

Overlapping Maritime Claims Areas and Maritime Joint Development Zones

Maritime Boundary Delimitation
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Continental Shelf/EEZ Delimitation

LOS Articles 74 and 83

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into **provisional arrangements of a practical nature** and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
- Could take multiple forms:
 - Provisional boundary
 - **Maritime joint development zones**
 - Agreement *not* to undertake particular activities

Maritime Joint Development: Key Requirements

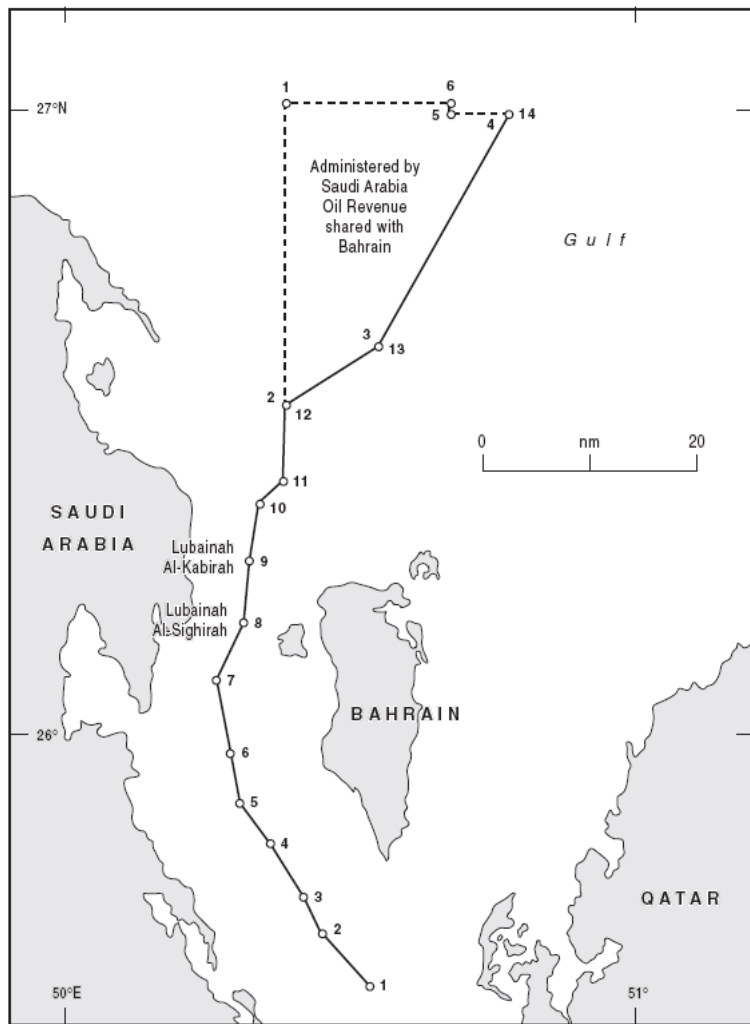
- A formal agreement
- Definition of a special zone
- Definition of the resources to which the arrangement applies
- Agreement on the laws and jurisdiction governing exploration, operations and revenue sharing
- **Uncontested sovereignty** over the area designated as a joint development zone (not always the case – likely to lead to further dispute)

Key Components of Joint Development

- Without prejudice clauses
- Neutral terminology
- Balance
- Can be created both in addition to a defined boundary (facilitating delimitation) or in lieu of a maritime boundary delimitation
- ***Political will***

Joint Zones as an addition to delimitation

- Bahrain-Saudi Arabia in the Persian Gulf (signed 1958)
- Qatar-United Arab Emirates (Abu Dhabi) in the Persian Gulf (1969)
- France-Spain in the Bay of Biscay (1974)
- Colombia - Dominican Republic in the Caribbean (1978)
- Australia-Papua New Guinea in the Torres Strait (1978)
- Iceland-Norway in the North Atlantic (Jan Mayen Island) (1981)
- Faroes-UK in the North Atlantic (1999)



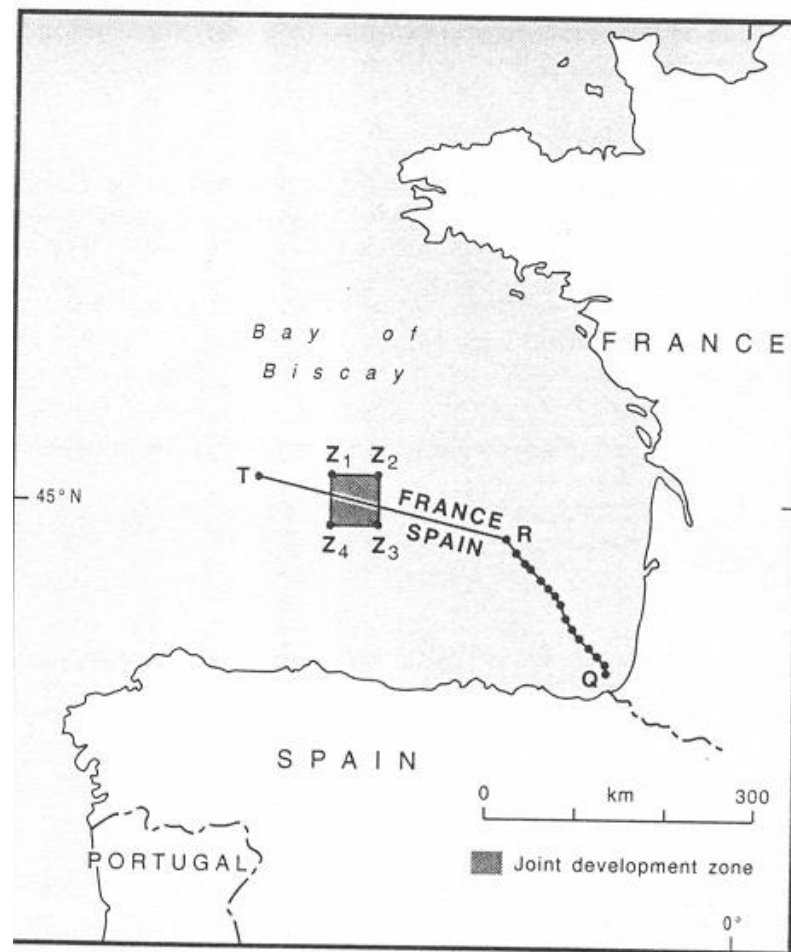
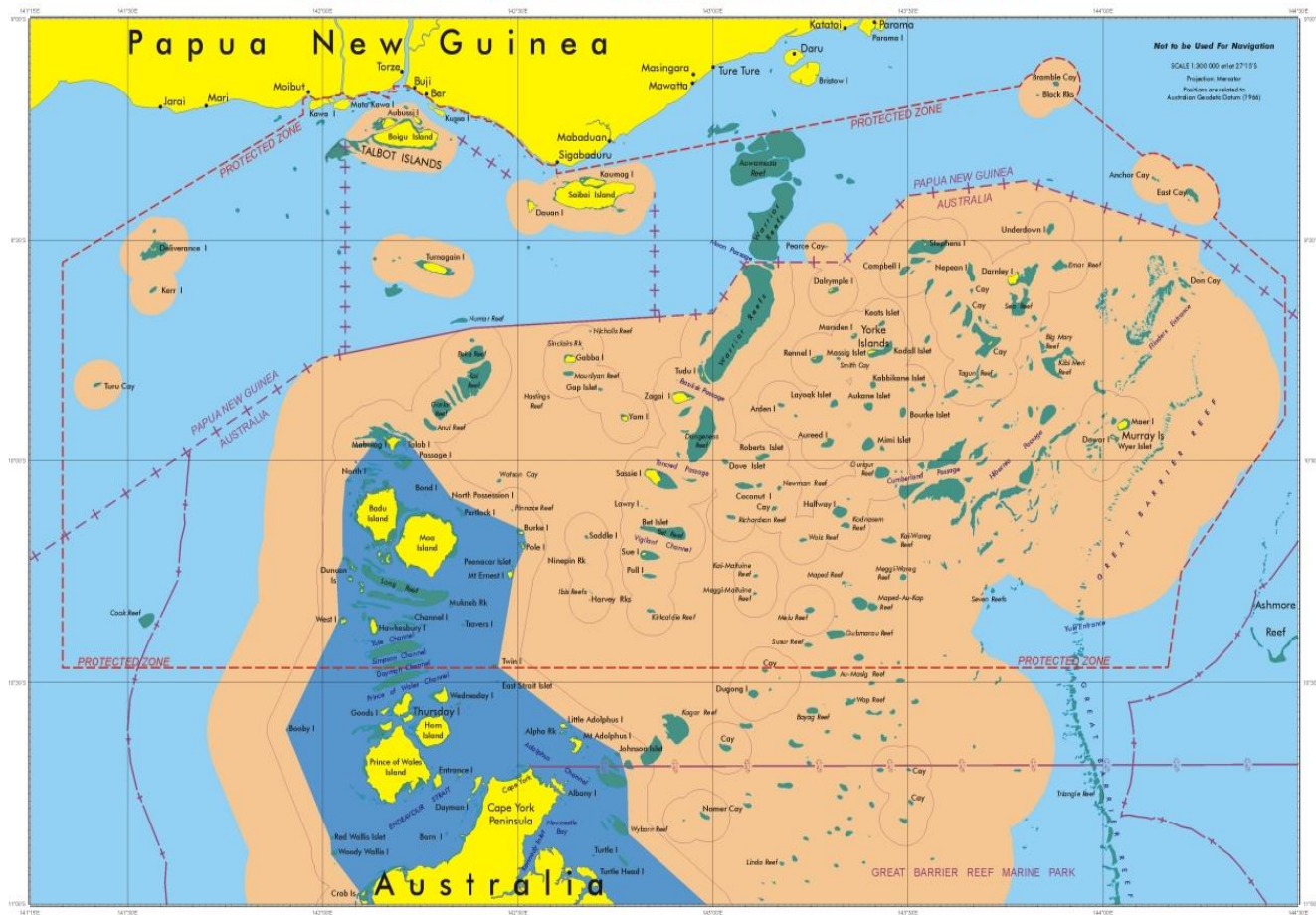


