

Joint Development of Offshore Oil and Gas in the Gulf of Guinea: A Case of Energy Security for Nigeria and Cameroon

Junaidu Bello Marshall

Faculty of Law, Usmanu Danfodiyo University, Sokoto, PMB 2346, Sokoto State, Nigeria

Email- jbmarshall82@gmail.com

Abstract

The paper examines the concept and practice of Joint Development Agreement (JDA) as a modality upon which Nigeria and Cameroon can jointly and efficiently utilise their offshore resources to secure future demands and supply of energy resources in the Gulf of Guinea. Gulf of Guinea is now regarded as one of the world's most important oil and gas producing region. Exploration and development activities in the region have increased significantly following the discovery of enormous reserves. The paper argues that the conflict between Nigeria and Cameroon was stimulated by the expectation of offshore resources in the area, which finally ended in litigation at International Court of Justice (ICJ). The combined effects of ICJ's judgement in 2002 and the continuous demands of energy resources by both parties made it possible to consider alternative arrangement. The paper further argues that the concept of JDA is currently utilised in almost all the regions of the world either as an alternative to boundary delimitation or in some instances in addition to maritime boundary. The paper suggests that both States can benefit from the concept considering the oil and gas deposits straddling their delimited maritime boundaries as delimitation is not necessary a panacea to offshore resources conflicts. The paper however relies on primary and secondary sources of data and the analysis is descriptive. It recommends for presence of political will, strong arrangements on sharing of resources and regard to precedents in the region which plays a vital role for any meaningful arrangement.

KEYWORDS: Gulf of Guinea, Energy Security, Oil and Gas, Maritime Boundary, Joint Development

1 Introduction

The paper examines the concept of JDA as a modality upon which Nigeria and Cameroon can jointly and efficiently utilise their offshore resources in a bid to secure future demands and supply of energy resources in the Gulf of Guinea. It is quite apparent nowadays; society is highly dependent on oil and gas deposits for energy generation and transmission, mobility and transportation, food supply, information and communication, health delivery and countless other services; bringing as a result a particular concern towards the discovery of new oil and gas deposits to ensure energy security. With yet no substantial effort at promoting reliable alternative to oil, the commodity has remained politically volatile and strategic in domestic and global economy and political sphere.¹

In this regard, there is continuous demand for energy resources from offshore as a result of growing concern for limited production from onshore oil reserves, whose production remains for more than two decades at peak². Hence, states around the world have used every effort to ensure more energy resources, a factor which resulted in offshore oil production to become extremely important in the global energy supply³. According to United State of America (USA) Geological Survey 2000 Petroleum Assessment, undiscovered offshore oil and gas deposits are estimated at 306 billion barrels of crude oil and 95 billion barrels of natural gas liquid, accounting for 47% of total undiscovered oil in the world.

However, Coastal States' claim for offshore oil and gas deposits in an area of overlapping claims renders it more difficult to settle boundary delimitation and fuels territorial disputes over islands of which waters are said to be in-rich in oil and gas deposits. The continuous claims of continental shelves by the states presented international maritime boundary disputes between states, as well as difficulties in oil and gas deposits development and exploration. These difficulties were as a result of the fact that International Oil Companies (IOCs) are not willing to invest in a disputed area considering the enormous risks involved. In other to accommodate the claims of coastal states over offshore resources resulted in the codification of the provisions relating to Continental Shelf in 1958 at the Geneva Convention on Continental Shelf and United Nations Convention on the Law of the Sea

¹ F. Allen, 'Oil and Security in the Gulf of Guinea: Reflections on the External and Domestic Linkages'. (2012) 5 *Journals of Sustainable Development* 4 132.

² S.K. KIM, 'The Joint Development of Offshore Energy Resources: Prospects and Issues in East China.' (2007) available at [http:// works.bepress.com/suk-kyoon-kim/5](http://works.bepress.com/suk-kyoon-kim/5). (Accessed on 15 September, 2012).

³ *Ibid* 2.

