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ESTABLISHMENT OF JOINT DEVELOPMENT ZONES OR ARRANGEMENT AS A PANACEA TO MARITIME BOUNDARY DISPUTES IN AFRICA

A. A. Daibu* & L. A. Abdulrauf**

Abstract

Boundary dispute is a potential challenge to global peace and security. Emerging trend in the International scene is that disputing States or Countries agree to jointly explore and exploit the natural resources found in the area subject to overlapping claims through the establishment of a Joint Development Zone for the benefit of the disputing States without prejudice to the merits of the conflicting claims. The establishment of a Joint Development Zone where the nature of boundary dispute provide incentives for such arrangement have numerous gains among which are peace and stability and socio-economic development within Region. The paper examines the prospects and challenges of Joint Development as a magic bullet for maritime boundary disputes in Africa Using the Nigeria- Cameroon and other similar boundary disputes as case studies. The paper makes a case for establishment of a permanent Joint Development Zone as a credible and realistic alternative to resolving maritime Boundary dispute. It finally concludes that establishment of Joint Development Zone fosters socio-economic cooperation between the disputing states thereby promoting trans-border peace and security.

Introduction

Issues of boundary are usually very sensitive and must be handled with utmost caution. States are very protective and critical of their territorial boundaries and these accounts for a reason why border disputes are common feature of African politics. Boundary disputes particularly maritime boundary dispute is a potential challenge

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¹Kornprobst M. "The management of border disputes in African regional subsystems: comparing West Africa and the Horn of Africa" *Journal of Modern African Studies*, 40, 3 (2002), 2002 Cambridge University Press. 370

to the development of any continent in the world. The then Secretary General of the United Nation aptly noted that the economic and political development of Africa has remained threatened by incessant conflicts across the International boundaries.² Some of these boundary disputes³ usually resort to war which is not in the interest of the sub-region and the continent as a whole. The negative impacts of these disputes cannot be overemphasised. Rather very unfortunately, boundary disputes are common within the African region. The Nigerian-Cameroonian dispute which the International Court Justice (ICJ) handed a decision delimiting the area in controversy has barely been settled,⁴ the Kenyan-Somali maritime boundary dispute is also heating up.⁵ The management of these boundary disputes, even though, vary from sub-region to sub-region⁶ has not been all that effective. Failure to adopt an effective dispute resolution will economically affect a country as prospective oil companies revenues that would otherwise accrue to them were exploration to take place would be lost. This calls for an effective solution to boundary disputes in Africa.⁷

There are several options available to disputing states on resolution of maritime boundary. These options includes, not taking any action, negotiations or resolution of the dispute by a 3rd party. Resolution of the dispute by a 3rd party includes arbitration or outright litigation to delimit the maritime boundary in dispute. Taking a cue from the Nigerian-Cameroonian boundary dispute, the paper argues that resolution of the boundary dispute by a 3rd party was not in the peace and security interest of Africa rather it is advocated that both nations should have jointly developed the area which will be more socio-economically beneficial to them. Furthermore, joint development defuses tension

²Kenwood A.G., *The Growth of International Economy from 1820 - 1990*, (London: Rutledge 1992), P.67

³For the purpose of this paper, boundary disputes will be restricted to maritime boundary disputes.

⁴As the Nigerian National Assembly has unanimously reached a decision to reopen the matter and appeal the ICJ's decision delivered in 2002 ceding the Bakassi peninsula to Cameroon. "Nigeria: National Assembly to Reopen Talks With Cameroon On Bakassi" in *Thisday* newspaper, 24th October 2012. Also available online in <<http://allafrica.com/stories/201210240208.html>> accessed on 2 November, 2012.

⁵Somalia/Kenya Maritime Dispute Heating Up' <http://www.petroleumafrica.com/en/newsarticle.php?NewsID=13868> accessed on 1 October 2012.

⁶Kornprobst M. "The management of border disputes in African regional subsystems: comparing West Africa and the Horn of Africa" 369

⁷There are several other solutions to maritime boundary disputes which include bilateral negotiations, conciliations, arbitration or even outright litigation by International Court of Justice (ICJ) or other arbitral tribunals. See Yusuf Y.M. 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes' *International Energy Law Review* (2011) 2

and postpones the delimitation of the boundary for the future generation to worry about.⁸ This article therefore advocates for Joint Development rather than resolution of the dispute by a 3rd party.

In the light of the above, the paper examines Joint Development as solution to boundary disputes in African Region. The article however first appraises the general principles of Joint Development. It also considers the arguments as to whether or not a Joint Development Zone could be established to operate on a permanent basis. This goes to strengthen our argument of Joint development as an effective boundary dispute resolution mechanism.

