Abstract

Provisional arrangements of a practical nature, and in particular maritime joint development zones, have been heralded as an attractive means of overcoming seemingly intractable maritime boundary disputes. While there is considerable merit in these arguments, they do not tell the whole story. While highlighting some of the key advantages of maritime joint development, the paper also explores some notable obstacles to the establishment of and potential problems associated with such joint management mechanisms. Pertinent examples are of such joint arrangements are drawn from the East and Southeast Asian experience. It is concluded that while challenges to the successful implementation of maritime joint development can be overcome and that joint development arrangements therefore retain their attraction, considerable caution is required before States with overlapping maritime claims pursue this dispute management option.

Introduction

Provisional arrangements of a practical nature, and in particular maritime joint development zones, have attracted considerable enthusiasm from commentators. In particular, joint zones have been suggested as a means of overcoming seemingly intractable maritime boundary disputes where the parties cling inflexibly to overlapping claims. In this situation, where there appears to be no prospect of agreeing on a boundary line in the foreseeable future, joint development agreements would appear to offer an ideal way forwards and allow States to retain their claims unaltered in principle yet proceed with mutually desired offshore development or management.

It is certainly the case that maritime joint development can be an appropriate and attractive means to address contentious maritime jurisdictional disputes in a manner that better allows the management of ocean spaces subject to overlapping maritime claims. This is especially the case as many such arrangements are
designed to facilitate the development of the marine resources contained within such disputed waters. However, there are a number of potential drawbacks to maritime joint maritime management arrangements and such mechanisms should not be entered into lightly.

This paper outlines some of the factors that offer the opportunity and, arguably, the need for maritime joint development to be applied. The paper then explores some of the key potential benefits associated with the application of joint development to areas subject to competing maritime claims. A number of obstacles to the establishment of and potential problems associated with joint management mechanisms for offshore spaces are then explored, drawing on examples of such joint arrangements located in East and Southeast Asia. In particular it is suggested that while there are numerous and attractive potential benefits to joint maritime arrangements, it is arguably inappropriate to promote joint development simply on the basis that the parties to a dispute over overlapping maritime claims have proved unable to resolve their differences. Other notable impediments to the establishment of joint zones include the claims of third States and the appropriateness of the use of the limits of unilateral maritime claims as the spatial basis for a particular joint zone. Such maritime joint management mechanisms also necessarily represent a significant challenge to State sovereignty. Their implementation is therefore challenging and requires the investment of considerable political capital over a period of decades. It is concluded that while challenges to the successful establishment and implementation of provisional arrangements of a practical nature can certainly be overcome, political remains the vital factor in making joint zones work effectively and for them to be sustained over the long term.

The Need for Maritime Joint Development

Fundamentally the need and opportunity for maritime joint development arises from the incomplete nature of the maritime political map of the world. The great extension of maritime jurisdictional claims seawards witnessed in recent decades has, unsurprisingly, led to the corresponding emergence of broad areas of maritime space subject to overlapping maritime claims. Many of these overlapping claims areas remain unresolved, thus providing ample scope for the application of maritime joint development arrangements.

The legal framework for maritime jurisdictional claims is provided by the United Nations Convention on the Law of the Sea (LOSC). A key achievement