1982 (UNCLOS)¹. UNCLOS recognised that states are very much concerned about offshore resources, a factor which makes it difficult for states to agree on boundary delimitation which usually resulted in moratorium in the disputed area, it then provided thus:

Pending agreement as provided for in paragraph 1, the states concerned, in the 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.²

Blake and Swarbrick maintained that states are usually found in boundary dispute either because the boundary has not been delimited or because the oil and gas deposits straddling a boundary line is fugacious in nature.³ Any attempt to develop the overlapping area by one state gave rise to armed conflicts with neighbouring states and sometimes ended up in litigation. However, the growing domestic needs for energy resources led to negotiations to develop offshore oil and gas in a mutually beneficial manner. Many states around the world came to agreement for joint development of offshore oil and gas deposits, putting aside for the mean time conflicting maritime boundary and territorial claims⁴. In other cases, states jointly develop agreed territorial area for maximum benefit of natural resources contain therein despite delimitation. Nigeria and Cameroon situation falls under the later arrangement.

This paper is divided into six sections. The first section is the introduction while the second section deals with the strategic importance of Gulf of Guinea. The third section concerns with the basic concept and legality of JDA. The management of Joint Development Zone (JDZ) and model arrangement of the JDA are discussed in section four. We examine the importance and precedents of JDA in the area while stressing the need for political will by parties concerned to actualise the agreement in section five and conclude in section six.

It is important to states that the paper relies on primary and secondary sources of data and the analysis is descriptive and the discussion now turns to economic importance of Gulf of Guinea.

2 Gulf of Guinea

2.1 Economic Importance of Gulf of Guinea

Gulf of Guinea is regarded as one of the world's most important oil and gas producing region. Exploration and development activities in the region have increased significantly following the discovery of enormous reserves⁵. More than 5 billion barrels of oil were discovered in the deepwater (water depth of about 650 feet) between 1996 and 1997 with a 200% production replacement rate, the Gulf of Guinea is now regarded as the world's leading region in terms of oil reserves' renewal.⁶ The Gulf of Guinea is increasingly assuming influence role in global politics, trade and investment. Now, amidst threats of energy insecurity due to crisis in the Persian Gulf and increasing concern for securing reliable source of supply by oil importing countries, especially by the USA, the Gulf of Guinea has come to the fore once more as a region with great potential for providing a significant part of

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²4 Articles 74/83 (3) United Nations Convention on the Law of the Sea, opened for signature on 10 December, 1982 and entered into force on 16 November 1994, available at <http://www.UN.org/depts/los>. (Accessed on 20 September, 2012).

⁵Ibid.

³ G.H. Blake and R.E. Swarbrick, 'Hydrocarbons and International Boundaries: A Global Overview' in G. Blake et al. (Eds). *Boundaries and Energy: Problems and Prospect* (Kluwer Law International, 1998) at 3.

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Besides joint development, which is by far the most widely used form in practice, the other forms of provisional arrangements pending delimitation are not based upon joint zones, but upon provisional lines or upon a *de facto* boundary. See Sun Pyo Kim, *Maritime Delimitation and Interim Arrangements in North East Asia* (Martinus Nijhoff Publishers, 2004), 96-97.

⁵ O.T. Oduntan, 'Modalities for Post Boundary Dispute, Cross Border Unitization Upstream Hydrocarbon Exploitation in the Gulf of Guinea?' (2009) 7 *OGEL* 37.

⁶ *Oduntan* (n8).

the answer for emerging fears of global energy insecurity. Allen pointed out the importance of Gulf of Guinea to global energy security when he succinctly put it; thus:

Trends in the discourse on the value of the Gulf of Guinea is fast moving in the direction of its role in meeting global energy needs, especially, the United States, China and India within the context of global and regional politics of oil. This growing interest in the Gulf of Guinea is now deceptively rationalized by the development vacuum in the major oil producing areas of the region. As a result, mutual security interest of the importing and exporting countries is advanced by western scholars and politicians as the region is expected to play more roles in meeting the energy needs of oil importing nations in the years ahead.¹