Conceptualization: Joint Development, Joint Development Zone, Joint Development Agreement and Associated Terms

Before discussing the establishment of Joint Development Zone (JDZ) as a boundary dispute resolution mechanism, it is important to consider the meaning of Joint development (JD), JDZ and Joint Development Agreement (JDA) and other related terms. The term joint development in the context of intergovernmental relations⁹ could mean a number of things which includes the agreement by states to jointly develop, explore and exploit the natural resources within a particular area which is subject to competing claims by both states. Such agreement is done pursuant to an agreement usually called a Joint Development Agreement (JDA). The area subject to the competing claim is called the JDZ.

There is no universally accepted definition of the concept of Joint Development Zone, as different authors and scholars have defined the term in different ways.¹⁰ Yusuf submits that Joint development of offshore petroleum resources is typically an arrangement where two or more countries have agreed, under international law, to co-operate to explore and exploit, within a given area, common offshore petroleum deposits, and to share revenues derived from such co-operative arrangement.¹¹ It is a useful device

⁸Eze C.N. 'Rethinking Maritime Delimitation And Promoting Joint Development Of Petroleum: The Nigeria-Sao-Tome And Principe Joint Development Model' (LL.M thesis, Department of Graduate Studies, Faculty of Law, The University of British Columbia, 2011) 5

⁹Lerer D. 'Joint Development Zones: Negotiating and Structuring a Joint Development Agreement' 1(5) *Oil, Gas & Energy Law Intelligence*, December 2003.

¹⁰Miyoshi M. 'The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf' (1988) 3 *International Journal of Estuarine and Coastal Law* 1-18

¹¹Yusuf Y.M. 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes' *International Energy Law Review* (2011) 15

for exploiting common resources, particularly offshore petroleum, situated in areas of disputed claims.¹² A joint development is a generic term given to the international agreement between countries or states, whose main function is to provide an avenue for the joint or cooperative exploitation of hydrocarbon resources that comes into the jurisdiction of two or more countries.¹³

Miyoshi defines Joint Developments as "a form of inter-governmental arrangement of a provisional nature, designed for functional purposes of joint exploration for and/or exploration of hydrocarbon resources of the seabed beyond the territorial sea."¹⁴ This definition given by the learned author seems to exclude the fact that there could be joint development or partnership between private companies and the government or joint development between governments and oil companies.

Shitata and Onarato defines joint developments as '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 hydrocarbon found in the area subject to overlapping claims.'¹⁵ The definition adopted by these scholars offers a simple and crystal clear definition of the concept of joint development as it explains the basic principles of what a joint development is all about.¹⁶

From all the definitions above, certain common points could be deduced which are the fact that JDZ involves the presence of conflicting claims between two or more states, cooperation and agreement between the two states to jointly develop, explore and exploit

¹²Ibid

¹³Ong D.M. 'The New Timor Sea Arrangement 2001: Is Joint Development of Common Offshore Oil and Gas Deposits Mandated under International Law?' 17 *Int'l J. Marine & Coastal L.* 79 (2002) . 84 See also M. Fitz Maurice, Melina Szuniewes, 'Exploration of Natural resources in the 21st century' (2003) Kluwer Law International, 116, Netherlands.

¹⁴Miyoshi M. 'The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf' 1-18

¹⁵Shitata I. and Onarato W.T., 'Joint Development of International Petroleum Resources in Undefined and Disputed Areas' in G. Blake & Ors (eds) *Boundaries and Energy: Problems and Prospects* (Luw Law Intl., Boston/ London/ The Hague 1998) 433 at 449

¹⁶Another Crystal clear definition of Joint development is that given by Lagoni where he defined it as joint development as the cooperation between two states with regards 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 of overlapping claims. See Lagoni R., 'International Committee on the Exclusive Economic Zone: Report on Joint Development of Non-Living Resources in the Exclusive Economic Zone' (1988) *International Law Association*

A similar term to JD is *cross-border unitization* (or simply, unitization) which in a sense involves joint development between two countries however, such agreement or arrangement apply to specific oil and gas field and more importantly, unitization involves an existing agreement as to the location of the international boundary¹⁸. Unitization has certain features which are common to JDZs which includes the signing of an agreement between the two governments and in most cases, agreements as to the applicable rules and regulation in the area concerned¹⁹. An example is the Nigeria/ Equatorial Guinea Unitization. In the context of this article, Joint Development, Joint development agreement and Joint development Zone are used interchangeably except where expressly stated.