Figure 2.21 The France-Spain maritime boundary and Joint Development Zone

Australia's Maritime Zones in the Torres Strait



- | | |
|--|--|
| ---+---+---+ Seabed & Fisheries Jurisdiction Lines | ---+---+---+ Limit of Contiguous Zone (24nm) |
| ----- Seabed Jurisdiction Line | ----- Limit of Coastal Waters (3nm) |
| +++++ Fisheries Jurisdiction Line | Orange Australian Territorial Sea |
| ---o--- Marine Park Limits | Blue Australian Internal Waters |

CAUTION: AUSLIG is presently verifying the location of Australia's Territorial Sea Baseline. This is the position of the low water mark as currently recorded is being checked against more recent and accurate mapping and, if necessary, the position of the low water mark will be corrected. In the event of a correction, the location of the low water mark will be adjusted to the new position. This adjustment will require a corresponding adjustment to the location of the line defining the outer limit of the territorial sea, the limit of the contiguous zone. In AUSLIG's opinion, however, it is highly unlikely that, as a result of the verification process, any error in the Territorial Sea Baseline as presently recorded will materially need to be shifted by more than 300 metres in any direction.

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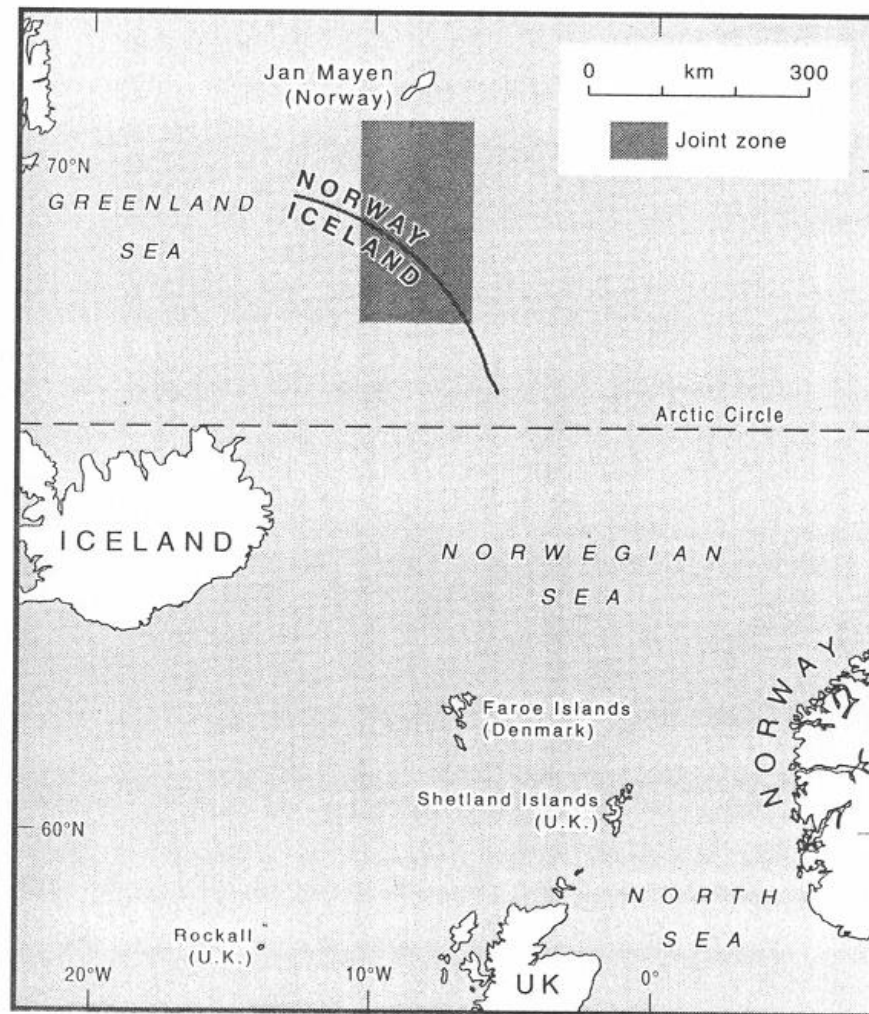
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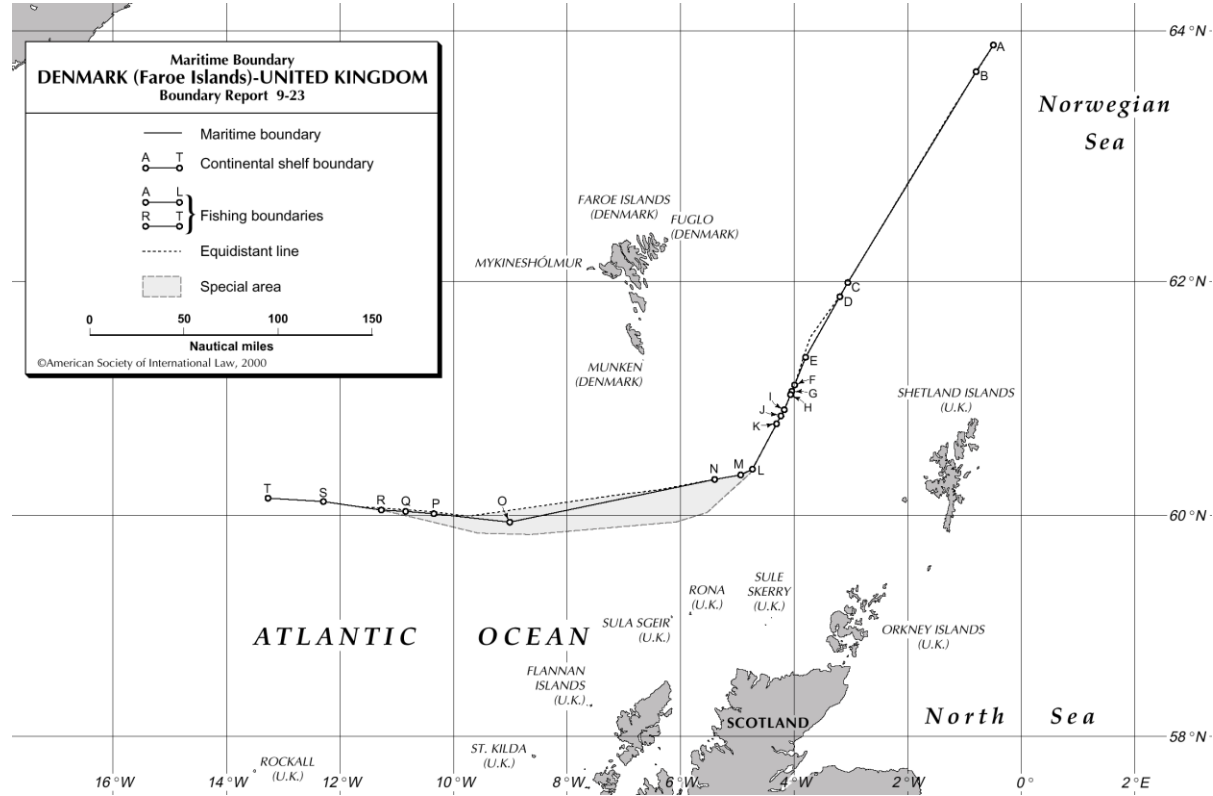
MP 97/790.80