However, like any other region in the world, the Gulf of Guinea is also faced with number of maritime boundary conflicts mostly located in the Atlantic Ocean and bounded by the five West African coastal states of Nigeria, Cameroon, Equatorial Guinea, Gabon and Sao-Tome and Principe (STP). Considering the manner in which some of these unresolved maritime boundary disputes around the world have obstructed the offshore oil and gas development, one commentator observed, 'all around the world millions of acres of territory are off limits of exploration because international boundary have not been agreed'². In order to facilitate security and the development of offshore oil and gas deposits in the sub-region, Nigeria and 7 other African countries concluded the creation of Gulf of Guinea Commission in 2001 through the Gulf of Guinea Treaty which has done a lot in providing stability and confidence in the future of oil and gas exploitation in the region among respective governments and investors in the region³. However, according to the secretary of the Gulf of Guinea Commission Mr Trovoado, 'the commission failed to carry out its primary mandate of securing the energy resource of the region and ensuring that these were peacefully exploited in ways that would provide the best possible advantage to the people of the region because of its challenges'.⁴

These countries' economies heavily depend on oil sector, particularly Nigeria whose oil according to Oil and Gas Journal had an estimated 37.2 billion barrels of proven oil reserves as of January, 2011. Significant reserves are found along the country's Niger Delta and offshore in the Bight of Benin, the Gulf of Guinea and the Bight of Bonny and accounts for over 95 percent of export earnings and up to 80% of the government revenue. However, Nigeria's oil production is declining daily, a factor which made Nigeria's Department of Petroleum Resources projected that at the current rate of depletion of about 763.2 million barrels per year; Nigeria's crude oil reserves will not last beyond 35 years.⁵ Therefore, Nigeria must however look elsewhere for oil resources to secure the future demand and supply by effective utilisation of its territorial waters and continental shelves in the Gulf of Guinea through the concept of JDA for the mutual benefits of all the states concern. The successful implementation of joint development between Nigeria and STP, although initially experiencing some level of difficulties, prove that such sophisticated arrangement can be successfully implemented in the Gulf of Guinea. It is also important to note that the rising global quest for oil in the Gulf of Guinea is not merely to satisfy energy security needs of key oil importing countries, but also to protect their investments in the oil sector in the region and seek new investment opportunities; all of which are fundamental to the economic security of home

¹ Allen (n1).

² C W. Dundas, "The Impact of Maritime Boundary Delimitation on the Development of Offshore Mineral Deposits" (1994) 20(4), *Resources Policy* 273, quoting Roger Vielvoye, in the *Oil and Gas Journal* of August 1983.

³ Oduntan (n8).

⁴ Speech delivered by the Secretary of the Commission at Presidential Villa Abuja on the 12 February, 2012. broadcasted by Nigerian Television Authority Network News at 9:00 pm.

⁵ C.B. Okafor, 'Joint Development: An Alternative Legal Approach to Oil and Gas Exploitation in the Nigeria-Cameroon Maritime Boundary Dispute?' (2006) 21 *International Journal of Maritime and Coastal Law* 489.

governments of the IOCs. This means that ensuring uninterrupted production of oil is paramount to the security of the Nigerian state.

However, the lack of ability to exercise effective control over maritime area has made it difficult for Gulf of Guinea states to enjoy the full benefits of important energy resources in their continental shelves. The potentials in the area are being undermined by multifaceted domestic, regional and international threats and vulnerabilities. Rather than contributing to stability and economic prosperity for states in this sub-region, pervasive insecurity in the area resulted in more than \$2 billion in annual financial losses, significantly constrained investment and economic prospects, growing crime and potentially adverse political consequence.

Despite the inability by the Gulf of Guinea states to effectively utilise their resources, the current demand for Africa's oil, especially from West Africa, is expected to increase as the political significance of the oil continues to grow between USA and the Persian Gulf, where long lasting political issues of mutual interests in relations between the USA, Western European nations and the region have remained relevant for key economic and oil production and supply decision. In this regard, Gulf of Guinea, where Africa's oil concentrated is extremely relevant in its importance of providing the haven of sort for meeting global energy security need. The paper will now look at the concept of JDA.

3 The Basic Concept of Joint Development Agreement

3.1 Definition of Joint Development Agreement (JDA)

It is worthy to note that States around the world recognised that boundary delimitation is not necessary a panacea for disputes over oil and gas deposits, as petroleum reserves which are fugacious in nature respect no national boundary. Therefore, the concept of JDA for the exploration and exploitation of oil and gas deposits in disputed International maritime boundaries emerged during the second half of 1950s.¹ The concept has become increasingly accepted as a constructive means in settling difficult disputes involving International maritime boundaries claims. It 'has been endorsed as an appropriately practical and legally viable measure for the development, exploration for, or exploitation of, natural resources where boundary delimitation has proved difficult...'² The concept is currently utilised in almost all the regions of the world either as an alternative to boundary delimitation or in some instances in addition to maritime boundary.³

