

The "*International Seabed Authority*" (ISA) established under the Section 4 of Part XI of the UNCLOS governs the natural resources on the seabed and under the subsoil of the Area. According to the Article 1 of the UNCLOS, the Area is defined as "… *the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction*" and the Article 136 of the UNCLOS provides that the resources located in the Area are considered as the "*Common Heritage of the Mankind*". Any provision related to the Area in Part XV of the UNCLOS cannot infer with the CS or EEZ rights of the coastal States and the

[128] Eze, N. C.: "The Nigeria–Sao Tome and Principe Joint Development - A Model for a Successful Joint Development Agreement", Journal of World Energy Law and Business, 2020, Vol. 13, p. 418.

[129] Kohen, M. G.: "Is the Internal Waters Regime Excluded from the United Nations Convention on the Law of the Sea?", *Law of the Sea, From Grotius to the International Tribunal for the Law of the Sea*, Castillo, L. D. (ed.), Brill-Nijhoff, 2015 Leiden, p. 110.

[130] Regarding to the delimitation of Territorial Waters please see Articles 3 and 16 of the UNCLOS.

control of the exploration and exploitation of the resources located on the Area is given solely to the ISA[131].

The definition of the resources does not limit itself to the hydrocarbon resources like the oil and natural gas but also include the mineral resources in solid, liquid, or gaseous form. Therefore, the polymetallic nodules and other resources can be considered as resources can be gathered from the seabed and under the subsoil while excluding the genetic materials[132].

The exploration and exploitation regarding a joint zone in disputed CS or EEZ can be done by one or more States as well as by a joint authority or venture upon the conclusion of JDA. Since the agreement is done in a nature of negotiations, the contracting States have the freedom of deciding the provisions of such agreement and may refer to sharing of the resource itself as well as revenue or income sharing[133].

IV. PARTIES

A) BI-LATERAL

The disputing States should consider the JDA as an alternative and viable option to the dispute settlement mechanisms that can be set in accordance with changing factors and the circumstances of the dispute. It is apparent that certain factors such as involvement of the more number of disputing States, economic factors and political will may work against achieving a JDA as well as successful management of the exploration and exploitation activities in a joint zone during the period of the agreement.

The maritime boundary disputes generally occur between two States that are either adjacent or opposing therefore the settlement of the maritime boundary disputes are made through negotiations are generally bi-lateral agreements. JDA are mostly bi-lateral agreements which are concluded through the negotiation period of the disputing States.

[131] Article 153 of the UNCLOS.
[132] Eze, 418.
[133] Miyoshi, "Joint Development of Offshore Oil and Gas", 6.

B) MULTI-LATERAL (REGIONAL)

The number of disputing States directly affect the complexity of the dispute. It is preferable that with the cooperation and mutual understanding, the disputing States if limited to two States can easily resolve and shelve the maritime delimitation dispute with a bi-lateral agreement[134].

The resolution of disputes related to CS and EEZ through the peaceful settlement means and the negotiations for a JDA becomes difficult to achieve when there are more than two disputing States since it will require multi-lateral agreement[135]. As the disputes become more complex by the increase in the involvement of more States, the disputing States can conclude a JDA through mutual understanding, co-operation and political will to jointly develop the disputed zone.

In addition, the disputing States should address the issues that may arise from the JDA such as the jurisdictional rights[136]. The disputing States are also required to agree on the terms of the joint exploration and exploitation for concluding a JDA.

Since every single maritime boundary delimitation dispute is unique, and there is no certain form of JDA, the disputing States have the freedom of determining the provisions of the agreement specific to the dispute at hand. If the disputing States are willing to conclude a JDA, best option is the use of a joint authority model since this model creates a single institution for the activities that are going to be performed in the JDZ in favor of all the JDA States.

C) INVOLVEMENT OF THIRD PARTY STATES AND ORGANIZATIONS

The "Good Offices" are useful for the decreasing tension between disputing States during maritime boundary delimitation disputes[137]. The disputing States may mutually refer to a third State, organization or institution for a non-binding opinion on the disputed matter. This is considered as the involvement of third party States or institutions as a

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[134] Miyoshi, "Joint Development of Offshore Oil and Gas", 12.
[135] Schopmans, 100 and 101.
[136] Okafor, 503.
[137] Naldi, G. J.: "The ASEAN Protocol on Dispute Settlement Mechanisms: An Appraisal", Journal of International Dispute Settlement, 2014, Vol. 5, p. 126.

mediator for the disputing States. The third party States, or institutions may act as a catalyzer for the disputing States to conclude a JDA.

Also, the lack of the technological capabilities of the disputing States regarding exploration and exploitation means of hydrocarbon resources or polymetallic nodules in the overlapping claims zone, involvement of third parties ease the conclusion of a JDA. In this scenario, the disputing States might want to work with a company that has the means to develop the joint zone in favor of the disputing States to a share from the revenue.

V. TYPES AND SIMILAR AGREEMENTS

A) TYPES

1- Single State Model

The JDA could be either bi-lateral or multi-lateral. The Single State Model is considered to be the simplest way to conduct a JDA, and the agreement, compared to the other models, is simple considering the amount of co-operation and understating required between the contracting States[138]. In this model, one of the contracting States is chosen to conduct the exploration and exploitation activity on the natural resources in the joint zone and the development of the zone in return of the share of the resource, income, or revenue. The earliest examples of the JDA used this model[139].

The model, as of its nature and in line with Article 74(3) and Article 83(3) of the UNCLOS, cannot be considered as the direct transfer of rights[140]. The Single State Model JDA may be thought to strengthen the position of the single State on its maritime boundary claims regarding the joint zone but on the contrary according to the Articles, the usage of the exploration and exploitation rights is given to a Single State according to

[138] Kashfi, A. / Adibah, W. S.: "Joint Development Agreement Scheme for Management of World's Largest Shared Oil and Gas Reservoir", Journal of Scientific Research and Development, 2015, Vol. 2, p. 72.

[139] For more information, see the *Bahrain – Saudi Arabia Agreement of 22 February 1958*.

[140] Beckman / Bernard, 102.

the UNCLOS cannot be used against the contracting States for the final delimitation of the disputed zone[141].

The nature of the Single State model also facilitates the institutional harmonization via determining the jurisdictional rights over the zone to the State entitled to explore and exploit the zone. Hence, the jurisdictional rights, limited to the frame set under the agreement, of the States are transferred to the Single State regarding the zone. Disputes arose by the activities are referred to the jurisdictions in the Single State therefore the jurisdiction and jurisdictional autonomies of the other contracting States are disregarded unless otherwise is stated in the JDA.

The Model is discussed to be disadvantageous for the other contracting States since the agreement places them in pre-emptive role for the exploration and exploitation of the hydrocarbon resources, minerals and polymetallic nodules[142]. It can also be mentioned that this model requires the contracting States losing their autonomy to the Single State over the exploration and exploitation activities as well as the jurisdictional powers. As a result, the preference of the States shifted to form of Joint Venture Model or Joint Authority Model.

2- Joint Venture Model

The Joint Venture Model is the most popular form between the JDAs[143]. Aside from the disputed CS and EEZ areas, if the maritime boundaries are delimited and the resources can be found in either within or lying across the delimitation line of the coastal State, the States can refer to this type of JDA for the exploration and exploitation of hydrocarbon resources, minerals, and polymetallic nodules. Joint Venture model is also used for the transboundary deposits where the unitization of the deposit is required for economical purposes[144]. It is discussed that the agreement where a boundary delimitation line has been already drawn is not an actual JDA but a unitization agreement since the JDA has a

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141 Articles 74 and 83 of the UNCLOS.
142 Marshall, 145.
143 Beckman / Bernard, 103.
144 Bastida, A. E. / Ifesi-Okoye, A. / Salim. M. / Ross, J. / Walde, T.: “Cross-Border Unitization and Joint Development Agreements: An International Law Perspective”, Houston Journal of International Law, 2007, Vol. 29, p. 370.

purpose of providing a solution to the maritime boundary delimitation of disputed CS and EEZ[145].