Source: International Boundaries Research Unit

Figure 2.26 The Iceland-Norway (Jan Mayen) joint zone

Faroes-UK



Source: Sovereign Limits



Joint Zones in lieu of delimitation

- Kuwait-Saudi Arabia in the Persian Gulf (1965)
- Japan-South Korea in the Sea of Japan (1974)
- Sudan-Saudi Arabia in the Red Sea (1974)
- Australia-Indonesia in the Timor Sea (Timor Gap) (1989)
- Malaysia-Thailand in the Gulf of Thailand (1990)
- Malaysia-Vietnam in the Gulf of Thailand (1993)
- Sao Tome-Nigeria in the Gulf of Guinea (2001)
- Australia-Timor Leste in the Timor Sea (2002 and 2007)
- China-Japan in the East China Sea (2008)?
- Joint fishing agreements in the **East China Sea**
 - China-Japan (1997)
 - Japan-Korea (2000)
 - China-Korea (2001)
 - Japan-Taiwan (2013)

(d) Iceland-Norway (Jan Mayen) (Figure 2.26). This agreement

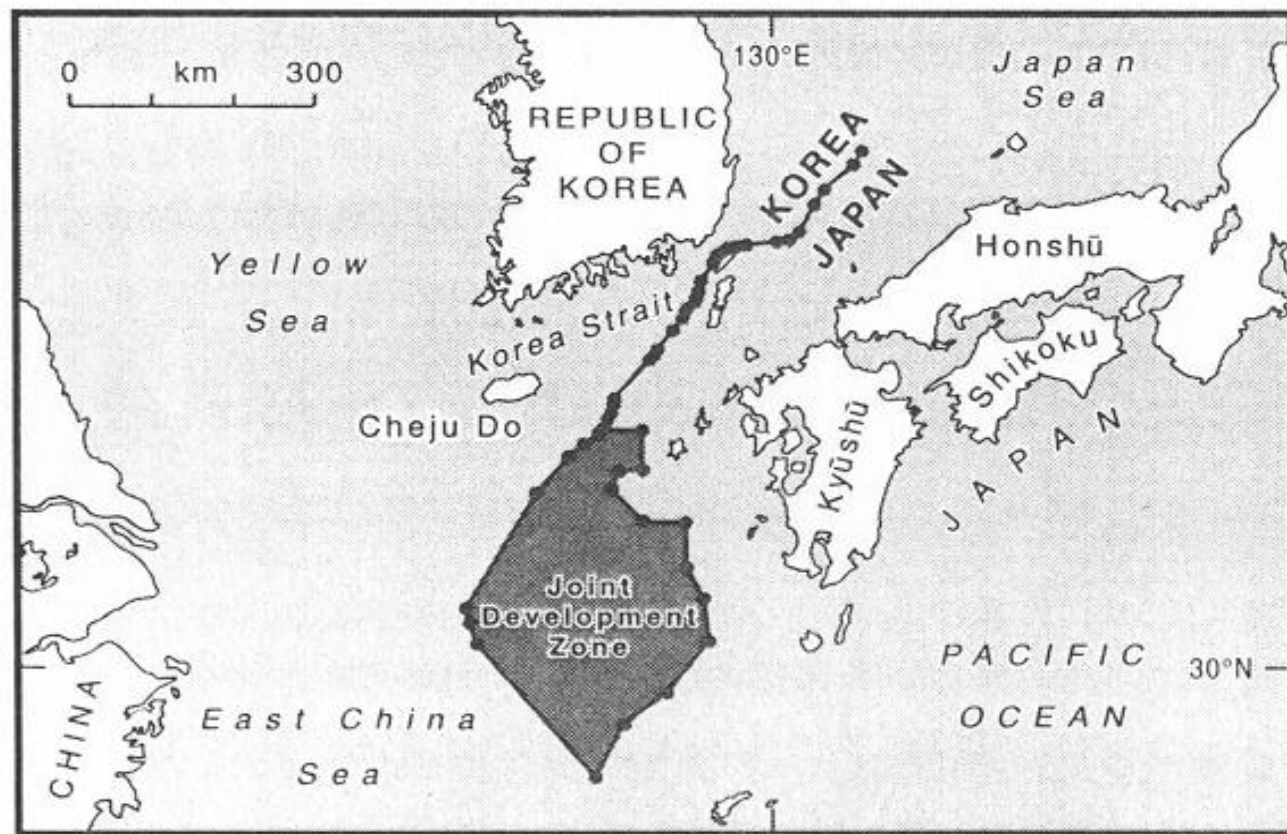


Figure 2.25 The Japan-Korea maritime boundary and Joint Development Zone

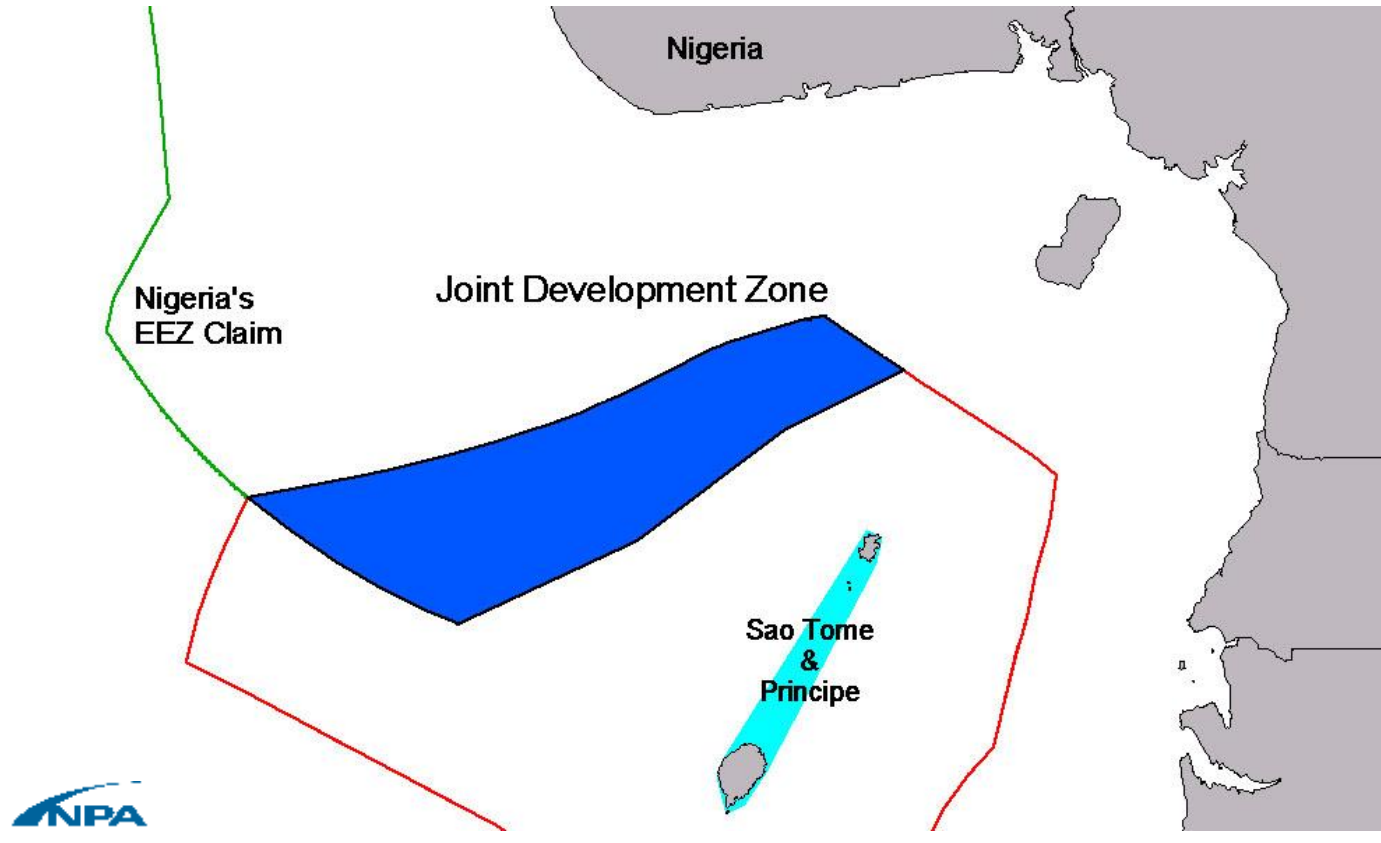


Source: International Boundaries Research Unit *Figure 2.23 The Saudi Arabia-Sudan common zone*