Anderson remarked that:

The solution of a joint area may be second best to an agreed boundary; but a joint area may well be better than seeing a dispute remain unresolved and possibly grow more serious. The governments may prefer a compromise to a defeat in litigation. An effective treaty providing for joint development may allow the industry to work and produce benefit for many years in an area which would otherwise have remained blighted by dispute over jurisdiction. 'Half a loaf is better than no bread', as the saying goes.⁴

Therefore, JDA, its major advantages lie first in the fact that it gives some level of assurance and guarantee to the IOCs that their capital investments are not under any kind of risk.⁵ It also provides the much needed revenue to the states. Generating benefits through the establishment of JDZ gives evidently a better chance for states dealing with their demand over oil and gas deposits, their economic development and most of all; benefiting from areas which may otherwise remain unproductive.

¹T.A. Mensah, 'Joint Development as an Alternative Legal Arrangement in Offshore Maritime Disputes' in Rainer Lagoni and Daniel Vignes (eds), *Maritime Dispute*. (Koninklijke Brill N.V 2006) 146.

² *Ibid*

³Example of JDA as alternative to boundary delimitation is Japan-South Korea Joint Development Agreement of 1974.

⁴ D H Anderson, 'Strategies for Dispute Resolution: Negotiating Joint Agreements' in G. Blake et al., (Eds), *Boundaries and Energy: Problems and Prospect* (Kluwer Law International, London 1998) 475.

⁵ F. Shihata and W.T. Onorato, 'Joint Development of International Petroleum Resources in Undefined and Disputed Areas' in G Blake Others (Eds), *Boundaries and Energy: Problems and Prospect* (Kluwer Law International, 1998) 434.

The concept received much attention from legal writers all over the world. But yet, it has no generally acceptable definition. However, there is general consensus among writers that JDA derives its legality from sources of international law ranging from conventional to customary international law. In this regard, Miyoshi notes that the concept of JDA is not understood or used in a uniform way.¹ In his words; JDA is 'an intergovernmental arrangement of provisional nature, designed for functional purposes of joint exploration for and/or exploitation of hydrocarbons resources of the sea bed beyond territorial sea.'²

Shihata and Onarato define JDA 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 hydrocarbons found in the area subject to overlapping claims.'³ According to Lagoni, JDA is '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.'⁴ To Townsend-Gault, JDA means '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.' He however, maintains that each JDZ must be comprised of areas which would otherwise be beyond the jurisdiction (if not the claims) of the parties.⁵ Similarly, Gao defines JDA as "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."⁶

The definition offered by Lagoni encompasses the Gulf of Guinea situation to the extent that the resources lie across an agreed boundary where the two states agreed to develop jointly. Similarly, legal writers usually maintained two instances where the concept of JDA may be applied. According to Miyoshi, the two types of JDA regimes are: first, where boundary delimitation has been shelved and the other regime is where the boundary has been delimited.⁷ Other writers like Robson, Bundy and Ong agreed with these two types of JDA.⁸ Most of the writers describe joint development as provisional, but Lagoni maintains that the duration of the arrangement depends on the agreement of the parties, who may choose to make it permanent. This description fits Churchill's first two classification of joint development⁹.

These basic principles and the legal features of JDA identified above are applicable in the Nigeria-Cameroon context. The first two types of Churchill's classification, i.e., JDZ as alternative to a boundary and JDZ as an additional element to a boundary line, will fit the Nigeria-Cameroon context. The first type is currently in use by Nigeria and STP on their continental shelves.

It is important to note that in establishing JDA, political will of the participating states play a key role as the success of the arrangement depend on it. Even the establishment of a regional framework and analogous provisions in bilateral agreements that are geared towards cooperation between states in the exploitation of their shared natural resources cannot be expected to provide concrete results without the political will from all the governments involved.¹⁰ The discussion now turns to the question of JDA structure.

¹ M. Miyoshi, 'The Basic Concept of Joint Development of Hydrocarbon Resources on the Continental Shelf' (1988) 3 *IJECL* 5.

² Ibid.

³ Shihata and Onorato (n19).

⁴ Okafor (n14).