Creation of JDZ: *Raison D'être*

¹⁷ However in most instances, JDZs are usually off shore rather than on shore. Some authors in their discussions on JDZ prefer to restrict the use of the terminology to off shore. This is because of the fact that unlimited maritime boundary are more common than unlimited land boundary. Furthermore, unlike maritime boundary disputes, the solution to land boundary disputes will normally involve dealing with more problems rather than just division of resources, not least the inhabitants of any disputed territories. See Lerer

¹⁴Lerer D. 'Joint Development Zones: Negotiating and Structuring a Joint Development Agreement' 1(5)Oil, Gas & Energy Law Intelligence, December 2003, 1-2

²⁶Lerer D. 'Joint Development Zones: Negotiating and Structuring a Joint Development Agreement' 1(5)*Oil Gas & Energy Law Intelligence*, December 2003, 3.

²¹ Ibid.

Legal Regime of Joint Development Zone in Africa

²² Whilst this is a viable option in some cases, it is not in others: in particular, where one or both of the governments wishes to exploit the natural resources of such an area, the existence of a dispute might effectively prevent such exploitation. Investors may be unwilling to invest until the situation is clarified. Lerer D. 'Joint Development Zones: Negotiating and Structuring a Joint Development Agreement' 1(*SOJ, Gas & Energy Law Intelligence*, December 2003, 3

²¹Ibid, this option could be risky as parties may not be able to predict the outcome more so, the possibility of the court handing an unfavourable decision.

²⁴Yusuf Y.M. 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes' *International Energy Law Review* (2011) 6

²⁵North Sea Continental Shelf cases [1969] ICJ Rep. 3.

26 <http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf> Accessed 2 October 2012

²⁷ The UNCLOS of 1986 came into force in 1994. It regulates all matters of international ocean affairs. It makes provisions on the limits of maritime zones, provides the rights and duties of states in those zones such as the protection of the marine environment and also provides dispute settlement mechanisms should conflicts arise between states in carrying out their duties. See EmdadulHaque A.K.M, 'A View from Bangladesh: Principles of Settling Disputes on Delimitation of Maritime Boundaries- A Review of Cases Relevant to the Bay of Bengal' (2011) 9(6) OGEL. www.ogel.org/article.asp?key=3198 Accessed 8 October 2012.

Particularly, Article 83 (3) of the UNCLOS provides that

"Pending agreement as provided for in paragraph 1, the states concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and during this transitional period, not to jeopardise or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

While it is conceded that the UNCLOS provision above on delimitation has neither been explicitly drafted for the sole purpose of joint development of petroleum resources nor is it talking about or urging states to set up joint development zones, a closer look at the provision and the practice of states will reveal that setting up a joint development zone to develop offshore petroleum resources as an interim measure in place of a boundary qualifies as an example of a "provisional arrangement".²⁸ It is thus submitted that agreements for the joint development of oil and gas deposits are good examples of models of provisional arrangements

In essence, Joint Development Agreements are international agreements between two or more countries (or, more properly, States), and as such they will be governed by international law; in particular, the rules set out in the Vienna Convention on the Law of Treaties, which are now also generally considered to be a statement of customary international law, will be applicable even to States which are not parties to the Convention. Whilst the JDZ Agreement is intended as a binding agreement creating legal obligations between States, it may – depending on the States concerned – be necessary for the parties to enact legislation in order to incorporate the terms of the Treaty into their internal laws. Such incorporation and implementation of the JDZ Agreement will be particularly important to the extent that its terms modify – or even wholly cancel – the application of already existing national laws to the zone and its resources.²⁹

Establishment and Management of Joint Development Zone

The first step in establishing a JDZ will be identification of the disputed area that will consist the JDZ. Where the appropriate criteria for delimitation has not been agreed

²⁸Yusuf Y.M. 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes' *International Energy Law Review* (2011) 6

²⁹Lerer D. 'Joint Development Zones: Negotiating and Structuring a Joint Development Agreement' *I(5) Oil, Gas & Energy Law Intelligence*, December 2003. 3

upon, both parties involved will want to ensure that any temporary arrangement will not prejudice its long term interests in the a permanent delimitation.³⁰

Issues of pending delimitation arise in relation to joint petroleum development agreement between two or more states, to develop and share jointly in agreed proportion the petroleum found, within a designated zone of seabed and subsoil of the continental shelf or within the exclusive economic zone to which the states are entitled under international law.³¹ Joint development of a disputed boundary does not however necessarily mean that the disputing parties would have equal share with respect to the revenue and this is usually a major problem in joint development as parties demand for equal share.