The Gulf of Thailand



Sao Tomé-Nigeria JDZ

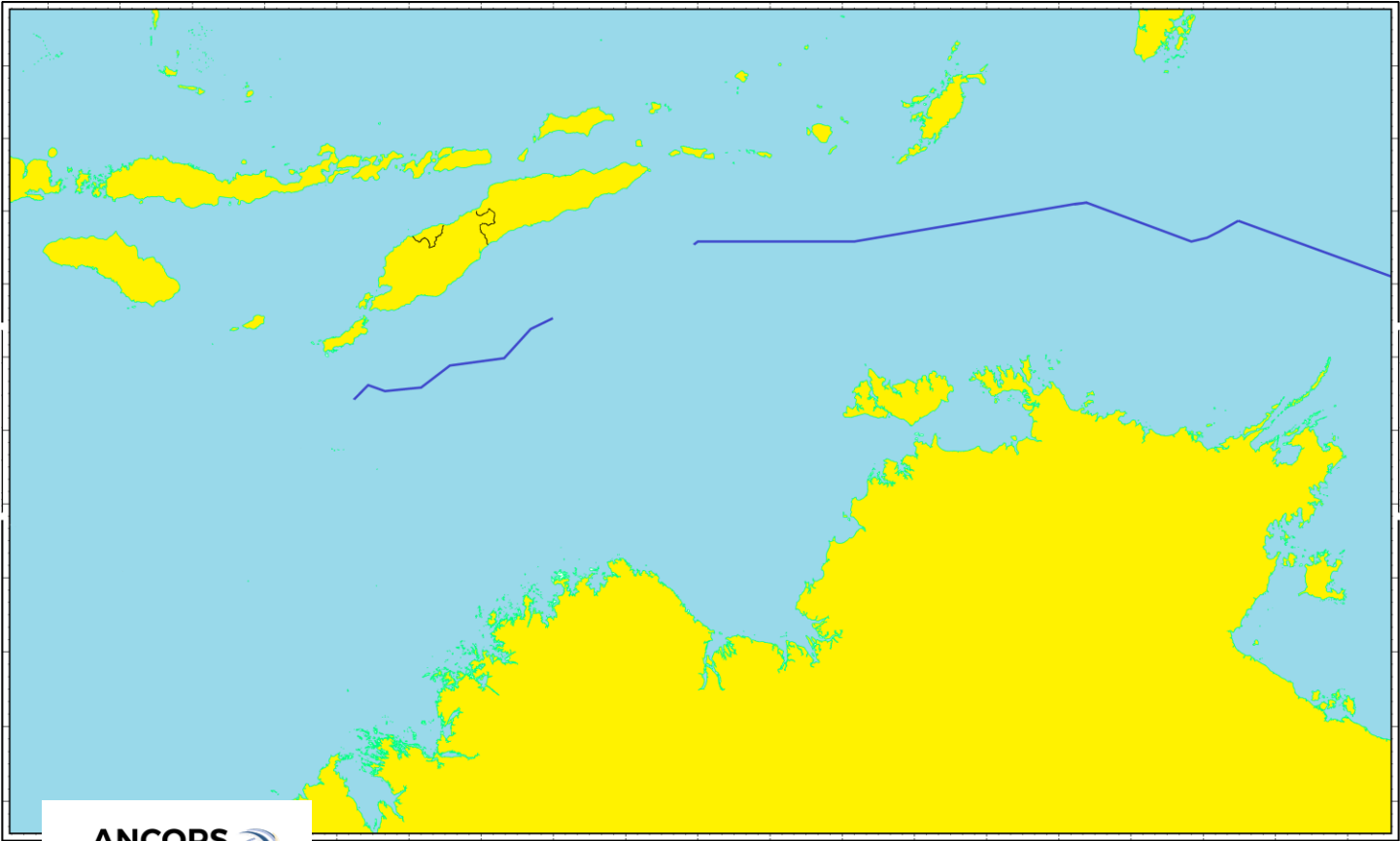


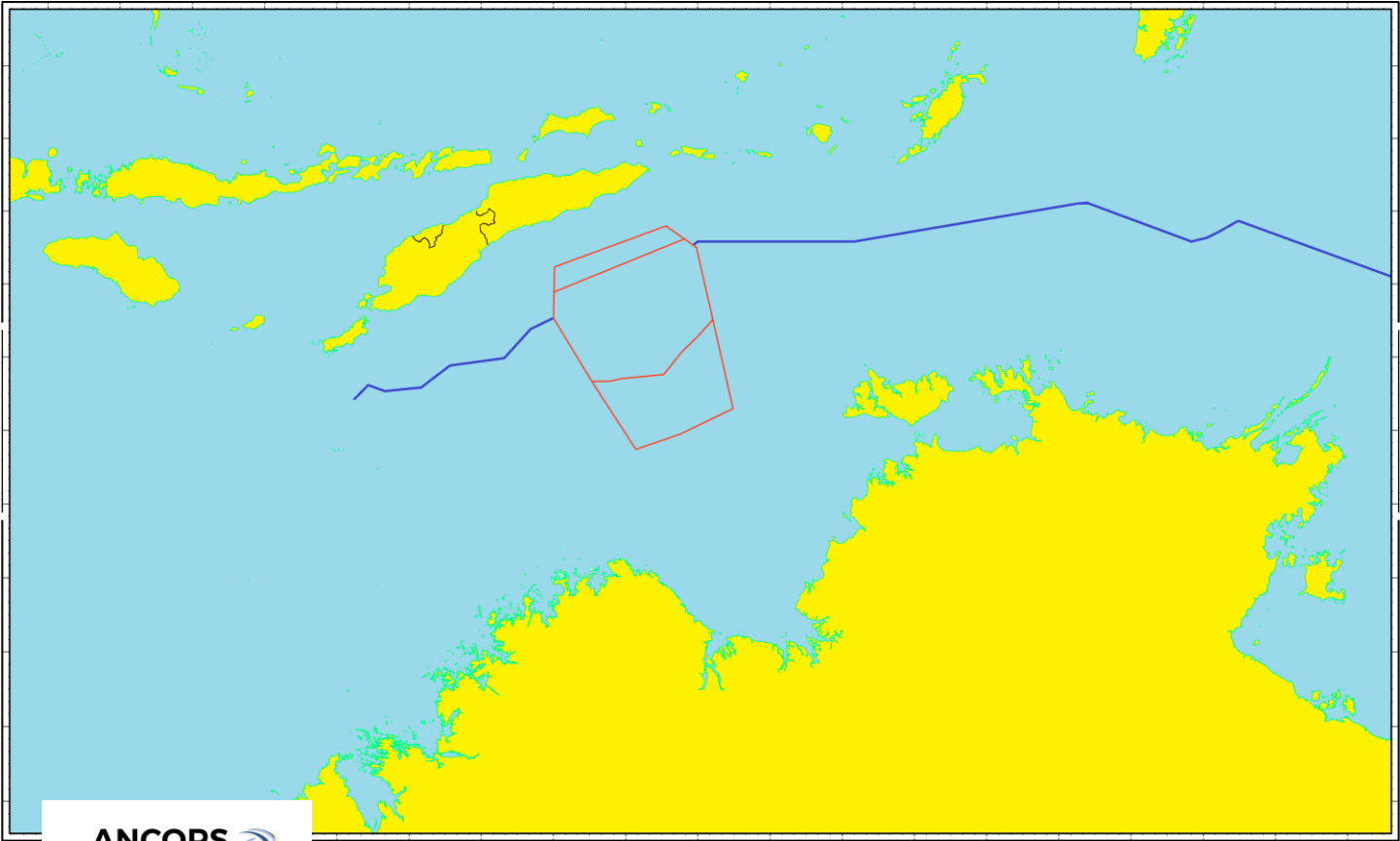
The Australia – Indonesia Continental Shelf Agreements