⁵ IT ownsend-Gault, 'Joint Development of Offshore Mineral Resources-Progress and Prospects for the Future' (1988) 12 *Natural Resources Forum* 286 5.

⁶ Z. Gao, 'The Legal Concept and Aspects of Joint Development in International Law' (1998) 13 *Oxford Year Book* 112 .

⁷ Miyoshi (n20) 3.

⁸ R.R. Bundy, 'Natural Resource Development (Oil and Gas) and Boundary Disputes' in G. Blake and Others (n19). Example of JDA after boundary delimitation are Norway – Iceland or France – Spain arrangements of joint development.

⁹ R.R. Churchill, "Joint Development Zones: International Legal Issues" in H. Fox ed., *Joint Development of Offshore Oil and Gas* vol. II (London: British Institute of International and Comparative Law, 1990) 55 at 67.

¹⁰ D. Ong, "the 1979 and 1990 Malaysia-Thailand Joint Development Agreements: A Model for International Legal Co-operation in Common Offshore Petroleum Deposits?" (1999) 14. *International*

3.2 Structure of Joint Development Agreement

3.2.1 Sharing of Resources

Sharing of resources is one of the major issues that must be dealt with from the beginning. Usually, the benefits of the area are the main concern of the parties, as such both states want to know with certainty the proportion the resources should be shared.¹ In principle, on the basis of attributing equality to each claimant, there is a good prima facie argument for the benefits being shared equally.² In practice, parties in the course of negotiation due considered other factors which affect the proportions of states' shares. Possibly, in the course of negotiations, concessions concerning respective shares will be made by the states, either in recognition of the weakness of their claim, or as a result of other political considerations.³

According to Lerer, the allocation of shares between states might end up recognising the fact that states are extremely reluctant to let go claims to territory or maritime boundaries, there may be less of a political problem regarding the sharing of the resources discovered.⁴ In Nigeria-STP Agreement of 2001, parties agreed on 60% and 40% respectively.

3.2.2 Area of the Zone

The most important issue for JDA is the geographical definition of the zone to which it applies.⁵ Usually in the context of maritime boundary dispute, the area of the zone is area of overlapping claims of the two states either publicly claimed or claimed in diplomatic negotiation. During the negotiations, there will be some level of compromise in relation to such claims, to an extent that a party might abandon areas where its claim is not strong. In Nigeria-STP Agreement 2001 the parties acknowledged 'the existence of an area of overlapping maritime claims as to the exclusive economic zones living between their respective territories ('the Area') taking Article 74(3) of the UNCLOS convention into account, and accordingly agreed to constitute by the present Treaty a joint development zone for the area.'⁶ Therefore, area of the zone to which JDA is apply, normally consist of at least part of the area claimed by both states in diplomatic negotiations if not actually in public.

3.2.3 Applicable Law

It is important to determine which rules and regulations apply in the JDZ. In this regard, this will normally depend on the model for the management of development in the area adopted by the participating states. Under the single state management, the rules and regulations of the managing state will likely apply all the way; and in the joint venture model, that of the state which granted concession to the operator governs the area. However, in joint Authority, different rules and regulations will have to be dealt with separately.⁷

Furthermore, parties must determine which petroleum regime is applicable. The parties can agreed on state petroleum regime to be applicable or the agreement will set a new regulations. However, reaching agreement for a unified petroleum regime for oil and gas activities including procedure for awarding concessions might be very difficult, more especially in a situation where both states have systems which are remarkably different, for example, where one state practices participation through production sharing contracts, whilst other state has licensing and royalty system.⁸

3.2.4 Subject of Joint Development Agreement

The JDA must specify the resources which will be the subject of the arrangement. However, the need for oil and gas deposits usually serve as a cornerstone for the establishment of JDZ, which reason would have been the motivating factor for putting aside the dispute pending final delimitation.

Therefore, in many instances, the JDZ is specifically set up for the purpose of exploiting oil and gas deposits. But it is at the discretion of parties to agree on joint development in relation to other resources, living and non- living

Journal of Marine and Coastal Law 207 at 221. Also see Okafor (n14) 510 – 511 where the author discussed other twelve factors to be considered in establishing JDA as agreed by writers.

¹ D. Lerer, 'Joint Development Zones: Negotiating and Structuring a Joint Development Agreement' (2003) 1 *OGE* 5.