The issue of management of a JDZ basically concerns who will be authorized to and who will authorize the undertaking of development activity. Lerner has stated 3 structures.³² The first is the Single State structure where one state will be responsible for managing the development of the Zone as if it were its exclusive territory. The managing state applies its own legislations and regulations and revenue and expenses will be shared with the non-managing state. The 2nd structure is the two-state/ Joint Venture Structure where each state is entitled to nominate its own concessionaires to undertake developmental activity. This structure sound attractive and simpler however question arises as to the rules and regulations that would apply. The last structure is the Joint Authority Structure where neither of the parties is directly responsible for the management of development and neither state choose concessionaires. In this structure, both states delegate their power in respect of such management to a body-usually an authority. The Nigeria/ Sao Tome Joint Development Agreement operate this structure with the establishment of Nigeria Sao Tome Joint Development Authority.

Joint Development as a Permanent Solution to Boundary Disputes

Joint development is in most cases a provisional or interim measure to boundary disputes pending delimitation. This implies that delimitation of a maritime boundary that is subject to conflict is always the ultimate goal of JDZ. The question here that has however generated continuing debate is the fact that could Joint development Zones be

³⁰ Ernest Willheim, "Australia-Indonesia Sea-Bed Boundary Negotiations: Proposals for a Joint Development Zone in the Timor Gap" (1989) 29 *Nat. Resources* 1, 821

³¹Batista A. E., Ifesi-Okoye A., Mahmud S., Ross J., Wade T., Cross -Boarder Utilization and Joint Development Agreements: An International Law Perspective', (2007) 29(2) *Houston Journal of International Law* 355-422 at 370-371.

³²Lerer D. 'Joint Development Zones: Negotiating and Structuring a Joint Development Agreement'

created to operate in a perpetuity i.e. can states enter into a Joint Development Agreement to establish a Joint Development Zone that will operate on a permanent basis? This issue may seem more academic than practical especially because of the fact that JDA are usually operational for over a long duration of time.³³

Even though it is clear that Joint development is an interim solution pending delimitation, Gao is of the opinion that the countries concerned may wish to maintain the same arrangement even after the final delimitation, thereby transforming the arrangement into a permanent one.³⁴

This view is however not often the case after the boundaries has been delimited, because the country in which the judgment is in favour would want to have dominant force and control over the delimited boundary and would not want to continue the joint development, because its revenue will be reduced. A country may however decide to continue a joint development if it does not have the financial capability of continuing the development alone.

Lagoni supports the view of Gao by admitting that "Joint development is one of the interim measures envisaged therein, but the parties are free to make the arrangement permanent by maintaining joint developments after the area has been delimited."³⁵ Better still, Lerer submits that it is quite possible for a JDZ to operate indefinitely without envisaging a final delimitation of Maritime boundary.³⁶ In his words:

...it is technically possible, and indeed might even be appropriate if the parties' intentions – whether spoken or unspoken – are that the Joint Development Arrangements should continue indefinitely, it being difficult to see at the time of the agreement why the underlying dispute should ever disappear.

³³Usually 30-40yrs for example the treaty between Nigeria and Sao Tome which says that the agreement shall remain in force for 45 years, subject to it been reviewed by the State parties 30 years after its entry into force also similarly, the Timor Sea Treaty provides that it shall be in force until there is permanent sea bed delimitation between Australia and East Timor or for 30 years from then date of its entry into force.

³⁴Gao Z., "The Legal Concept and Aspects of Joint Development in International Law" (1998) 13 *Ocean Year Book* 107 at 108

³⁵Lagoni R., "Interim Measures Pending Maritime Delimitation Agreements" (1984) 78 *AJIL* 345 at 358

³⁶Lerer D. "Joint Development Zones: Negotiating and Structuring a Joint Development Agreement"

Miyoshi and Valencia are however of the opinion that Joint development is neither an optimal or permanent solution to unresolved boundaries, in some situations it may be the only alternative to a confrontation and conflicts.³⁷

Looking at all the arguments presented by the different scholars, we are of the view that Joint development is an interim measure or solution to boundary delimitations and it is only in rare circumstances that states would continue a joint development after the boundaries has been delimited. However, there is nothing precluding states from agreeing to create a JDZ to operate on a permanent basis. This is so even after delimitation of their boundaries. This fosters peace and allows for greater development and both states can jointly pool resources together to develop, explore and exploit natural resources in the disputed region. It also encourages more friendly relations between the states.