- Australian arguments based on the concept of ‘natural prolongation’
- Argued that the axis of the Timor trough should be the basis of delimitation
- Indonesia argued for equidistance-based line
- Compromise: southern margin of trough used instead of axis
- 80% of disputed area to Australia
- Indonesia allegedly “taken to the cleaners”

The 'Timor Gap' Treaty

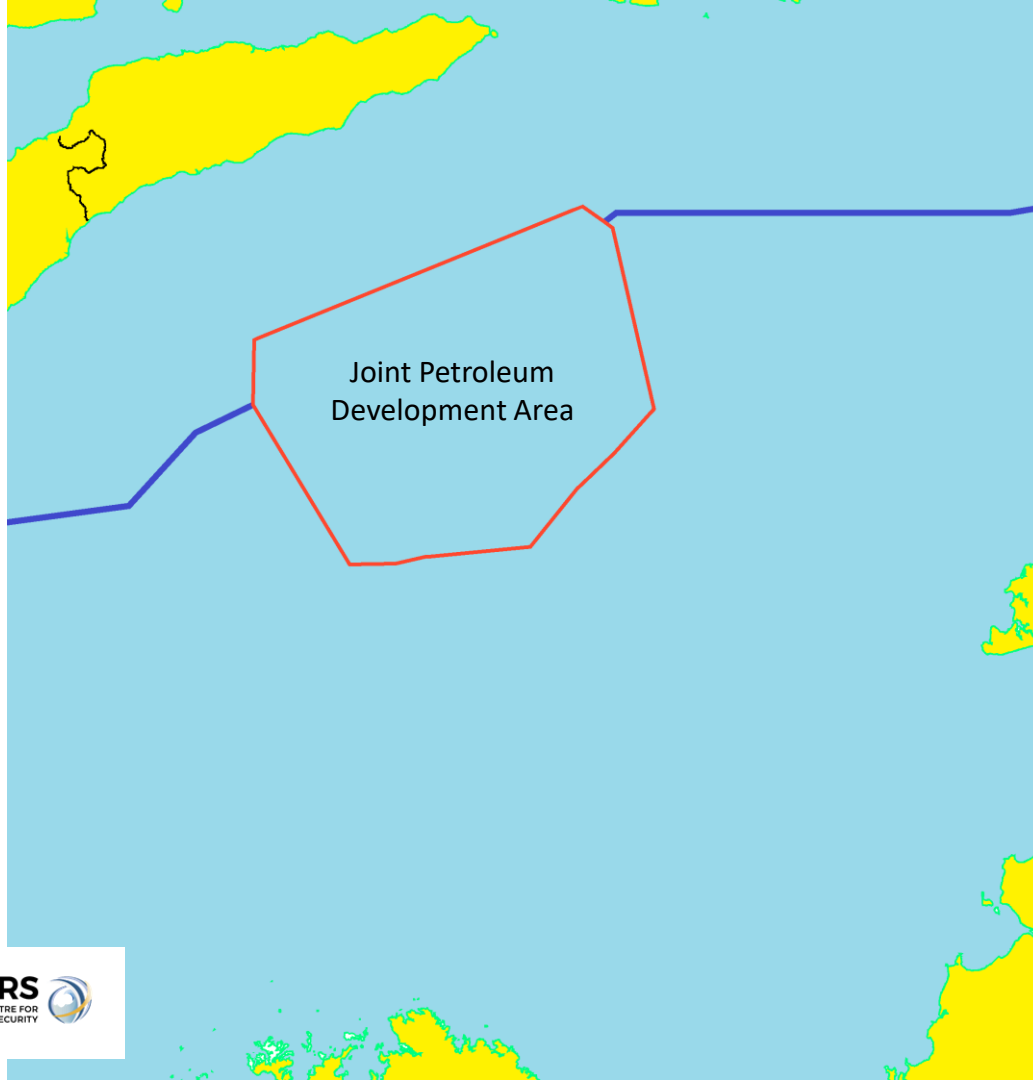
- East Timor not incorporated into Indonesia at the time of the Australia-Indonesia seabed boundaries
- Therefore a gap in the line
- Prospective seabed
- Indonesia refused to accept Australia's natural prolongation claims
- Deadlock overcome through innovative Timor Gap Zone of Cooperation Treaty, 1989





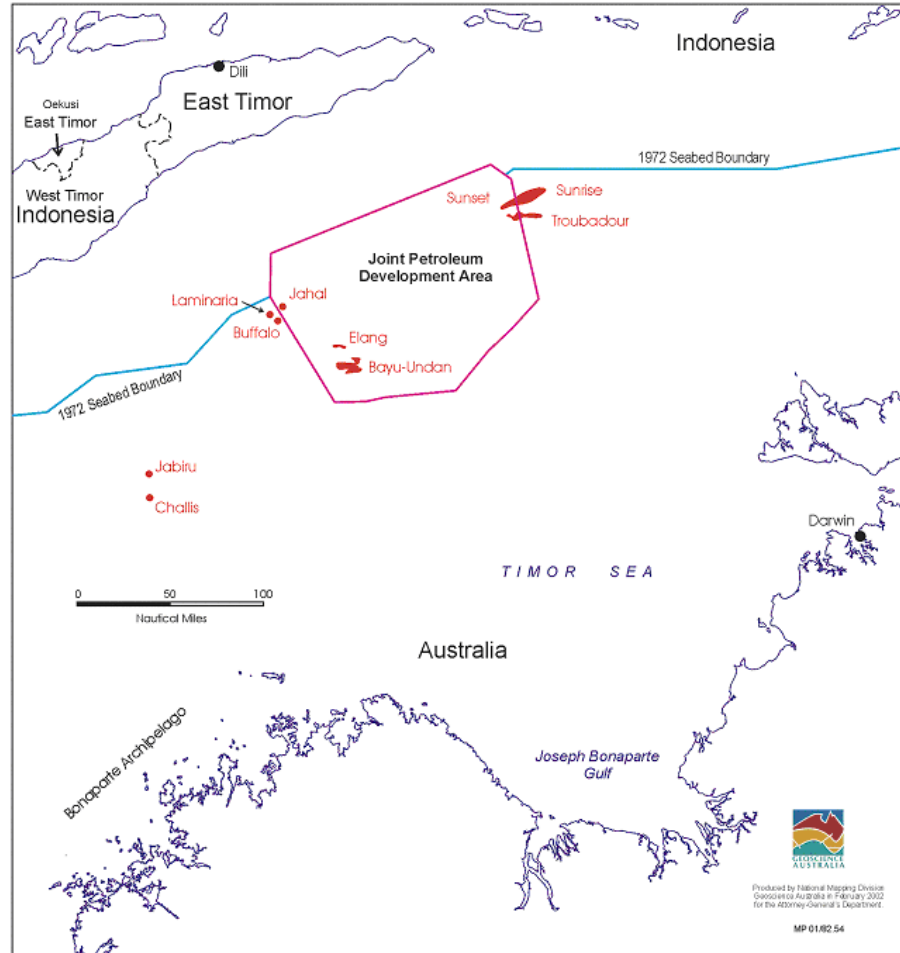
Timor Sea Treaty

- On independence Timor-Leste not bound by Timor Gap treaty
- New interim arrangement under Timor Sea Treaty
- Creation of the Joint Petroleum Development Area
 - JPDA occupies the same location as Area A of the Timor Gap Zone of Cooperation
- Jurisdiction shared
- Revenue shared
 - 90% East Timor
 - 10% Australia
- Signed in 2002, entered into force April 2003
- To operate for 30 years unless a permanent boundary is agreed