Unlike the Single State Model, JDA contracting States are either expected to form a joint venture through their companies or institutions, or to conduct activities themselves without transferring the sovereign rights on the exploration and exploitation of the resources located in the joint zone[146]. Furthermore, the States maintain their exclusive rights and obligations over the CS and EEZ while also retaining their autonomy and jurisdiction rights.

Preferably, the States form designated subgroups in the joint zone. The exploration and exploitation activities in these subgroups can be carried out by national or international private companies if not directly by the governmental institutions[147]. Depending on the conditions of the agreement, the revenue of each subgroup might be pooled and shared by contracting States or the States may only take their income from the designated subgroups.

As an alternative, the joint zone may be created upon unitization of a deposit and upon which the contracting States may refer to a single operator[148]. Then the activities are carried out by that operator, which is either an international or national company on behalf of all interested States. The operator is expected to develop the natural resources in the joint zone and the States can take their shares from the revenue.

The jurisdiction of the joint zone can be decided in two form in the agreement. The States may refer each subgroup to owner's jurisdiction where each operator State in their own subgroup should apply its own jurisdiction over the zone. As for the unitization of a straddling resources, the States may refer to a special jurisdiction or both of the domestic laws[149].

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145 *Ibid*. 358.
146 Beckman / Bernard, 103.
147 Bastida / Ifesi-Okoye / Salim / Ross / Walde, 400.
148 Marshall, 145.
149 Kashfi / Adibah, 78.

3- Joint Authority Model

The Joint Authority Model requires the upmost cooperation of the JDA States for conclusion and governance of the Joint Authority that is going to be established for the exploration and exploitation activities in the joint zone[150]. The model is considered to be the most complex type and also most institutionalized form of JDA since it requires the contracting States to arrange a commission or authority, which has a legal identity, with management rights over the joint zone regarding the development of the natural resources and the licensing rights[151]. The authority is consisted upon the experts and the governmental bodies of the contracting States. As the creation of the authority requires the coordination of the States, during the time period of the JDA, the States must as well work in accordance to maintain the role given to the authority.

The authorities are given wide range of functions such as decision-making powers and the extensive supervision rights over the zone by the agreeing States. Thus, the authorities compared to advisory governmental or inter-governmental bodies, are considered as “strong” institutions[152].

The authority develops, explores, and exploits the non-living resources in the joint zone either by itself or through contractual relations. The responsibilities, related to the exploration and exploitation activities that are carried out on the joint zone, fall to the authority. The States take their share, provisioned in the JDA, from the revenue of the activities carried by the authority. The States may decide on securing certain percentage of the revenue in a bank to be released accordingly to the shares to be decided on the final delimitation line[153].

The Joint Authority Model, apart from its complexities, is simpler on the matter of jurisdiction. The authority, regarding to the activities in the joint zone, may be given or supported by the right of jurisdiction with a special set of rules thus harmonizing the domestic laws of the contracting States and preventing the conflict of laws[154]. The States

[150] Miyoshi, “Joint Development of Offshore Oil and Gas”, 42.
[151] *Ibid.*
[152] Beckman / Bernard, 104.
[153] Yusuf, 133.
[154] Kadagi, N. I. / Okafor-Yarwood, I. / Glaser, S. / Lien, Z.: “Joint Management of Shared Resources as an Alternative Approach for Addressing Maritime Boundary Disputes: The Kenya-Somalia Maritime

may also decide that the disputes arose by the activities in the joint zone can be judicable in the domestic courts by carrying the special laws into effect or directly implementing the special law into their domestic systems.

B) SIMILAR AGREEMENTS

1- General

The JDA is mostly viewed as an agreement which presents a potential provisional or permanent solution to the maritime boundary delimitation disputes[155]. Therefore, it is mostly used as a provisional measure to explore and exploit the overlapping claim zone in case of absence of maritime boundary delimitation lines.

As there are differences and discussions on the definition of JDA, the maritime boundary delimitation line's existence is also debated on whether if it affects the agreements status. As for some academics who views the agreement as only a mean to resolve the maritime boundary delimitation dispute, the agreement made in zone with a maritime delimitation line is considered as a (cross-border) unitization agreement rather than JDA[156]. On this matter other academics consider that the presence of the maritime boundary delimitation line's existence does not affect the purpose and the contents of the agreement hence the agreement does not differ from the absence and it should be considered as JDA[157].

Thus, to the freedom of choice on the provisions of JDA, the disputing States are also free to settle on how the JDZ is to be utilized. The States may decide on whether explore and exploit the whole JDZ zone unitizing the scattered or straddling natural resources or may prefer dividing the JDZ into smaller zones and assign them to each other's exploration and exploitation.

Boundary Dispute", Journal of the Indian Ocean, 2020, Vol. 16, Iss. 3, p. 349.
155 Anderson, 495.
156 Shihata, 299.
157 Gao, 112.

2- Joint Management Agreements

The EEZ, unlike CS, grants sovereign rights over living resources and the water column up to but not exceedingly 200 nm. In accordance with the addition of the water column and the living resources, fish stocks, to the EEZ's definition, the JMA agreement regarding the living resources can be concluded in EEZ. In line with that a JMA can be made for the joint exploration and exploitation of the living resources, especially on the fish stocks[158].

Article 123 of UNCLOS states that in the enclosed or semi-enclosed seas, neighboring States are put under 4 obligations. The States should work in co-ordination for the "*management, conservation, exploration and exploitation of the living resources*" while also implementing necessary measures to "*protect and preserve*" the marine ecosystem[159]. The States are also required to co-ordinate their "*scientific researches and research policies*" in order to achieve a sustainable "*exploration and exploitation*" and "*protection and preservation*" of the marine environment. For further enhancing the obligations of this article, neighboring States may co-ordinate interested States or Organizations. According to the Article 123 of UNCLOS, the States should work in co-ordination and the JMA can be of use to provide such co-ordination in wider aspect.

The JMAs and JDAs are separate agreements regarding their content, scope and maritime zones. In practice depending on the disputing States' political agenda and the activities in the JDZ, the JMA can be imbedded into the JDA. Therefore, the rights granted to coastal States are only on the natural resources located on the seabed and subsoil so the JMA agreement cannot be concluded in the CS.

JMA also includes the joint protection and preservation of the marine biodiversity, straddling and highly migratory species in and around the joint zone. In addition, the contracting States may as well decide on joint maritime security of the zone.

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[158] Sumalia, U. R. / Palacios-Abrantes, J. / Cheung, W. W. L.: "Climate Change, Shifting Threat Points, and the Management of Transboundary Fish Stocks", Ecology and Society, 2020, Vol. 25, Iss. 4, p. 40.

[159] Acer, Y.: "The Present Status of the Mediterranean Sea as to the Maritime Law", Review of International Law and Politics, 2008, Vol. 4, p. 120 and 121.

3- (Cross-Border) Unitization Agreements

The JDA, aside from being a provisional or permanent solution for maritime boundary delimitation disputes, can be used as joint ventures of the neighboring States to unitize the straddling or scattered natural resources around the maritime boundary delimitation line and located on the seabed or under the subsoil.

In presence of a maritime boundary line, it can be debated that the agreement is just a mere (cross-border) unitization agreement of the natural resources but as for the JDA definition includes such unitization of an area to the contracting States in order to allow the cooperation on joint exploration and exploitation of the JDZ. Therefore, it can be stated that the existence of the delimitation line does not affect the status of agreement and such agreement is considered to be a JDA.