Maritime Boundary Disputes in Africa: An Appraisal

Natural resources are of immense importance to the economy of any nation hence the wish to explore and exploit these natural resources (particularly offshore petroleum resources) has led coastal states to make claims to new areas and to the resources found therein³⁸. Most often than not, crisis of Trans-boundary claims are triggered not only by territorial ambition but also by economic desperation³⁹. These new offshore claims by states are responsible for many maritime boundary disputes between some coastal neighbours with the result that some of these neighbouring coastal states, in order to avoid these conflicts as well as benefit from the offshore discoveries, have completed maritime delimitation agreements.⁴⁰ Better still, others enter into a joint development agreement pending a final delimitation of their maritime boundary.

There are quite a number of maritime boundary dispute in Africa notable among which is the maritime dispute in the Gulf of Guinea, which is bounded by five coastal states: Nigeria, Cameroon, Equatorial Guinea, Gabon and Sao Tome and Principe⁴¹. This article focuses on the Nigerian Cameroonian boundary dispute.

³⁷Valencia M.J and Miyoshi, "Southeast Asian Seas: Joint Development of Hydrocarbons in Overlapping Claim Areas" (1986) 16:3 *Ocean Development and International Law* 211 at 247

³⁸Yusuf Y.M. 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes' 1

³⁹Kenwood A.G., *The Growth of International Economy from 1820 - 1990*, (London: Routledge 1992) 67

⁴⁰Yusuf Y.M. 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes' 2

⁴¹Ibid

Nigeria is a country very rich with oil and share boundaries with Cameroon, Niger, Benin Republic, Togo, Chad, and Equatorial Guinea⁴². Nigerian because of her endowment in natural resources is usually seen as the giant of Africa as such countries along the coast of West Africa depend heavily on Nigeria for their economic development especially in terms of trade⁴³. Economic relationship between Nigeria and her neighbours could be described as cordial⁴⁴ not until the 70's when things turned around and relationship with Cameroon began to deteriorate.⁴⁵ The Bakassi Peninsula is at the heart of the boundary dispute between the two countries⁴⁶.

On the 29th of March 1994 Cameroon instituted proceeding at the ICJ against Nigeria over the sovereignty of the Bakassi Peninsula⁴⁷, an area that has been long disputed by the two coastal countries in the Gulf of Guinea⁴⁸. Cameroon further applied to the court to resolve the delimitation of maritime boundaries beyond the territorial seas (beyond point G) between the two countries, as there have been partial negotiations between the countries⁴⁹. The negotiations and all efforts of diplomacy ultimately failed⁵⁰. In October 2002, the International Court of Justice (ICJ) gave its ruling. The ruling among other issues ceded the Bakassi Peninsula to Cameroon on the basis of the Anglo-German Agreement of March 11 1913, the Yaounde II Declaration 1971 and the Maroua Agreement of 1975. The ICJ called for the adjustment of the maritime boundary to

⁴² Okoye F.C., *International Law and the New African States*, (London: Sweet & Maxwell 1972), pp. 21-56

⁴³ The World Bank, *The Global Economic Prospects and the Developing Countries*, (Washington D.C: The International Bank for Reconstruction and Development and the World Bank, 1993), 45-64.

⁴⁴ Abdullahi S., 'Oil: The Transboundary Migration and Conflicting Claims: Nigeria and its Neighbours' *OGEI* vol. 4 Issue 3 Sept 2006

⁴⁵ Ibid

⁴⁶ Francis MenjoBaye, 'Implications of the Bakassi Conflict Resolution for Cameroon' (2010) 10 (1) *African Journal on Conflict Resolution* <http://www.ajol.info/index.php/ajcr/article/viewFile/59305/47603> Accessed 12 June 2012, see also Washington Post, "Oil Rich Bakassi Sparks military conflict" Sept. 8th 1995, P. 23; Some writers are of the opinion that the discovery of oil in the bakassi peninsula is the remote cause of the conflict. See Ize C.N 'Rethinking Maritime Delimitation And Promoting Joint Development Of Petroleum: The Nigeria-Sao-Tome And Principe Joint Development Model' 194

⁴⁷ The International Court of Justice: Case Concerning the Land and Maritime Boundary between Nigeria and Cameroon, (Cameroon v Nigeria) The Preliminary Objection of Federal Republic of Nigeria, Vol. 1, 1995, pp. 1-33, at http://www.icj-cij.org/iccjwww/ldock.../icn_lplcadings_951201, Guardian Newspapers, "Bakassi Peninsula: A Judgment at last", 26th July 1998, at www.ganji.com

⁴⁸ Yoshifumi Tanaka, 'Reflections on Maritime Delimitation in the Cameroon' *Nigeria Case* 'I.C.L.Q., 2004, 369-406.