Timor Sea Treaty

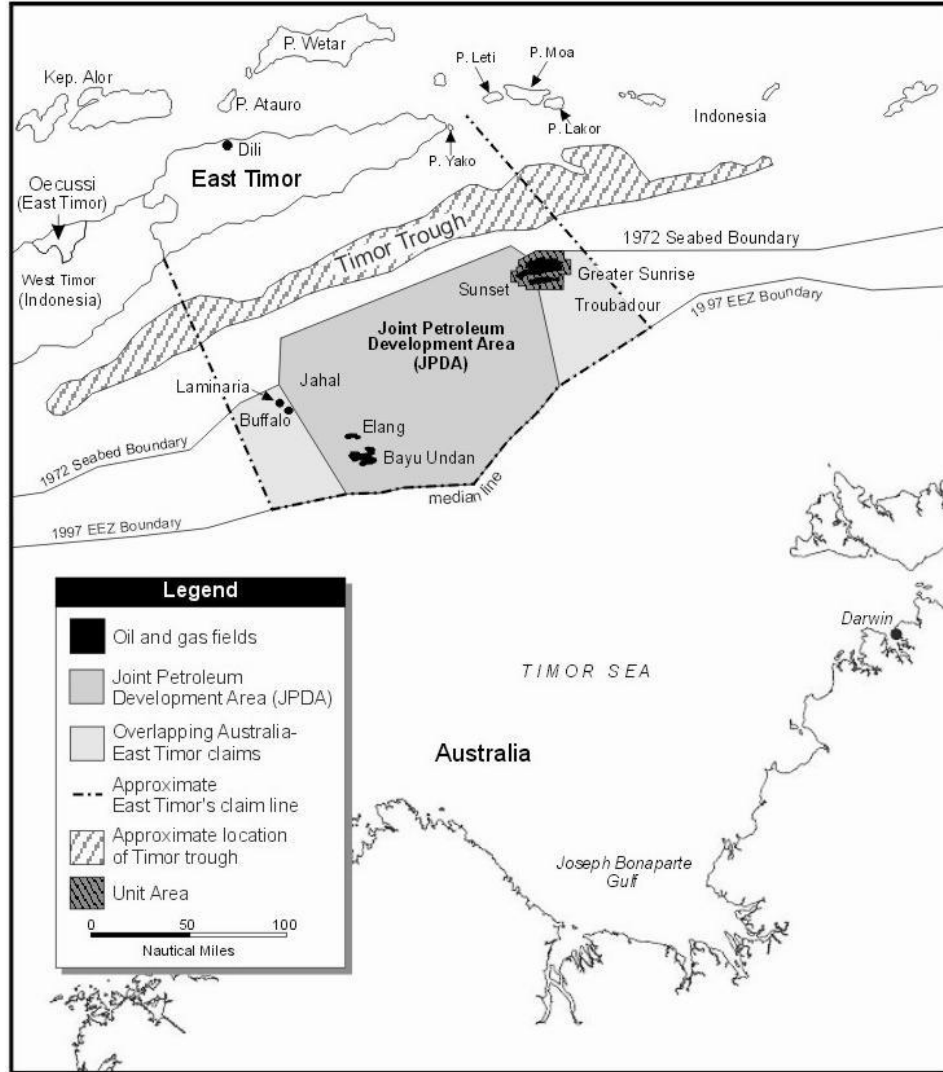
Joint Petroleum Development Area



Complications

- Greater Sunrise: c.7.8 tr.cu.ft. gas
- Discovered after Gap Treaty
- Extends from “Australian” continental shelf into JPDA
- Necessity of a unitization agreement
- Agreement reached 2003
 - 79.9% Australia
 - 20.1% East Timor
- Timor-Leste refused to ratify the unitization agreement as a means of putting pressure on Australia in the boundary talks

The JPDA and CMATS



Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) (2006)

- Revenues from Greater Sunrise field to be divided equally
- Treaty to last 50 years after entry into force or until 5 years after exploitation ceases, whichever occurs earlier, but Treaty can be terminated if:
 - A development plan for the Sunrise field has not been approved within 6 years, or
 - Production from Sunrise has not commenced within 10 years
- Water column jurisdiction:
 - Australia to continue to exercise jurisdiction south of the JPDA
 - Timor-Leste to continue to exercise jurisdiction in the JPDA
- Joint Maritime Commission established

Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS)

- Without prejudice future maritime boundary delimitation
- Links the duration of the TST to the duration of CMATS
- Provides for a moratorium on both sides claims:
“Neither Australia nor Timor-Leste shall assert, pursue or further by any means in relation to the other Party its claims to sovereign rights and jurisdiction and maritime boundaries for the period of the Treaty” (Article 4)

Litigation

- Timor Leste commenced arbitral proceedings against Australia seeking the ending of the CMATS Treaty (2013)
- Timor Leste sought provisional measures via ICJ to safeguard documents seized from a legal advisor resident in Australia
 - Court orders and Australian Government undertakings not to use the documents
 - Proceedings discontinued 2015
- Timor Leste commenced further arbitral proceedings in respect of tax revenue from the JPDA pipeline

Conciliation

- Timor-Leste initiated an Annex V Conciliation against Australia (2016)
 - Australia initially challenged aspects of the competence of the Commission
 - Commission found it had competence
 - 12 month time limit commenced from the date of the ruling as to competence
 - Later extended into 2017

Conciliation

- Conciliation Commission was constituted by the States:
 - Dr Rosalie Balkin (Australia)
 - Judge Abdul Koroma (Timor-Leste)
 - Professor Donald McRae (Australia)
 - Judge Rüdiger Wolfrum (Timor-Leste)
 - Ambassador Peter Taksøe-Jensen (Chairman)

Conciliation

- Commission engaged in “confidence-building” activities
 - Meetings of parties – no records at this point
 - Telephone contacts
 - In-country meetings with senior ministers and officials
 - Preparation of non-papers

Conciliation

- Commission facilitated expressions of goodwill
 - Australia suspended activities on petroleum blocks adjacent to the JPDA under Australian jurisdiction
 - Timor-Leste ceased the additional arbitral proceedings
 - Both States moved to wind up CMATS and return the area to the Timor Sea Treaty alone pending a final negotiated boundary

Conciliation

- Production of an issues non-paper
 - Boundary positions of both parties received
 - Identification of points of difference
 - Importance of commercial stability of existing activity

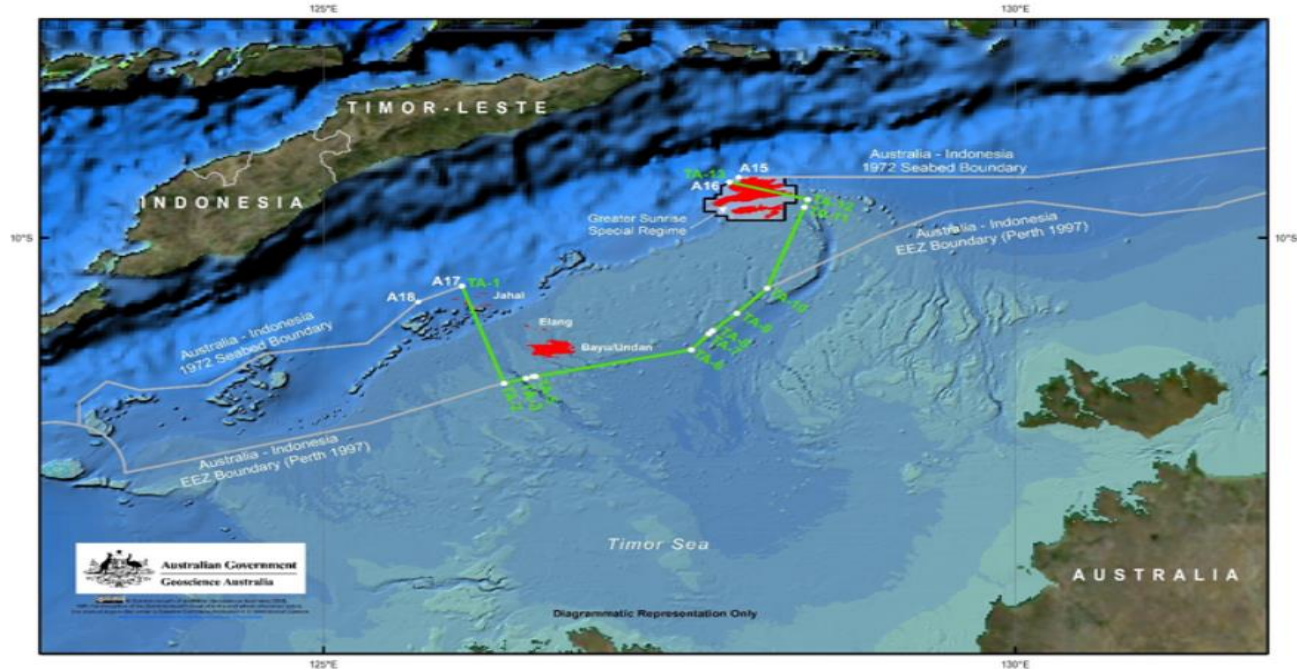
Conciliation

- Commission moved the focus onto the economic issues
 - LNG pipeline to Darwin versus LNG pipeline to Timor-Leste