The JDA can only be used in CS or EEZ. The existence or absence of a maritime boundary delimitation has no effect on the agreement itself, but it effects the conditions of the agreement and negotiation process when concluding JDA. Even though the agreements where a maritime boundary line has been drawn may be considered as a unitization agreement, the core; the joint exploration and exploitation of the hydrocarbon resources and the polymetallic nodules located in the joint zone, of the agreement is the same with JDA.

Unitization agreement itself does not replace the original maritime boundary line but it is an addition of common zone to it for a provisional time period. The presence of the maritime boundary delimitation line enables and facilitates reaching of an agreement by States. Existence of such delimitation also eases the tension in the negotiation process of the terms of such agreement especially on the revenue sharing. There are 6 JDAs that has been made in presence of maritime boundary delimitation line[160].

Tunisia and Arab Libyan Jamahiriya took their CS delimitation dispute to the ICJ in 1978 in regard to the principles and rules to be used in the delimitation of the maritime boundaries. The ICJ decided that the use of "equidistance method" cannot achieve

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[160] Schofield, 5.

equitable solution therefore the States should use "equitable principles"[161]. This approach consists of drawing a provisional equidistance line from the baselines of the disputing States as a first step. On the second step, adjustment of the line is made in accordance with the special circumstances of the disputed zone and the disputing States in order to achieve equitable solution. The final step is the conducting of a final check of disproportionality on the provisional line drawn in the second step to ensure and adjust the line, if necessary, to finalize the maritime delimitation line[162].

On the ICJ decision of 1982, in dissenting opinion of ad hoc Judge Evensen advised that a JDA would be more equitable to the States. In accord with this dissenting opinion of Judge Evensen, Tunisia and Libyan Arab Jamahiriya has concluded one agreement on the implementation of the ICJ decision of 1982 as well as two agreements to form separate JDZ on both sides of the CS delimitation line[163].

Very first JDA concluded between Bahrain and Saudi Arabia in Arabian Gulf, 1958 as an addition to CS delimitation agreement, the Bahrain-Saudi Arabia Boundary Agreement. The agreed maritime boundary line is the median line from each States' baselines. On the northern part of the boundary delimitation line and in the agreed CS of the Saudi Arabia a hexagonal JDZ has been created. Regarding the second clause of the agreement, the Saudi Arabia as a Single State is chosen to carry out the exploration and exploitation of hydrocarbon resources in the JDZ in return of the 50% of net revenue to Bahrain.

VI. REQUIREMENTS

A) GENERAL

Articles 74(3) and 83(3) of the UNCLOS set forth that if the States cannot agree upon a final delimitation line through a conventional settlement of dispute mechanisms, the State therefore should refer to a "*provisional arrangement of a practical nature*". The

[161] See footnote 13, North Sea Continental Shelf Case, 23.

[162] Yuyao, J.: "The Development and Legal Status of the Three-Stage Approach: Its Implications for the Sino-Japan Delimitation of the Continental Shelf in the East China Sea", China Oceans Law Review, 2014, Vol. 2014, p. 162 and 163.

[163] Scovazzi, T.: "Report No. 8-9: Libya-Tunisia", in Charney, J. I. / Alexander, L. M. (eds.): *International Maritime Boundaries II*, Brill-Nijhoff, 1993 Leiden, p. 663.

JDAs, as a temporary arrangement pending the final delimitation line, can be concluded through negotiation periods and exchange of letters by States[164]. In addition, the disputing States may also refer to the JDA as a permanent maritime boundary dispute settlement.

As the agreements aim the joint exploration and exploitation of hydrocarbon resources, minerals, and polymetallic nodules in the zone of overlapping claims of CS and EEZ, the States while negotiating and conducting JDA should consider and solidify their positions as well as enhance their understandings of factors which effect the area and the relation between the States[165]. The factors effect both the disputed States willingness of agreeing on a JDA as well as the form of the agreement.

Before starting the negotiations for a JDA, the States should consider the factors including their legal rights and obligations as well as their entitlements, which affect the terms of the agreement. They are not limited to the legal rights and entitlements but also include the, political will, specification on the overlapping claims and JDZ, effects of the agreement being "*without prejudice to the final delimitation*" line and "*practical nature*"[166].

For the JDA negotiations to start, there must be an overlapping claim of CS or EEZ which cannot be solved by the disputing States permanently through conventional methods, furthermore the research activities should indicate that there are hydrocarbon resources, minerals, or polymetallic nodules worth developing jointly in the overlapping zone[167]. Additionally, the States must present their willingness to conclude and cooperate a JDA with each other. The political willingness also includes the public's response in the States[168].

B) OVERLAPPING CLAIMS ON A MARITIME ZONE

Settlement of maritime boundary delimitation disputes require the disputing States to present their standings on the maritime boundaries clearly to the other parties either by

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[164] Noussia, K.: "On International Arbitrations for the Settlement of Boundary Maritime Delimitation Disputes and Disputes from Joint Development Agreements for the Exploitation of Offshore Natural Resources", The International Journal of Marine and Coastal Law, 2010, Vol. 25, Iss. 1, p. 75.

[165] Ong, "Legal Co-Operation in Common Offshore Petroleum Deposits", 221.

[166] Maclaren / James, 141.

[167] Kadagi / Okafor-Yarwood / Glaser / Lien, 353.

[168] MacLaren / James, 139.

negotiation texts or through negotiation groups[169]. Disputing States must be able to precisely address the disputed zone which is the overlapping claims of CS or EEZ. The delimitation rules regarding the CS and EEZ is set under the UNCLOS and the international customary law in case the disputing State is not party to the UNCLOS. Also, the settlement as drawing the final maritime boundary delimitation line, of such disputes are referred to be solved in peaceful manner either by negotiations, conciliation or through the Judicial bodies.

The maritime boundary claims of the disputing States may be referred to an inquiry. The inquiry is not binding to the disputing States but a tool that can provide the fact check and mutual understanding to the States and their claims over the disputed zones[170]. It should be mentioned that the JDA is not made in case of a jurisdictional vacuum, on the contrary, the claims of exclusive rights coincide[171]. Through an inquiry or by any means the disputing States must check the maritime boundary claims of the disputing States whether the claims are in line with the international law and legitimate[172]. It has the upmost importance since the maritime boundary claims of the disputing States directly affect the JDZ in terms of the size and location of the area and the resources within while may also affect the share of the States.

However, the dispute may not be settled through conventional mechanisms then Articles 74(3) and 83(3) of the UNCLOS compel the disputing States to seek a provisional arrangement of a practical nature. As a provisional arrangement, JDA also requires the mutual comprehension and understanding of the disputing States upon the disputed zone and its' resources. Disputing States must consider their state of art, underlying conditions of the dispute, strength and weakness over the overlapping claim zone with respect to the international law[173].

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[169] Irwin, 108.

[170] Article 5 of Annex VII of the UNCLOS; Supancana, I. B. R.: "Maritime Boundary Disputes between Indonesia and Malaysia in The Area of Ambalat Block: Some Optional Scenarios for Peaceful Settlement", Journal of East Asia and International Law, 2015, Vol. 8, Iss. 1, p. 201.

[171] Beckman / Bernard, 97.

[172] Schopmans, p. 105.

[173] MacLaren / James, 140.

C) POLITICAL WILL

The political will is important for the disputing States to negotiate for and concluding a JDA. The governments should be willing to overcome the tension related to the final maritime boundary delimitation line and work in a co-ordination to agree upon a joint zone and joint exploration and exploitation activities[174].