² *Ibid.*

³ *Ibid.* 6.

⁴ *Ibid.*

⁵ *Ibid.* 4.

⁶ Nigeria-Sao Tome and Principe Joint Development Agreement 2001.

⁷ *Lerer* (n28) 11.

⁸ *Ibid.*

resources.¹ In practice, other resources could be dealt with extensively as oil and gas deposits, for instance, agreement on fisheries between the Republic of Korea and Japan, which was signed on 28 November 1998.

3.2.5 Dispute Resolution

It is always important for parties to include provisions in their agreement as to how dispute will be dealt with. The dispute resolution clause in an agreement need to be carefully and thoughtfully considered especially where the relationship between the parties prior to the agreement was not cordial. In some agreements the parties normally leave dispute resolution to diplomacy, while in some the parties resort for third party settlement, through either binding arbitration or resort to appropriate tribunal.

In this regard, Nigeria and Cameroon must recognised the fact that both states were engaged in wars and conflicts prior to litigation at International Court Journal (ICJ) and in the last three decades gone through most of the dispute resolution mechanisms recommended by Article 33 of the United Nation charter. Therefore, arbitration will be the best option for the states as it is increasingly becoming acceptable means of dispute resolution of choice in international oil and gas contracts.²

3.2.6 Preservation of Existing Rights

It is important for the JDA to provide a provision for the preservation of parties' claims or rights in the JDZ. The fact that parties agreed to jointly develop area of overlapping claims or straddling between the parties does not mean that claimants relinquishes its claimed rights in the area.

In practice, the JDA provides for "without prejudice" clause which facilitates states engagement in the development of offshore resources, by setting aside the delimitation dispute.³

3.2.7 Duration and Termination

One question that generates much concern from the legal writers is whether joint development is a permanent solution to a boundary dispute or it is an interim measure taking by states in utilising the resources in a disputed area for a given time? Lagoni while discussing Articles 74/83 of UNCLOS maintains that JDA is one of the interim measures envisaged therein, however, 'the parties of course, are free to change any provisional arrangement into a permanent one by agreement, for example, by maintaining a joint development zone after the final delimitation of that area'.⁴

Gao states that JDA is transitional in nature as it directly deals with resource development in a disputed area between the states rather than resolution of dispute per se. He however, acknowledges that states may wish to maintain the same arrangement even when final delimitation is reached, transforming same into a permanent arrangement.⁵

According to Onarato and Shihata, whether JDA is temporary or permanent in duration, its basic concept allows states to develop oil and gas deposits without prejudice to their respective claims of sovereignty.⁶ In practice, states usually provide for duration and mode of termination of JDA normally 30-40 years. The paper will now consider the management of the agreed area.

4 Management of Agreed Area by the Parties

4.1 Management of Joint Development Zone

Usually participating states decide which model of management governs their JDA. However, state practice throughout the world and legal writers identified three most common models of joint development arrangements.⁷ Furthermore, there are other classifications suggested by scholars, they are all, strictly speaking, different variations of the three classifications that now appear to command universal acceptance.⁸ Of these three classifications, each has its own special features and also has its own peculiar regulatory and licensing approach.⁹ As observed by British Institute of International and Comparative Law group of experts, no particular type of model appears to dominate the other as: 'each of these models has a number of possible variations yet none

¹ Ibid 12.

² *Oduntan* (n8).

³ *Kim* (n2)18.

⁴ R. Lagoni, 'Interim Measures Pending Maritime Delimitation Agreements' (1984) 78 *AJIL* 358.

⁵ *Gao* (n25).

⁶ *Shihata and Onarato* (n19).

⁷ Y.M. Yusuf, 'Is Joint Development a Panacea for Maritime Boundary Dispute and for the Exploration of Offshore Transboundary Petroleum Deposits?' (2009) 4 *IELR*.

⁸ Ibid 3.