Conciliation

- Boundary arrangements
 - **Modified median** line using existing endpoints
 - **Adjustment outside the limits of the JPDA**
 - **Joint development of Greater Sunrise**
 - **Pipeline** to come from economic case by Joint Venture Partners
 - Possible westward adjustment to Indonesian tripoint and beyond after Laminaria and other fields are depleted

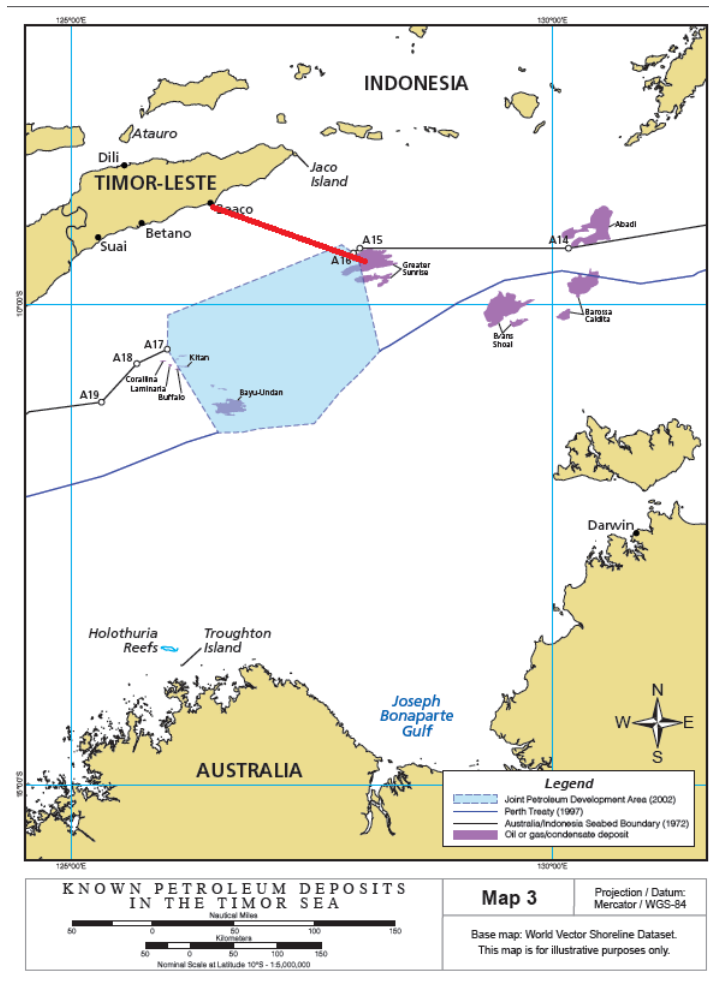
Resolution to the Timor Sea Boundary Disputes



Australia – Timor-Leste Boundary Agreement, 6 March 2018

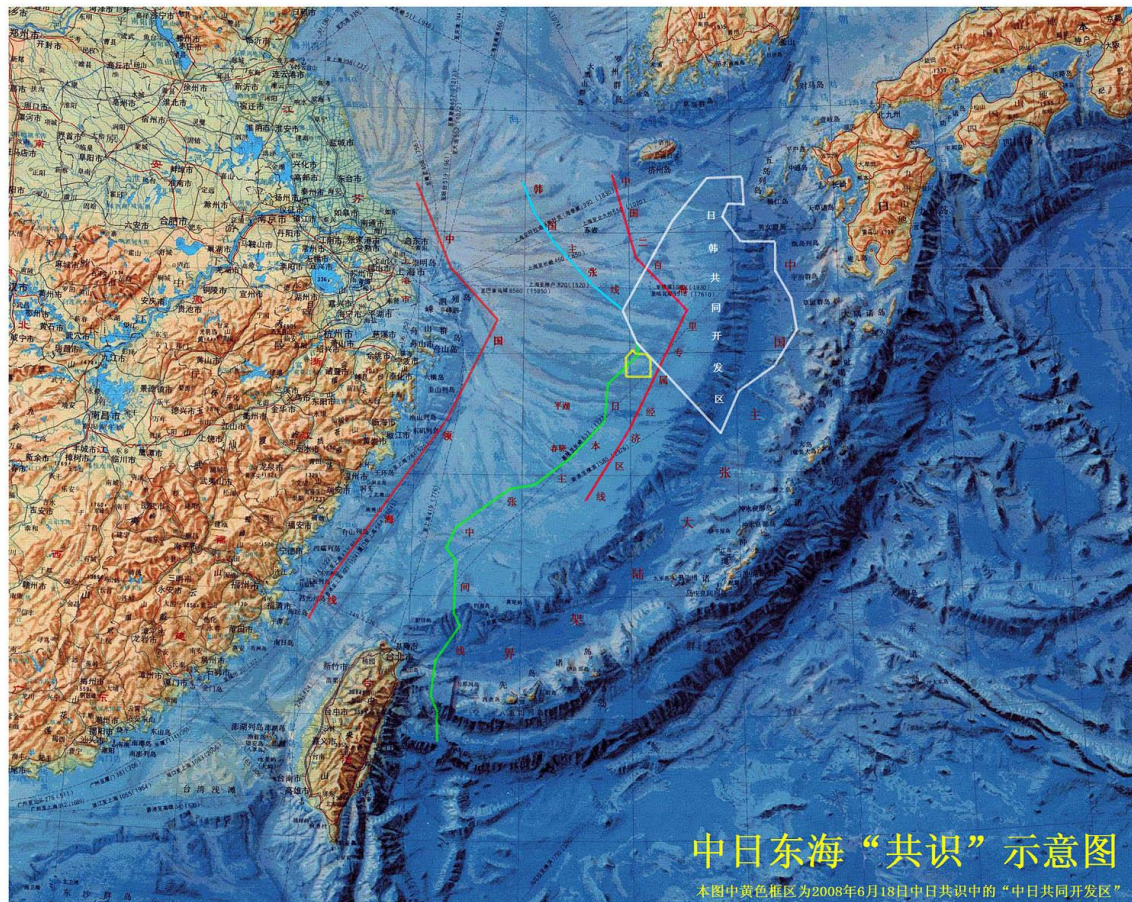
Conciliation

- Timor-Leste preferred position was LNG piped ashore
 - Concern that Australia had benefited greatly from the Bayu-Undan pipeline
 - Desire to create a similar processing facility in Timor-Leste
- Australia had no preferred position
 - Strong desire for a commercially viable exploitation regime



Conciliation Conclusions

- Conciliation proved **effective**, largely through the rebuilding of trust
- Crucially Australia engaged in conciliation in **good faith** after losing challenge to competence
- A plethora of issues were effectively reduced to one, allowing the States to prioritise their interests in the dispute
- The experience **may not be transferable**