The procedure to conclude a successful agreement require commitment in terms of time, resources and inclusion of experts. The agreement should address the type, definition of the JDZ, the exploration and exploitation activities, the jurisdictional matters, and the revenue sharing. It can be mentioned that negotiating for a JDA is as complex as negotiating for a final maritime boundary delimitation line.

Disputing States must present high level of political will to make certain compromises over some of the claims to progress and reach to an agreement. Pursuance of excessive claims or aggressive approach by any negotiating State during negotiation process mostly result in the failure of the negotiations[175]. Therefore, the States should present their willingness to conclude an agreement and should present their understanding in "good faith".

The political will must go in line with the preparation of the public's response[176]. As for the disputes including the sovereignty issue over geographical features, it is common that the political parties of the disputing States may present their maritime political agenda against the JDA and cooperation. This may affect the public's view on the matter hardening the governmental bodies taking necessary steps for the negotiation and conclusion of a JDA[177].

The domestic political opinion may obstruct the political will through political debates[178]. Depending on the dispute, where the maritime boundary dispute became a

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[174] Robert, W. B. / Thomas, B.: "Island Disputes and the Law of the Sea: An Examination of Sovereignty and Delimitation Disputes" International Boundaries Research Unit Maritime Briefing, 1999, Vol. 2, p. 2.

[175] Schopmans, 101.

[176] MacLaren / James, 142.

[177] Schopmans, 103.

[178] Townsend-Gault, I. / Stormont, W.: "Offshore Petroleum Joint Development Arrangements: Functional Instrument? Compromise? Obligation?", in Blake, G. / Hildesley, W. / Pratt, M. / Ridley, R. / Schofield,

political debate and the public's response is against the JDA, the political will of the governments may not be able to make such an agreement. Hence, for the negotiation process of an agreement to begin, the States must be able to prepare the public and present the opportunities of the agreement[179]. A successful JDA may strengthen the cooperation and relationship between the neighboring States and facilitates the agreement on the final maritime boundary delimitation line.

The political will is not only essential and critical for the negotiation period also crucial for the agreement's duration[180]. Since the agreement is in either a provisional nature or as a permanent settlement, the States are required to keep the spirit of cooperation for long period of time. The agreement forces the States work together for the exploration and exploitation activities for many years over the joint zone.

D) SPECIFICATION ON JOINT DEVELOPMENT ZONE

Upon a maritime boundary delimitation dispute over CS and EEZ, the disputing States have the obstacle of determining the joint zone that is going to be developed through a JDA[181]. The JDZ in most cases, created over the overlapping CS or EEZ claims but in some cases may include some parts of the agreed boundaries to include the straddling or cross border resources[182]. These cases are mostly limited to the exploration and exploitation activities being inefficient and not financially feasible, so the States decide to enlarge the JDZ.

During the negotiation, the States must rationalize and clarify their claims in terms of the extent and must refer their claims to the international law of the sea as well as UNCLOS if they are party to[183]. The vague definition or refusing to clarification of the claims by disputing States is often considered as negotiation tactic which works as a blockage to the progression on the JDA negotiation[184].

C. (eds.): *Peaceful Management of Transboundary Resources*, Kluwer, 1995 London, p. 62.

[179] Ong, "Legal Co-Operation in Common Offshore Petroleum Deposits", 221.

[180] MacLaren / James, 142.

[181] Bastida / Ifesi-Okoye / Salim / Ross / Walde, 371.

[182] Onorato, W. T.; "Apportionment of an International Common Petroleum Deposit", International and Comparative Law Quarterly, 1977, Vol. 26, p. 333 to 336.

[183] Irwin, 96.

[184] Maclaren / James, 144.

Subsequently to the exchanges of letters for the understanding of the claims of the disputing States, the parties to a dispute should check and test the States' claims of CS and EEZ and should confirm the legitimacy of such claims[185]. Then the disputing States must decide on the joint zone through analyzing the natural resources located in the zone and reach a consensus regarding the area to be jointly developed in terms of exact location, size and the shape[186].

The disputing States should keep in mind that having a JDA is the second-best option for a maritime boundary delimitation agreement replacing the agreement or not able to agree over the final maritime boundary delimitation line[187]. The disputing States should try to make the final delimitation line as much as possible and try to keep the JDZ as small as possible. It is the natural result of the JDA being a temporary arrangement of a practical nature and being limited to the exploration and exploitation activities of the hydrocarbon resources or polymetallic nodules located on the seabed or under the subsoil of the JDZ[188]. In general, such activities, including the research period, construction and decommission of the offshore facilities can take up to 40 to 50 years.

One of the main issues that should be covered in a JDA is the share of the revenues[189]. Depending on the type of the agreement and the circumstances of the JDZ, the agreeing States may refer to the equal governmental share. In some agreements, there are disproportions on the agreed shares because of the relevant circumstances.

In the JDA, the States may divide the JDZ into subgroups and entitled them to one of the contracting States[190]. In this case, the States have two options to share the revenue. The States may prefer to pool the revenue gathered from all subgroups and then share accordingly to the percentages determined in the JDA. If not agreed upon the pooling, the States may separately operate in the subgroups and keep their revenues.

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[185] Ong, "Common Offshore Oil and Gas", 779.
[186] Beckman / Bernard, 101.
[187] Miyoshi, "Joint Development of Offshore Oil and Gas", 46.
[188] Okafor, 490.
[189] Lerer, D.: "Joint Development Zones: Negotiating and Structuring a Joint Development Agreement", Oil and Gas Journal, 2003, Vol. 101, p. 38.
[190] Kim, H. J.: "What Did the Republic of Korea and Japan Mean by the Term "Joint Development" in their 1974 Agreement?", Marine Policy, 2020, Vol. 117, p. 1.

VII. FUNCTION

A) GENERAL

The conventional methods of settlement of disputes should be elaborated in order to understand where the JDA can be placed. The mechanisms are the negotiation, mediation, conciliation, arbitration, good offices and the judicial settlements. The judicial bodies listed in the UNCLOS are the ICJ and ITLOS[191].

Negotiation is a strategic process where two or more parties in a dispute or conflict, tries to reach common understanding and a peaceful settlement that is agreeable between themselves through discussions without involvement of a third party States or organizations[192]. Definition can be rephrased as it is the settlement of dispute willfully and with compromises by both parties. Parties are the disputing States in the law of the sea disputes which means that stronger party may give minimal compromises.

The definition of the mediation is to use a respected, independent, and impartial third party, which can be a State, international organization or eminent personality, in the settlement of dispute[193]. Mediation isn't a binding procedure, and the mediators can make proposals to the direct the representatives of disputing States. In short, it is the negotiating process with including a third party that can make proposals.

Conciliation is a method that disputing States chose one conciliator each to create a commission with accepting rest of the commission with mutual acceptance where the commission formed gives a non-binding resolution to the dispute[194]. Conciliation is a similar method to the arbitration. Conciliation also uses the enquiry which is to pinpoint the facts related to the specific maritime dispute. The results of the enquiry are also not binding to the States, but the States may use the report as a way for settlement. The enquiry is mostly used by UN and the UN agencies for the fact finding purposes over the

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191 Nelson, D.: "The Settlement of Disputes Arising from Conflicting Outer Continental Shelf Claims", International Journal of Marine and Coastal Law, 2009, Vol. 24, p. 410.

192 Kearney, R. D.: "International Legislation: The Negotiation Process", California Western International Law Journal, 1979, Vol. 9, p. 505.

193 Wiegand, K. E.: "Mediation in Territorial, Maritime and River Disputes", International Negotiation, 2014, Vol. 19, p. 349.

194 Tamada, D.: "The Timor Sea Conciliation: The Unique Mechanism of Dispute Settlement", European Journal of International Law, 2020, Vol. 31, p. 322.

disputes. It can also be said that the conciliation includes of enquiry and mediation. Unlike the arbitration, the results and the advices of the conciliation is non-binding to the disputing States.