⁹ Ibid 37.

seems capable of commanding universal acceptance due to differing political and economic systems, traditions of conflict and degree of national sensitivity'.¹ Okafor further stressed that; states should not be held captives or slaves of precedents.²

4.1.2 Single State Management

As the name implies, it is the simplest model where participating states reached an agreement for one state to manage the joint development on behalf of both states, while the other state monitor and share in revenue accrue after the managing state's expenses are settled.³ The managing state applies its own regulatory regime to the JDZ; with the other state retain powers of monitoring and inspection of the JDZ apart from receiving a share of the revenues.⁴ However, recognising total authority of one state in the management of JDZ has a lot of political implications; therefore, most states nowadays are reluctant in entering into this model arrangement.⁵ This model was adopted in Saudi Arabia-Bahrain Agreement of 1958 and Qatar-Abu Dhabi Agreement of 1969.

4.1.3 Joint Venture Management

Joint venture model represent a system of compulsory joint venture between the participating states or their nationals in agreed JDZ.⁶ The model makes provisions for a compulsory utilisation of transboundary oil and gas deposits with the nomination of a single operator on behalf of all participating operators in order to exploit oil and gas deposits. The attractive aspect of joint venture to states is that each state will be entitled to nominate its own concessionaires to undertake development activities. After such nomination, states are required to ensure that their concessionaires enter into joint operating agreement with each other.⁷ Oil and gas recovered by the joint venture will be divided in accordance with the agreement of the states. Each concessionaire's share will be subject to tax and revenues in accordance with the concession agreement in line with fiscal regime of the awarding state.⁸

The problem usually associated with joint venture model lies as to which laws and regulations in relation to oil and gas activities and otherwise will be apply in the zone. Solution to this problem was found in Japan-South Korea Agreement of 1974 where provision was made that whichever of the concessionaires was chosen to act as the operator in a given block, the state which awarded the operator's concession would be such state's laws that will govern the block. However, the solution would therefore, made the choice of operator a matter of so much concern for the participating states than it would normally be.

4.1.4 Joint Authority Management

Joint Authority model might also be called an interstate joint venture. In this model, neither state has the direct responsibility for the management of development of the zone and also nor state has the direct power to choose its own concessionaires. In this regard, powers are delegated to a single Authority, which could be called Joint Authority for the management of development of the zone and the awarding of concession. States might wish to agree to attribute a distinct legal personality to the Joint Authority under the laws of each participating state.

In terms of management, Joint Authority model is a simple solution, but there might be real reluctance, from political point of view, for states to delegate so much power to Joint Authority.⁹ However, in some instances, states leave the role of the Joint Authority as purely administrative, with the authority carrying out duties on the basis of policies which have been agreed and set by the two participating states. Classical examples of this model are Nigeria-STP Agreement of 2001 and the Timor Sea Treaty between Australia and Timor Leste Agreement of 2002.

Joint Authority management model is the most sophisticated and the most complex of all models, having elaborated and details provisions which are wanting in other models.¹⁰ The focus of the paper will now turns to importance and precedents of JDA.

5 Importance and Precedents of Joint Development Agreement

5.1 Importance of Joint Development Agreement

¹ Ibid 32.

² C.B. Okafor, "Model Agreements for Joint Development: a Case Study" (2007) 25(1) *JENRL* 102.

³ Yusuf (n42).

⁴ Ibid.

⁵ Ibid 3.

⁶ Ibid.

⁷ *Lerer* (n28) 7.

⁸ Ibid.

⁹ Ibid.

¹⁰ Yusuf (n42).

JDA, its major advantages lie first in the fact that it gives some level of assurance and guarantee to the IOCs that their capital investments are not under any kind of risk.¹ It also provides the much needed revenue to the states. Generating benefits through the establishment of JDZ gives evidently a better chance for states dealing with their demand over oil and gas deposits, their economic development and most of all; benefiting from areas which may otherwise remain unproductive.² Nigeria and Cameroon missed the opportunity of establishing JDZ for about 20 years and now both states recognised the fact that cooperation for joint exploitation of oil and gas deposits remains the most viable option. The JDZ therefore guarantees 'no gain no loss' solution for the parties concern.³ It is important to note that the parties have the advantages in the favour of cooperation for joint development as the existing JDZ agreements between Nigeria and STP provides much needed experience to work and the existing unitisation cooperation between Nigeria and Equatorial Guinea. These existing arrangements between Nigeria, STP and Equatorial Guinea respectively, although experiencing some level of difficulties, prove that such sophisticated arrangements can be successfully implemented in the Gulf of Guinea.⁴ Also, the progress made by states in concluding the Gulf of Guinea Treaty and the creation of a Gulf of Guinea Commission by 7 African states including both Nigeria and Cameroon has done a lot in providing stability and confidence in the future of oil and gas exploitation in the region among respective governments and investors in the region.⁵