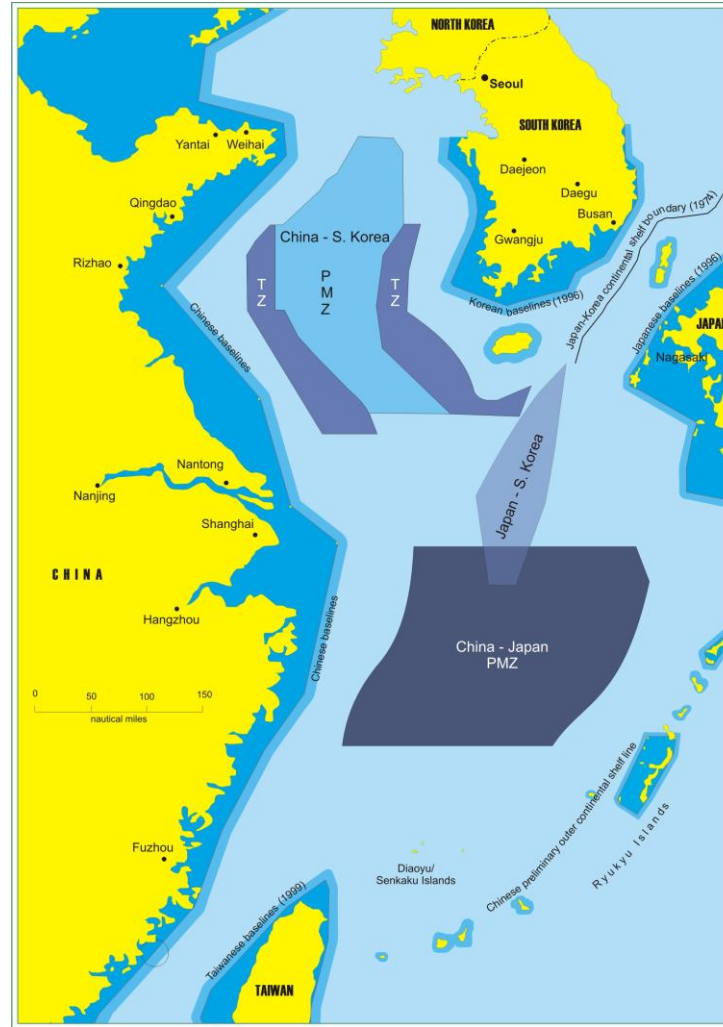


中日东海“共识”示意图

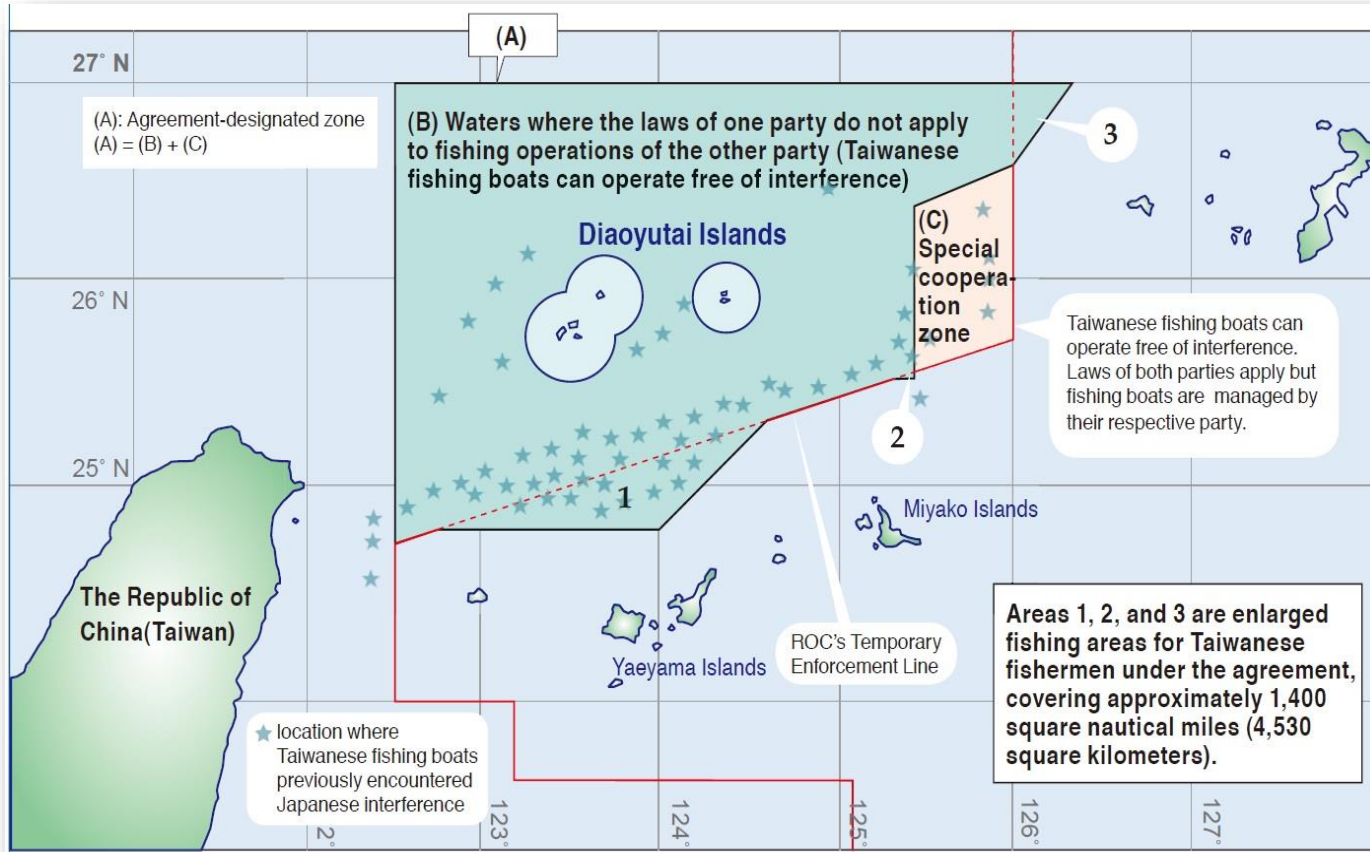
本图中黄色框区为2008年6月18日中日共识中的“中日共同开发区”

2008年6月18日

Joint Zones related to Fisheries in the East China Sea



Taiwan-Japan Fisheries Agreement 2013



Advantages of Joint Development

Key Advantages

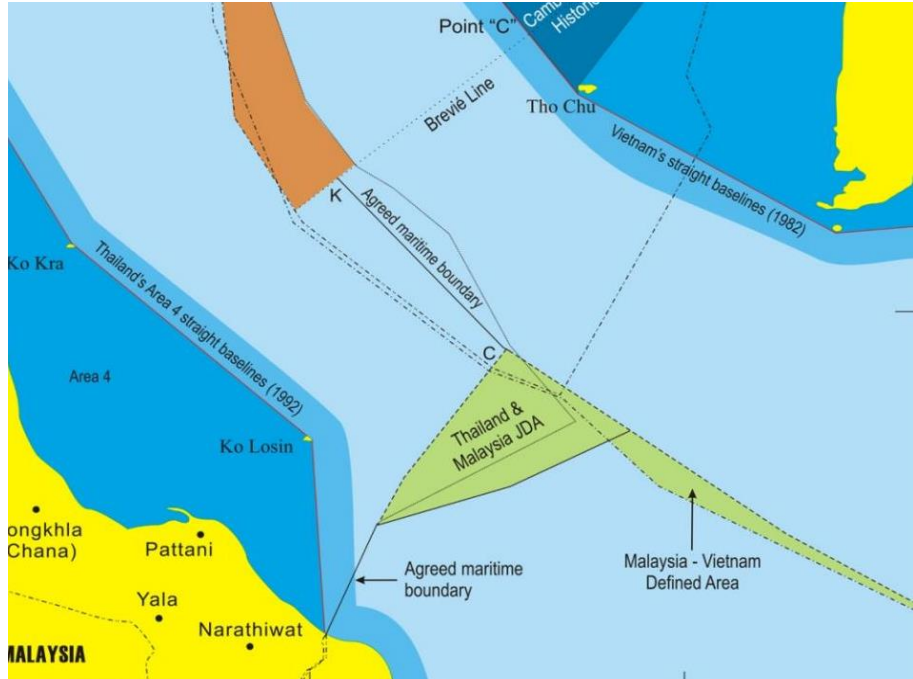
- Unlocks intractable disputes
- Sidesteps sovereignty issues
- Allows development/management of resources/environment to proceed without delay
- Without prejudice clauses effectively address concerns over compromising jurisdictional claims (at least in a formal legal sense)

Additional Advantages of Joint Development

- Avoids the need for a costly 'once and for all' boundary delimitation exercise
- Often perceived to be an 'equitable' solution
- Cooperative – no 'winner' or 'loser'
- **Flexible** in area, administration, function and duration
 - Can apply to living or non-living resources
 - Can be general or resource-specific
 - Can be permanent or temporary
 - Can be applied to security issues
- Consistent with international law
- Models exist

Potential Drawbacks of Joint Development

- Limits frequently defined by unilateral claims – encourages excessive claims



Koh Losin



Potential Drawbacks of Joint Development

- A challenge to State sovereignty
- Sensitivities over security cooperation – fears over intelligence gathering by the ‘other’ side
- Political will a crucial factor – can it be guaranteed?
- Continuity a must
- **No panacea** – should not be rushed into simply because overlapping claims exist

Conclusions

- OCAs cover large maritime areas
 - Precise limits often uncertain
- Articles 74(3) and 83(3) provide for provisional arrangements of a practical nature
 - Legal justification for maritime joint development zones
- Multiple examples of maritime joint zones globally
- **Joint development** has attractions but **should not be entered into lightly**

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