As defined in the UNCLOS, arbitration is "… *a procedure for the settlement of disputes between States by a binding award on the basis of law and as a result of an undertaking voluntarily accepted*". It is the default dispute settlement mechanism provided under the UNCLOS which also foresees consent to go arbitration disputes that may arise from the "*interpretation and application*" of UNCLOS. Before seeking other methods of dispute settlements, the disputing States must give their consent prior or during the disputes[195]. Arbitration is a dispute settlement mechanism that works through an arbitral commission with power to make binding resolutions. Forming of the arbitral commission is similar to the conciliation but the commission is limited to five arbitrators.

Judicial settlement is a method that requires consent of the disputing States and its through and established courts such as ITLOS and ICJ which can make binding awards on the dispute[196]. It can be said that Judicial settlement should be the last resort of dispute settlements since the disputing parties have no control, compared to other mechanisms, over the courts and settlements take longer period of times.

The conventional dispute settlement mechanisms are taken into question because of their long period of negotiations and judicial proceeding in some cases taking more than 10 years besides conventional dispute settlement mechanisms costs the States too much. Even after the long period for the negotiations and conciliations disputing States may not agree upon the final delimitation line.

The JDA allows States either resolve the issue of the maritime delimitation permanently or provisionally until the dispute has been settled through a conventional mechanism. Additionally, it should be mentioned that the International Law and UNCLOS does not obliges the disputing States to agree on the final maritime boundary delimitation line but in case of disagreement the disputing States are left with 3 options. As first option, the dispute may be referred to a third party dispute settlement mechanism

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[195] Nelson, 410.
[196] *Ibid*. 418.

with the consent of the disputing States. The second option, the States may conclude a provisional arrangement pending the final delimitation agreement. The last option is that the disputing States may refrain from entering into any agreement thus the disputed are remains unregulated and in a moratorium state[197].

The JDAs purposes itself with carrying the activities regarding the natural resources jointly which reside either on the seabed and/or under the subsoil of CS or EEZ of the either or both States. The natural resources are the hydrocarbon resources, oil and natural gas, and the mineral resources including the polymetallic nodules on the seabed. The reason of such agreement can be varied but will be categorized under two categories as a provisional arrangement pending the final maritime boundary delimitation line or as a dispute settlement mechanism which replaces the conventional dispute settlement mechanisms.

B) TEMPORARY SETTLEMENT MECHANISM (PROVISIONAL ARRANGEMENT)

The JDA in nature and historically, presented itself as a provisional arrangement for the joint exploration and exploitation of the hydrocarbon resources. In practice all the JDAs are limited to a time frame up to 50 years[198]. States with a maritime delimitation dispute on the CS or EEZ according to the international customary law, and the UNCLOS shall refrain from any activities that may affect the final maritime boundary delimitation line[199]. In this manner, the any exploration and exploitation that may infringe the rights of the other State and will be unlawful[200].

In Articles 74(3) and 83(3) of the UNCLOS regarding the EEZ and CS, delimitation issue has been addressed. Both rules provide a "*provisional arrangement*" option until the maritime boundary delimitation has been settled. Even though the wording does not point out what the provisional arrangements are, there are two outstanding agreements as "*provisional arrangements*"[201]. First agreement is the MoU on "Agree to Disagree". This

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[197] Logchem, Y. V.: "The Scope for Unilateralism in Disputed Maritime Areas", in Schofield, C. / Lee, S. / Kwon, M. S. (eds.): *The Limits of Maritime Jurisdiction*, Brill-Nijhoff, 2014 Leiden, p. 178.
[198] Anderson, 498.
[199] Articles 74(3) and Article 83(3) of the UNCLOS.
[200] Beckman / Bernard, 91.
[201] *Ibid*. 93.

MoU is used when disputing States cannot reach a final delimitation agreement as well as any other type of provisional arrangement hence the disputing States cannot overcome the deadlock of the natural resources on the seabed and under the subsoil created by Articles 74(3) and 83(3) of the UNCLOS.

The JDA, as the second option, can be used in any type by the disputing States to explore and exploit the natural resources in the disputed zone. The States have the freedom of deciding on the management of the JDZ. There are three types of JDA: "Single State Model", "Joint Venture Model" and "Joint Authority Model"[202].

The freedom of formation includes the jurisdictional rights over the zone. Contracting States to a JDA can decide for a provisional time that one of the State use their jurisdictional rights over the whole JDZ but this type of agreement on the jurisdiction is not preferred because of jurisdictional limitation set on the other State. Instead, the States prefers either a joint jurisdiction either by separating the jurisdictional zones over the JDZ or creating a separate jurisdictional approach in a co-operational manner just for the JDZ[203].

The provisional nature and preference of JDA allows States to shelve the maritime boundary delimitation disputes over long period of time while presenting solution to the moratorium created over the disputed maritime zone as well as presenting variety of options in terms of type of the exploration and exploitation and the jurisdictional rights over it[204].

C) PERMANENT SETTLEMENT MECHANISM

Drawbacks of the conventional dispute settlement mechanisms, rather time consuming and being expensive, are exhausting and limiting for the disputing States. Even though the JDA has yet to be used in a manner of permanent solution for the maritime boundary delimitation disputes, it presents a great potential with its advantages. The advantages of

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[202] Ong, "Common Offshore Oil and Gas", 788 and 792.

[203] Anderson, D. H. / Logchem, Y. V.: "Rights and Obligations in Areas of Overlapping Maritime Claims", in Jayakumar, S. / Koh, T. / Beckman, R. (eds.): *The South China Sea Disputes and Law of the Sea*, Edward Elgar, 2014 Cheltenham, p. 192.

[204] Becker-Weinberg, V.: *Joint Development of Hydrocarbon Deposits in the Law of the Sea*, Springer, 2014 Heidelberg, p. 8.

the agreement are the cuts on the long negotiation process, reduced cost of the settlement compared to the jurisdictional processes, freedom of choice on the type of the agreement and the management of the JDZ as well as the jurisdictional preferences and availability of changes in the JDA[205].

Hence the JDA as a provisional arrangement that can be used under Articles 74(3) and 83(3) of the UNCLOS, there is no restriction of the agreement being a replacement to the final boundary delimitation agreement itself[206]. The agreement presents an opportunity for joint exploration and exploitation activities in the JDZ for the hydrocarbon resources and polymetallic nodules that are the discovered or will be found in the future.

Article 279 of the UNCLOS refers to the peaceful settlement for the disputes arising from the "*interpretation and application*" of the agreement while also referring the means that are listed in Article 33(1) of the UN Charter[207]. The list herein includes the negotiation as a peaceful settlement mean among many other means such as the conciliation and judicial settlement means.

The negotiations for maritime boundary delimitation disputes generally used for drawing the final maritime boundary delimitation line between the disputing States[208]. It should be considered that the negotiation as a term is wider than mere agreement upon the final delimitation line. As an agreement, the JDA is concluded after negotiation procedures and can be considered as a result of negotiation.

It should be mentioned that the disputing States at first should seek to achieve an agreement on the final boundary delimitation but as a second best alternative the JDA can be done instead[209]. In practice, there is no example of a JDA used as a permanent dispute settlement but in theory the disputing States may refer to the agreement if they deem acceptable.

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205 Becker-Weinberg, 23.
206 Schofield, 11.
207 Article 279 of the UNCLOS.
208 Irwin, 106 - 111.
209 Anderson, 498.

VIII. AGREED CLAUSES

A) JOINT ZONE

The dimensional aspect of the agreement is the joint zone which is designated and designed as a joint zone by the disputing States to be jointly explored and exploited. UNCLOS as well as the international customary law presented CS and EEZ as maritime boundaries that give exclusive rights on the resources located over the seabed and under the subsoil to the coastal States[210].