5.2 Precedents of Joint Development Scheme in the Region

Precedent of JDA in a region is a likely factor to influence the decision of disputing states in that region in similar circumstances to enter into a joint development agreement. The ICJ in North Sea Cases suggested that state parties should look at the practice of states in the region to see how such problems have been dealt with. The Court further stated that all is needed is for the disputing parties to refer to the agreements entered into by the neighbouring states of the region with a view to ensuring the most efficient exploitation of oil and gas deposits extracted.

The JDA between Japan and South Korea in 1974 served as a cornerstone for further maritime cooperation in the region. Also, in the Gulf of Thailand, joint development agreement between Thailand and Malaysia in 1979 led to many successful joint development agreements in the region.

In case of Nigeria and Cameroon, Cameroon out of urgent obligation to protect its interest took the dispute for litigation, which so far has not yielded any fruit with regards to oil and gas deposits in the disputed area as the ICJ decision is unfavourable to both parties. The decision made it possible for both parties to look at the Gulf of Guinea for precedent of JDA of oil and gas deposits. Indeed, the presence and success of Nigeria and STP JDA and Nigeria and Equatorial Guinea Unitisation Agreements served as strong factors for the parties to reached agreement in principle for the establishment of JDA. For practicability and benefit of JDA between Nigeria and Cameroon, parties must consider the above issues in their best interest.

6 Conclusion

The concept of JDA appeared to be in existence through state practice as an alternative means of settling maritime disputes where negotiations between parties become deadlock or used in delimited area between parties for convenient exploration of joint area for the benefit of parties concerned. In this regard, it offers a means to a fair division of the resources at stake, rather than on the determination of an artificial line or concern for parties' rights of exploration in their area of authority. In practice, concerned states usually agreed on the proportion of resources based on each party's bargaining power or strength of claim. The concept allows parties to benefit from the resources of the disputed area without prejudice to each claimant's claim in the disputed area or agreed area where boundaries are delimited.

The value of JDA either in addition to or as an alternative to maritime delimitation is based on the fact that it allows investors to invest in the agreed area for the exploitation and exploration of oil and gas deposits for mutual benefits of the states concerned. It also strengthens the relationship of the states concerned even in other areas of bilateral relationship as indicated in Nigeria-STP Agreement of 2001.

Nigeria and Cameroon agreed in principle through Mixed Commission for the exploration of oil and gas deposits straddling their maritime boundaries as the decision of ICJ did not provide solution to offshore resources despite final delimitation for 12 years now. Both parties resorted to JDA now in addition to boundary delimitation in

¹ *Shihata and Onarato* (n19).

² V.F. Orrego, 'Regional Cooperation in Non-living Resources: Joint Management Zones', in B.P Peter(ed), *Ocean Governance: Sustainable Development of the Sea* (United Nation University, Press 1994) at 179.

³ N.H. Thao, 'Joint Development in the Gulf of Guinea' (1999) Article Sections *IBRU BSBA* at 87.

⁴ *Oduntan* (n8) at 20.

⁵ *Oduntan* (n8).

other to cooperate with one another for mutual benefits. This agreement confirmed JDA as an alternative and effective disputes resolution mechanism for the exploration of offshore oil and gas deposits in International maritime boundary. However, even at that both parties must demonstrate political will in other actual the arrangement as demonstrated before between Nigeria and STP in 2001.

The parties must also agree as to the type of model management of JDA to be adopted as the parties concerned are always at liberty to choose the one convenient to them. It is highly desirable, if not mandatory for the parties to ensure that the arrangement is not sham considering the importance of oil and gas deposits said to be in abundance at the Gulf of Guinea in a bid to achieve energy security now and in the future.

Finally, this paper, therefore, cannot agree any better with Mensah when he states:

In establishing and operating JDA, states are doing nothing more than making use of an approach which is likely to promote the realization of one of the objectives of the convention as stated in its preamble, 'namely, to establish a legal order for the Seas and Oceans which will, among others 'promote the peaceful uses of the Seas and Oceans (and) the efficient utilization of its resource'.¹

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