⁴⁹ Ibid

⁵⁰ Kwiatkowska B., *Ocean Affairs and the Law of the Sea in Africa: Towards the 21st Century*, (Netherlands: Martinus Nijhoff Publisher, 1992), 32-43

surrender both offshore and onshore areas to Cameroon⁵¹. This decision of the ICJ has been met with severe criticism, ill feelings and antagonism.⁵²

More than 10 years after the judgment of the court the area has not been fully delimited due to the impracticality of the decision and protests by the inhabitants of Bakassi and demands by Nigerian politicians for President Goodluck Jonathan of Nigeria to appeal the decision of the ICJ. Recently, there have been clamour from various quarter to appeal the ruling of the ICJ⁵³. Their reason for a revisit of the case is hinged on the fact that the handling of the matter was very untidy and unconstitutional.⁵⁴ The Nigerian senate has unanimously declared the decision null and void.⁵⁵

The merits or otherwise of this matter is not a subject of consideration what concerns us here is that the resolution of the dispute by delimitation of the boundary present an unsatisfactory situation and could cause peace and security breaches. It thus calls for an effect and acceptable dispute resolution system.

Joint Development Zone as a Panacea to Boundary Disputes in Africa: The Nigerian Cameroonian Boundary Dispute in Focus

There are quite a number of maritime boundary dispute resolution mechanisms which conflicting states could adopt. Some of these mechanisms include resolution by a 3rd party which includes negotiations, conciliations, arbitration or even outright

⁵¹ The International Court of Justice: Case Concerning the Land and Maritime Boundary between Nigeria and Cameroon, (Cameroon v Nigeria) The Preliminary Objection of Federal Republic of Nigeria, Vol. 1, 1995, pp. 1-33, at http://www.icj-cij.org/iccjwww/ldock.../icn_lplcadings_951201, Accessed on 10 October 2012, Guardian Newspapers, "Bakassi Peninsula: A Judgment at last", 26th July 1998, at www.ganji.com.

⁵² Ordinarily, the Bakassi people want to remain in Nigeria. And as a people, they also have the right to choose where they want to belong. The Bakassi people have protested the ill-treatment meted to them by Cameroonian security forces. They have even threatened to form a country of their own if the Nigerian government fails to act now.

⁵³ Obioha R. Appealing the ICJ ruling on Bakassi <http://news2.onlinenigeria.com/news/general/201361-news-review-appealing-the-icj-ruling-on-bakassi.html> accessed on 30 Oct 2012

⁵⁴ Ibid

⁵⁵ Ibid, the senators argued that the Vienna Convention on treaties requires domestication of the judgement by a national parliament, which in this very case was not done. The domestication of the judgement is required by Section 12 of the Constitution of Federal Republic of Nigeria 1999. They also observed that a referendum, which ought to have been held as stipulated by the United Nations on matters like this was not held. Under such a situation, the lawmakers reasoned that the people were not given a fair chance to decide where they wanted to belong hence they declared it illegal and unconstitutional. The Nigerian House of representative have also made similar request for an appeal of the decision of the ICJ.

litigation⁵⁶. The option of resorting to a 3rd party settlement option by Cameroon was in our opinion hasty and unnecessary. The winner take all nature of 3rd party settlement especially litigation is capable of promoting conflicts and hence a challenge to peace and security within the African region. A writer notes that:

*Maritime disputes already abound with potential ones breeding. Resorting to third party dispute resolution is certainly better than aggression and intimidation, but may either be counterproductive or unpredictable with the state of international judicial precedents on the matter. Indeed, even after a bona fide judicial settlement, there is no guarantee of peace and security in such troubled waters.*⁵⁷

Joint development presents a better solution to maritime boundary dispute in Africa especially when there are claims between two conflicting states. The success story of the Nigeria Sao Tome and Principe Joint development (STP JD) is a testament to this fact. Off course, it must be stated that the Nigeria STP JD Treaty is not the first joint development in the Gulf of Guinea, considering the Senegal-Guinea-Bissau arrangement, however, it is the first joint development in the region with actual discoveries of oil and gas and one that has generated some generous income for the States involved.⁵⁸ Apart from that, the size of the Parties involved in the joint development⁵⁹ and the cordial nature of their relationship is, to say the least, amazing.⁶⁰ Prior to the Nigeria and Sao Tome and Principe Joint development Treaty, there was no agreed maritime boundary between both states. One of the factors that lead to the conclusion of the treaty was the apparent realization by the Nigerian government of the trend of events in the Nigeria Cameroon case.⁶¹ The Nigerian government decided to preempt the judgment by quickly concluding other maritime boundary agreements with her neighbors and in the case of Sao Tome and