Disputing States must address the exact location of the joint zone. The zone does not require to be a single area and can be separated into subgroups as in the case of the Japan and Republic of Korea JDA in 1979.

B) JURISDICTION

The JDA should refer to judicial procedure to solve the problem of conflict of law regarding the domestic laws of the disputing States[211]. The referral can change depending on the type of the JDA or the exploration and exploitation activity. For the Single State model, the sole exploration and exploitation activity is left to a State in return of the revenue sharing. Therefore, the chosen jurisdiction should be the Single State's jurisdiction unless otherwise is mentioned in the JDA[212].

Second type of the JDA is the Joint Venture Model where both States either separately or jointly explore and exploit the hydrocarbon resources, minerals, or hydrocarbon resources. If the joint zone is explored and exploited jointly and the contracting State's domestic laws are in cohesion, the States may chose applying their own domestic laws and provide a choice of law to the parties of the dispute. The joint zone might be dived into subgroups, and the exploration and exploitation of the subgroups are attributed to contracting States to both facilitate the share of the resources or interest and also for the clarification of the jurisdiction[213].

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[210] Articles 56(1)(a) and 77(1) of the UNCLOS
[211] Miyoshi, "Joint Development of Offshore Oil and Gas", 41.
[212] Beckman / Bernard, 102.
[213] Miyoshi, "Joint Development of Offshore Oil and Gas", 12.

Disputing States can create a Joint Authority to govern the exploration and exploitation of the joint zone. In this type of JDA, the States are not conducting any activity by themselves in the joint zone, but the activities are done through the Authority in cordial manner. Therefore, the Authority is required to work in upmost coordination of the JDA contracting States. While conducting Joint Authority Model JDA, the States can refer the jurisdiction of the joint zone either to a specific domestic jurisdiction of one of the contracting States or can create a special jurisdiction to be prosecuted over the zone[214]. The special jurisdiction also can be granted to the Joint Authority, arbitration or domestic jurisdictional bodies of the contracting States.

C) APPLICABLE LAW

Articles 56 on EEZ and 76 on CS of the UNCLOS attribute certain sovereign rights, jurisdiction and obligation to the coastal States. The States can practice their exclusive rights in the zones but the overlapping claims of CS and EEZ creates a problem of whom has the jurisdictional power over the JDZ along with many other problems. The delimitation of maritime boundaries addresses the question of the jurisdiction applicable to maritime zones and in respect of the natural resources located in the CS and EEZ. Through the distinct delimitation line, the jurisdictional rights fall to the coastal State[215].

The jurisdictional rights are put on hold and cannot be exercised in a disputed maritime zone. In this matter the actions of disputing States especially exploration and exploitation of the natural resources in the overlapping CS or EEZ before and after the arise of the dispute comes into question upon whether the States can be held responsible or not. Since the EEZ is required to be proclaimed, the actions before the proclamation does not constitute an infringe of the coastal State's rights therefore, the State that conducted maritime activities in that zone cannot be held responsible. On the contrast, CS is an inherent right and the infringement of the rights of the disputing coastal States depends on the "Good Faith" and "Bad Faith"[216].

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[214] *Ibid*. 15.

[215] Elferink, A. G. O.: "Article 76 of the LOSC on the Definition of the Continental Shelf: Questions concerning its Interpretation from a Legal Perspective", The International Journal of Marine and Coastal Law, Vol. 21, Iss. 3, p. 271.

[216] Murphy, S. D.: "Obligations of States in Disputed Areas of the Continental Shelf", in Heidar, T. (ed.): *New Knowledge and Changing Circumstances in the Law of the Sea*, Brill-Nijhoff, 2020 Leiden, p. 188.

D) TYPE

On the agreement the States should chose the type of the JDA. The options are the "Single State Model", the "Joint Venture Model" and the "Joint Authority Model". The types of the agreement require certain co-operation between the JDA States and trust. The type selected directly influence the operational and managerial capabilities of the States in the joint zone.

The Single-State Model reflects that one of the State concluding the exploration and exploitation activities by itself in return of the revenue share. The Joint Venture Model requires the co-operation of the States to jointly conduct such activities regarding the oil and gas resources located in the joint zone. If the States agree upon the Joint Authority Model, then through the agreement or separate agreement, they are required to create a legal entity with "strong" managerial and licencing powers to govern the activities that are going to be held in the joint zone in return of the share on the revenue for the States.

E) REVENUE SHARING

The factors affecting the negotiation and conclusion of a JDA also effect the decision made for the revenue sharing. The factors that the negotiating States should consider when they agree upon a certain share are the historic activities, economic factors and geographic status such as the relative coastal length. The revenue sharing decisions should be based upon the "equitable solution" as the Article 74 and 83 of UNCLOS refers. Additionally, for the provisional JDA the States may prefer to deposit some percentage of the revenue gathered from the JDZ to share accordingly or compensate one party in line with the rights agreed on the final maritime boundary delimitation agreement. Where the JDA is used in lieu of a delimitation agreement permanently, the revenue sharing should be decided through negotiations with consideration of the relevant and unique circumstances of the zone.

Joint zone can be managed by one of the State or through a joint venture and the revenue or income can be shared according to the agreement. Furthermore, the establishment of joint zone through a JDA can be done in splitting the joint zone into subzones for either separate management of the States or joint management through joint

authorities. Revenues coming from the subzones shall be shared depending on the provisions of the agreement. There are examples of unproportioned shares regarding the JDAs for example the TST 90% to 10% in favour of the East Timor, which was later changed and the East Timor and Australia agreed upon the equal shares.

F) TIME PERIOD AND TERMINATION

1- General

The JDA aims for the development of hydrocarbon resources and polymetallic nodules in a maritime zone that overlapping claims of CS and EEZ were made. Disputing States agrees to overcome the moratorium created by Articles 74(3) and 83(3) of the UNCLOS via an agreement for the joint exploration and exploitation of that zone[217]. The agreements made with a referral to UNCLOS provisions are in a provisional nature and the parties to that agreement should consider and evaluate the effects of the termination of the JDA as much as the conclusion.

The termination of a JDA can be made in several different ways. The agreement can be terminated through mutual agreement on cancellation or termination of ongoing agreement. The States may decide to go for a final maritime boundary delimitation agreement by any peaceful settlement means. In addition, the JDA States may terminate the contract through the compulsory dispute settlement mechanisms listed in Part XV of the UNCLOS. Any JDA State to an agreement has the right to unilaterally withdrawn from an agreement. Furthermore, JDA is terminated at the end of the time period decided in the agreement. Finally the agreement achieves its aims and the agreement is left without a subject.

It should be mentioned that the number of successful agreements is rather low compared to the agreements which were canceled or terminated[218]. It is because of the competition for the natural resources and political will for gaining better and bigger share

[217] Reid, P. C.: "Joint Development Zones between Countries", Australian Mining and Petroleum Law Association Bulletin, 1987, Vol. 6, Iss. 1, p. 7.

[218] Xue, 422.

over the natural resources as well as the States not being able to co-operate and not have the mutual understanding.

2- Mutual Termination

All the States have freedom of concluding an international agreement such as the maritime boundary delimitation agreement or a JDA within their sovereignty and sovereign rights[219]. It is the right of the disputing States to conclude a JDA which aims the joint usage of the exclusive rights related to the exploration and exploitation. These exclusive rights and obligations of the States are performed in the joint zone which is created by the JDA.

As the disputing States are given the choice of procedure related to the "*interpretation and application*" of the UNCLOS, the States may divert from the JDA after their mutual agreement without any repercussions. While doing so, the disputing States are required to provide a choice of procedure or any kind of agreement over the disputed matter[220]. The "Agree to Disagree" MoU can be considered as an agreement in terms of Articles 74(3) and Article 83(3) of the UNCLOS.

3- Conclusion of the Dispute Through Dispute Settlement Mechanisms

Disputing States have the right for addressing the matter to a compulsory dispute settlement mechanism if all disputing States are party to the UNCLOS[221]. The matter can also be taken to an agreed mechanism if the disputing State has given their consent[222]. In this case, the disputing States prefer to make a final maritime boundary delimitation of the States' CS or EEZ through drawing a final delimitation line and revert from a joint development of the disputed zones.

This might be the direct result for one of the contracting State's lack of implementing the JDA through the domestic procedure and unwillingness on acting accordingly to the agreement[223]. In addition, the recent changes in knowledge over the joint zone or the

[219] Naldi, 129.
[220] Articles 283(2) of the UNCLOS.
[221] Maclaren / James, 143.
[222] Bastida / Ifesi-Okoye / Salim / Ross / Walde, 360 and 363.
[223] Xue, 419.

newly discovered hydrocarbon or polymetallic nodule stock may change the view of a contracting State. In these scenarios, the State may prefer to take the matter to a compulsory dispute settlement mechanism.

4- Unilateral Termination

It is possible that a contracting State to an agreement may decide a unilateral termination of the agreement[224]. The CS is an inherent right of the coastal State and any activity over the natural resources located on the seabed and over the subsoil is given to the coastal State as an exclusive right[225]. The JDA provisions the joint usage of the hydrocarbon resources and polymetallic nodules in the joint zone.

Through the exclusive rights and the agreement, the disputing States may decide upon a joint management, jurisdiction and exploration and exploitation of the zone[226]. Therefore, it can be stated as the disputing States have the freedom of deciding how to use their exclusive rights over the zone, they also have the right to terminate or cancel an agreement within their rights.

The unilateral termination of an agreement increases tension between the disputing States and causes damages to the relationship between the disputing States. The unilateral denunciation of an agreement will also affect the further peaceful dispute settlement mechanisms and harden the reaching a final maritime boundary delimitation line[227].

In certain agreements, the States might provision specific grounds or opt-outs for the contracting States. In addition, the contracting States may refer and decide on a penalty clause which may activate as a breach of contract when one of the States decide to unilaterally denounce the agreement.

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[224] Helfer, L. R.: "Terminating Treaties", in Hollis, D. (ed.): *The Oxford Guide to Treaties*, Oxford University Press, 2012 Oxford, p. 635.

[225] Article 76 of the UNCLOS.

[226] Mensah, T.: "Joint Development Zones as an Alternative Dispute Settlement Approach in Maritime Boundary Delimitation.", in Lagoni, R. / Vignes, D. (eds.): *Maritime Delimitation*, Martinus-Nijhoff, 2006 Leiden, Vol. 53, p. 146.

[227] Beckman / Bernard, 98.

5- Expiration of the Time of the Agreement

The JDA is used as a provisional arrangement for certain periods of time postponing the final maritime boundary delimitation agreement[228]. In certain cases, the agreement is done up to 50 years. At the end of the time decided on the agreement, if not prolonged by the contracting States, the agreement will come to an end.

6- Dissolution of the Agreement

The JDA is made for the development and exploitation of a specific zone located on the overlapping claims of CS and EEZ of the coastal and interested States. The subject of the agreement is the natural resources especially the hydrocarbon resources and polymetallic nodules located in the joint zone[229].

When the States have achieved the complete exploration and exploitation over the joint zone then the agreement itself has no subject. Hence the agreement concluded by the disputing States for the joint development of the joint zone will come to a close. If the main reason for the disputing States that hinders conclusion of the final maritime boundary delimitation line is the natural resources located in the joint zone, after the finalization JDA, the disputing States may easily negotiate for a maritime boundary delimitation agreement[230].

CONCLUSION

The JDA presents great opportunity to the disputing States on the maritime boundary delimitation disputes regarding the delimitation of CS or EEZ. The JDA is a useful mean that the States with overlapping claims. There are several reasons that make disputing States' to seek a JDA such as the lack of agreed dispute settlement mechanisms, geography, moratorium on the resources and the other factors. Disputing States might be in lack of agreed dispute settlement mechanism and none of the disputing States take the matter to a compulsory dispute settlement mechanism. Therefore, the disputing States should seek a peaceful settlement mechanism or try to conclude a JDA.

[228] Schofield, 13.
[229] Miyoshi, "Joint Development of Offshore Oil and Gas", 3.
[230] Schofield, 25.

There are number of factors that effects the conclusion of a JDA such as the historical activities in the disputed zone, geographical conditions and features, number of the disputing States and the economic value of the natural resources located in the joint zone. These factors also affect the revenue sharing and jurisdiction between the States.

Even before the introduction of the UNCLOS with its provision on the settlement of disputes related to the maritime boundary delimitations and the provision to the delimitation of specific maritime zones, the States had the maritime boundary disputes and settlement mechanisms which were met by the international customary law and the UN Charter. The very first examples of both JDAs and JMAs were present in the 1950s and 1960s before the UNCLOS entered into force in 1982.

When the disputing States cannot delimit their maritime boundaries through conventional maritime dispute settlement mechanisms, they are obliged to make every effort to enter into a provisional arrangement according to Articles 74(3) and 83(3) of the UNCLOS. Those provisions prohibit any activity of a State that may cause permanent damage, which creates a deadlock on the natural resources located on the seabed or under the subsoil of EEZ or CS. In most cases, the disputed States agree upon a "Agree to Disagree" MoU hence the disputing States cannot perform any activity regarding the exploration and exploitation of the resources located in the disputed zone. The best option for overcoming such prohibition is conducting a JDA. The provisional JDAs can shelve the maritime delimitation dispute over 50 years thus de-escalating any tension between the disputing States created by the maritime boundary delimitation.

There is no exact or commonly agreed definition of the JDA. However, the aim of the agreement is the jointly governing the JDZ and either unitize the resources straddling through the delimitation line or disputed zone. The agreement presents an opportunity to the States' to make the activities financially feasible and overcome the dispute. Furthermore, the JDA can be formed to fit special circumstances and can be varied according to the needs and wills of the disputing States. The States, at any point during the JDA period, may decide to prolong, alter the terms, or change the status of the agreement from provisional to permanent agreement. The elements of the JDA must include the agreement itself, geographical area which is created in the overlapping claims

of the disputing States, as well as the hydrocarbon resources and the polymetallic nodules located on the seabed and under the subsoil of the joint zone.

The State practice regarding the JDA are in bi-lateral nature but the agreement is in fact can be in multi-lateral. The involvement of third party States, and parties might catalyze the disputing States to conclude a JDA.

There are different forms of JDA. The States should refer to a type of an agreement such as the Single State model, Joint Venture model or Joint Authority model. Each model has it is own advantages and shortcomings. Aside from the freedom on the management of the JDZ, jurisdictional rights and the revenue sharing are left to the determination of the contracting States. Lastly the composition of the JDZ is also at the hand of the contracting States. They may utilize the JDZ jointly or they are free to create sub-areas and assign them to each other.

The Single State model allows one of the State to perform the exploration and exploitation activities in the joint zone in favor of the JDA States. The States predetermine the shares and jurisdiction is generally left to the single State.

The second type is the Joint Venture model where the States jointly pursue the development of the natural resources located in the joint zone. In this model States may prefer creating subzones in the JDZ and designate them to each JDA State. If this is the case, then the revenues gathered from the exploitation of the joint zone either can be pooled and shared between the contracting States or can be individually kept. The JDA States may also prefer creating a joint company or venture to explore and exploit the natural resources in the joint zone without creating subgroups. The revenue share will be in accordance with the terms decided on the agreement.