Principe, a definite maritime boundary could not be easily concluded in view of the overlapping maritime zones⁶². A writer submits that

*Indeed all the outstanding maritime boundaries, joint development and international unitization agreements between Nigeria and her neighbours in the Gulf of Guinea were concluded by at about the same period- 2000 to 2002. In my opinion, this was in anticipation of the ICJ judgment in Cameroon v. Nigeria, and probably an attempt to preempt it.*⁶³

The Nigerian government apparently recognized Joint development as an effective boundary dispute resolution mechanism and took advantage of it. We submit that the Nigeria and Cameroun should have decided on a better solution of jointly developing the Bakassi Peninsula instead of hurriedly resorting to the court.

Joint Development: Benefits for African States

Africa, being a continent that is largely comprised of developing nations needs a very effective method of dispute resolution. Fictions of whatever sort is counterproductive and against development and must be avoided as much as possible. This implies that an effective maritime dispute resolution mechanism must as much as possible, be adopted. The benefits of the adoption of establishment of JDZ as a formidable boundary dispute resolution mechanism in Africa cannot be over emphasised.

The establishment of JDZs have of recent become more frequent than ever before.⁶⁴ Governments see it as the best way to deal with boundary disputes with their neighbours especially in situations where there is a desire to reap the benefits of resources located within a disputed area, particularly oil and gas.⁶⁵ The negotiation of new joint development agreements in the future is almost inevitable, not least because there are a large number of international maritime boundaries which are yet to be fixed⁶⁶.

⁵⁶Yusuf Y.M. 'The role of the 1982 UNCLOS in the resolution of maritime boundary disputes' 12

⁵⁷Eze C.N 'Rethinking Maritime Delimitation And Promoting Joint Development Of Petroleum: The Nigeria-Sao-Tome And Principe Joint Development Model' ii

⁵⁸Ibid, 149

⁵⁹Nigeria is the most populous country in Africa and invariably in the Gulf of Guinea region with about 150 million citizens and counting, while Sao Tome and Principe has about 170,000 in population. The total landmass of Nigeria is approximately 923,000 square kilometres while Sao Tome and Principe has about 1000 sq. km in landmass, making it the second smallest country in Africa- only bigger than Seychelles

⁶⁰Ibid

⁶¹Mostly, rejection of the weak preliminary objections raised by Nigerian government

⁶²Eze C.N 'Rethinking Maritime Delimitation And Promoting Joint Development Of Petroleum: The Nigeria-Sao-Tome And Principe Joint Development Model' 148

⁶³Ibid

⁶⁴Lerer D. "Joint Development Zones: Negotiating and Structuring a Joint Development Agreement" 1(5) *Oil, Gas & Energy Law Intelligence*, December 2003. 1.

⁶⁵Ibid

⁶⁶Ibid

Joint development first and foremost brings about greater peace and security within the African Region. It fosters more friendly relation between states and reduces fiction, acrimony and rancour. It brings the disputing parties closer to one another as they have to work hand in hand in order to facilitate the development of the disputed area pending the delimitation of the boundaries. This facilitates more peace within the African Region.

Joint Development furthermore presents a more economically viable boundary dispute resolution mechanism. On one hand, it ensures that immediate resolution of the boundary dispute is achieved. This is so especially because in most circumstances, the time taken for a decision or consensus on the delimitation of the maritime boundary is usually too long. Yusuf notes that "...reaching agreement on a maritime boundary is a long and time-consuming process it may take years before the international community can reach agreements on the remaining boundaries."⁶⁷ Most government would want to reap the benefits of the disputed area rich in natural resources immediately. Creation of JDZ offers them advantage. On the other hand, economic benefit comes in on another note as some states seem to have more expertise than the other. This is obvious as regards Nigeria and Cameroun. The Development, exploration and exploitation of resources in an area require a lot of technical expertise. Cameroun for example could have immensely benefited from the expertise of Nigeria if the Bakassi peninsula was jointly developed. A situation where both states lack expertise could also exist. joint development arrangement present another more viable alternative as disputing states can pool their economic resources and technical expertise together to form a formidable force for the development of both state. This fosters peace and security in Africa.

Above all, joint development encourages greater foreign investment in the region as it creates an investor friendly environment for potential investors and restore in them greater confidence towards full utilization of the resources available to them. This is obvious because no nation would want to invest in a disputed territory or a territory that is devoid peace and security.

Hydrocarbon resources are of immeasurable value to the economy of an average African state and this make them indispensable. JDZ brings about a harmonized exploitation of resources in a dispute zone and present more hydrocarbons for the development of the disputing states.

Joint Development arrangement (particularly JDA) furthermore helps to prevent states from taking unilateral measures that would further aggravate the situation and thereby hamper the reaching of a final agreement on the maritime boundary⁶⁸.

Politically, resorting to creation of JDZ is seen as a very viable option because government reserved their sovereign right when entering into a JDZ especially because of the fact that such agreement are merely temporary or provisional in nature⁶⁹. Both states also have rights to the disputed region. Diplomatically also, creation of JDZs facilitate resolution of the boundary dispute in an effective manner. Thus besides the facilitation of off-shore petroleum, joint development also promotes the resolution of maritime boundary dispute.⁷⁰

Parties could also agree on almost every conceivable thing in a JDA, dispute resolution, environmental issues, and various laws to regulate the JDZ. Despite these laudable benefits of JD to African states it is surprising that Nigeria and Cameroon never resorted to establishing JDZ as a solution to their boundary dispute.

Challenges of Joint Development Zones in Africa

Before now, the immense benefits of Joint development agreement have been stated however, Joint development is also face with some inherent difficulties especially in relation to the Africa. Some of the problems usually faced by states in jointly developing an area subject to overlapping claims are as a result of the peculiar African situation.

The first challenge of establishment of JDZ is the Sharing ratio. Of course, it is important to state that disputing parties rarely take equal share in a particular zone. They usually agree on a sharing formula. In some circumstance, states with a lower ratio feel aggrieved. This could lead to backing out of the Joint development agreement and hence defeat the main essence of JD. Further still, states with a lower ratio may develop a lackadaisical attitude towards development of the zone- after all they are taking the lesser share.

Similarly, Poor funding possess another challenge to the establishment of JDZ. This usually occurs where the financial capacity of the states involved in the Joint development zone is not balanced. This is a major disadvantage because the state that

⁶⁷Ibid

⁶⁸Ibid

⁷⁰Yusuf Y. M. "Joint Development a Panacea for Maritime Boundary Disputes and for the Exploitation of Offshore Transboundary Petroleum Deposits?" 4 International Energy Law Review (2009) 130

⁶⁷ Yusuf Y.M. "The role of the 1982 UNCLOS in the resolution of maritime boundary" 2

provides larger fund for the exploitation of the suspected natural resources would feel entitled to more revenue if oil is actually found in the joint development zone and this usually creates a lot of problem.

A typical Joint Development Agreement in itself is technical in nature and thus requires great expertise in drafting. There is the need for Detailed Legal requirement. A possible challenge usually encountered in a joint development zone is that it usually requires detailed legal documentation which would set out in clear terms the right and obligation of the states and this is usually complex where the legal systems of the countries involved in the joint developments are totally different.

Management style is also another difficulty. This is a challenge because different cultures and management styles often result in poor integration and operation. The states to a joint development sometimes have problems with respect to the style that would be adopted in managing the joint development zone and this is usually a major problem in some cases as it usually tends to slow down work.

Above all, most African States crave for absolute ownership and control of resources within their territorial jurisdiction and would in most cases, usually prefer an option which will expressly determine their rights in a particular disputed region. This is the case with Nigeria- Cameroun boundary dispute. This poses a challenge to the practice of JD in Africa.

Conclusion

The benefits of Joint Development cannot be over emphasised. It allows for peace, security and above all, speedy economic development (which is indeed needed by Africa). The above advantages of creation of JDZ make one wonder why Nigeria and Cameroon choose not to explore that option in relation to the Bakassi Peninsula dispute. The military casualty that occurred when both states engaged themselves in the 90's would have been avoided. Both nation could jointly develop, explore and exploit the natural resources in that region and that would have adequately resolved their boundary dispute. Both countries could have equally made the agreement on a permanent basis or agree that the agreement should span for a long duration of time.

The option of a legal action before the ICJ delimiting the maritime boundary between the two states has done nothing but fuelled greater animosity, rancour and unfriendliness between both nations. This is undesirable in this critical stage of Africa's development. The state of affairs as regards the Nigerian Cameroon disputes seems like a

case of *crying over spilt milk*, as the opportunity for promoting peace and friendly relation between both states appear to have been lost. It is however submitted that this is not the case as both nations could swallow their pride and go into a JDA. This is so because delimitation of the maritime boundary does not preclude a subsequent agreement by states to jointly develop the area subject to dispute. Such Joint Development will also serve as a useful lesson to other African States for ensuring peace, security and good neighbourliness within the region.