While negotiating for a JDA, the disputing States may prefer to create a Joint Authority with a legal entity and strong powers, such as the management and licensing rights. The creation of such authority is a complex procedure and requires upmost cooperation of the JDA States to maintain. The exploration and exploitation activities in the JDZ is decided and made by the authority while the JDA States take their share from the revenue of the authority.

The unitization agreement is essentially the JDA that has been done where the final delimitation line has been drawn. Both agreement purposes themselves with the development of a natural resource jointly. The difference between a JDA and a JMA is mainly the resources and also the geographical scope. The JDA can be done in the CS or EEZ while a JMA can be concluded in either EEZ or fisheries zone. In practice, the States prefer to include JMA in the JDA.

Concluding a JDA requires certain conditions such as the overlapping claims of CS or EEZ. The CS and EEZ as their definition in UNCLOS, gives certain exclusive rights over the seabed and under the subsoil to the coastal states. If there are no overlapping claims of these zones, the coastal State may exercise its exclusive rights freely. On the other hand, Articles 74(3) and 83(3) of the UNCLOS prohibits the exploration and exploitation of the disputed zones. It should be mentioned that if the final maritime boundary delimitation regarding the CS and EEZ has been made, the neighboring States give their consent to conclude JDA and create a JDZ.

In addition, the political will is one of the important conditions for achieving a JDA. The governments of the disputing States must show their willingness to shelve the delimitation dispute and work towards a joint development of the disputed zone through a JDA. The political will also include the public’s response. If the popular opinion is against concluding a JDA then the governments may refrain from taking necessary action and participate in a JDA.

The specifications of the joint zone are also an important condition. The joint zone should have the hydrocarbon or polymetallic nodule deposits. The States should decide on the form of the JDA, revenue sharing, jurisdictional rights and specific provisions to the dispute. The agreement also required to make reference to the law applicable for the disputes that may arise from the exploration and exploitation of the joint zone.

The nature and application of the JDA is provisional but in theory there is no prohibition of the agreement used as a definite solution to the maritime boundary delimitation disputes. Article 33(1) of the UN Charter states that negotiation is one of the peaceful settlement mechanism. In line with that UNCLOS requires the disputing States to seek for a peaceful settlement of disputes arising from the “*interpretation and*

application" of the convention. Therefore, the disputing States can permanently settle their dispute with a JDA.

The States must agree on certain clauses such as the exact definition of the joint zone, the jurisdiction and applicable law, the type, revenue sharing, the time period and the termination of the agreement. The JDA can be terminated and canceled in several ways. The JDA States can terminate their agreement with mutual decision. The conclusion of a final maritime boundary delimitation agreement can finalize the JDA if otherwise is not stated explicitly. Any JDA State may decide on a unilateral cancellation of the agreement. The agreement can expire after the time period decided in the JDA or the agreement can come to an end when the natural resources are completely explored and exploited in the joint zone.

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ABSTRACT

Even though the Joint Development Agreement between Bahrain and the Saudi Arabia in 1958 was the first to be concluded, the concept and the idea emerged in the 1930s in United States through the studies and judicial cases on joint petroleum, coal, and natural gas deposits. The agreement as a concept has shifted to the European continent in the 1950s and the North Sea Continental Shelf Case later in 1969, the International Court of Justice's judgement which referred to a possibility of "*…a regime of Joint Jurisdiction, use or exploitation for the zones…*" set the current idea of the agreement. Since then there has been many Joint Development Agreements are concluded.

The agreement presents itself to the States as an agreement with possibility of provisional or permanent solution for maritime boundary delimitation disputes. Aside from the agreement's application as a mean to settle maritime boundary delimitation method, the States in presence of a maritime boundary line, may refer to the Agreement in order to jointly carry out the exploration and exploitation activities over natural resources located on the coastal States' either Continental Shelf or Exclusive Economic Zone.

The Thesis will focus on the Joint Development Agreements. The States' reasons and the factors for concluding an agreement will be examined. In addition, the historical development and legal background of the agreement will be evaluated before and after the "*United Nations Convention on the Law of the Sea*" and the rights of the disputing States set under Law of the Sea Convention Article 74(3) and Article 83(3). The thesis also aims to define the agreement and elaborate on the elements of the agreement. Furthermore, parties of the agreement and types of the agreement will be studied along with the requirements to conclude an agreement. The function of the agreement and the agreed clauses will be scrutinized as well.

Keywords: Joint Development Agreements, Joint Development Zones, International Customary Law, United Nations Convention on the Law of the Sea, Rights and Obligations of the States in the Disputed Maritime Zones, Contents of Joint Development Agreements, Types of Joint Development Agreements, Alternative Dispute Settlement, Termination of Joint Development Agreement.

ÖZET

Bahreyn ile Suudi Arabistan arasında 1958 yılında imzalanan Ortak Kalkınma Anlaşması imzalanan ilk anlaşma olmasına rağmen, kavram ve fikir 1930'larda Amerika Birleşik Devletleri'nde ortak petrol, kömür ve doğal gaz yatakları üzerine yapılan çalışmalar ve adli davalar yoluyla ortaya çıktı. Ortak Kalkınma Anlaşması kavramı 1950'lerde Avrupa kıtasına kaymıştır ve daha sonra 1969'da Uluslararası Adalet Divanı Kuzey Denizi Kıta Sahanlığı Davası'nda "… belirli alanlar için Ortak Yargı Yetkisi rejimi, kullanımı ve işletilmesi …" ihtimaline değindi ve anlaşmaların mevcut fikrini belirledi. Uluslararası Adalet Divanı'nın bu kararından sonra birçok Ortak Kalkınma Anlaşması imzalandı.

Anlaşma, deniz alanlarının sınırlandırılmasına ilişkin anlaşmazlıkları geçici veya kalıcı olarak çözmek isteyen ihtilaflı devletlere seçenek olarak sunulmaktadır. Anlaşmanın ihtilaflı deniz alanlarına geçici bir çözüm olarak uygulanabilmesinin yanı sıra, deniz alanlarının sınırlarının kesin olarak belirlendiği hallerde, Kıta Sahanlığı veya Münhasır Ekonomik Bölge sınırının iki tarafında da bulunan doğal kaynakların kıyı Devletlerinin anlaşması halinde ortak arama ve işletme faaliyetlerini yürütmesine de imkân sağlamaktadır.

Tezde Ortak Kalkınma Anlaşmalarına odaklanılacaktır ve Devletlerin anlaşmayı tercih etme sebepleri incelenecektir. Anlaşmaların tarihsel gelişimi ve hukuki arka planı "*Birleşmiş Milletler Deniz Hukuku Sözleşmesi*" öncesi de dâhil olarak ele alınacaktır. Ayrıca ihtilaflı Devletlerin Deniz Hukuku Sözleşmesi Madde 74(3) ve 83(3) kapsamında belirlenen hakları değerlendirilecektir. Tez sözleşmeyi tanımlamayı ve sözleşmenin unsurlarını detaylandırmayı da amaçlamaktadır. Sözleşmenin işlevi, tarafları, türleri, gereklilikleri ve sözleşmede bulunması gereken maddeler incelenecektir.

Anahtar Kelimeler: Ortak Kalkınma Anlaşmaları, Ortak Kalkınma Bölgeleri, Uluslararası Örf ve Adet Hukuku, Birleşmiş Milletler Deniz Hukuku Sözleşmesi, İhtilaflı Deniz Alanlarında Devletlerin Hak ve Yükümlülükleri, Ortak Kalkınma Anlaşmalarının İçeriği, Ortak Kalkınma Anlaşmalarının Türleri, Alternatif Uyuşmazlık Çözümü, Ortak Kalkınma Anlaşmasının Feshi