



Resolution and Thinking on the Rights of Third Parties in the Joint Development of the South China Sea

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How to cite this paper: Haizhi Wang, Xiaoyi Fang. (2022) Resolution and Thinking on the Rights of Third Parties in the Joint Development of the South China Sea. *Journal of Humanities, Arts and Social Science*, 6(4), 822-824.
DOI: 10.26855/jhass.2022.12.046

Received: November 28, 2022

Accepted: December 20, 2022

Published: December 30, 2022

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Abstract

Most of the relevant cases involving the joint development of disputed sea resources in the international community are faced with the situation of properly resolving the rights of third parties. They have three main choices: reauthorization; second, direct recognition; third, disapproval; its advantages and disadvantages. Countries around the South China Sea have some overlapping sovereignty demands for some waters, resulting in some disputed waters. Therefore, if countries around the South China Sea want to jointly develop in the so-called "disputed waters", they also need to face a proper settlement of the rights of third parties. At present, there have been successful joint development cases in the South China Sea region, such as the joint development model of Malaysia and Vietnam, and the joint development model of Malaysia and Thailand. The proper settlement of the rights of three parties is worth learning from other countries around the South China Sea. This paper takes these two models as the starting point, trying to provide some ideas for other countries around the South China Sea to jointly develop them in the so-called "disputed waters".

Keywords

South China Sea, oil and gas resources, joint development

1. Basic overview of the South China Sea

The South China Sea involves six countries and seven parties, which is complicated, and the sovereignty waters of all countries overlap. For example, the Philippines, Vietnam and other countries in the South China Sea bidding, a large part of the area has invaded China's territorial waters (Huang Shaowan, 2015). Based on their own international law, countries have claimed sovereignty and increased the instability in the South China Sea region. Peace and development have become the theme of The Times, and cooperation is the main theme of the South region. Joint development is based on the common interests at sea, and it is a way of cooperation among neighboring countries. It can not only make full use of Marine resources, but also enhance political mutual trust. Therefore, some scholars point out that "maritime common interests" is the basis of cooperation for countries to normalize maritime diplomacy. As an important part of Marine development and cooperation, the cooperative development of Marine resources has been highly valued by governments of all countries (Li Xinlei, 2020).

2. Main contents and basis of the rights of third parties

The rights of the third party involved in the joint development of the disputed sea area are divided into two types by different conditions. First, they are based on the sovereign rights under international law; second, the main basis of the oil and gas resources in the disputed sea area are the international treaties, national sovereignty and sovereign rights and concession agreements (Zhang Lina, 2015).

(1) Basis for sovereign rights in the sense of international law

It is a consensus in the international community that coastal countries have sovereign rights to the exclusive economic zone and the continental shelf. Article 56, paragraph 1, of article (a), and article 77, paragraphs 1 and 4, of the United Nations Convention on the Law of the Sea. The exclusive economic zone and continental shelf rights of the coastal states are stipulated, so that the coastal states thus obtain the sovereign rights of the exclusive economic zone and continental shelf in the sense of international law, and have the right to conduct resource exploration and exploitation in the exclusive economic zone and continental shelf, which shall not be infringed upon by any state. However, in article 58, paragraph 1, article 78, and paragraphs 1 and 2 of the United Nations Convention on the Law of the Sea and article 79, third party states have reasonable freedom of aviation and navigation and the right to lay submarine cables and pipelines. In the development of oil and gas resources, the exploration of oil and gas Wells and the construction of equipment and facilities related such as drilling platforms are bound to affect the exercise of the rights of the third parties in the development area.

(2) The franchise agreement in the disputed area

A concession legal agreement in which one or more of the relevant parties shall sell the contracting right in the disputed area through tender without the consent of the disputed parties, and allow the winning bidder to engage in the exclusive right of natural resources exploration and exploitation in the relevant sea areas. The agreement is signed without the consent of other dispute parties, for other dispute parties without any legal effect, and hold licenses of foreign oil and gas companies enjoy dispute waters exploitation of natural resources, the nominal rights exist before joint development, called the right of advance, this is also an important part of the rights of a third party.

3. International practice on the first depository right disposal

(1) Malaysia and Thailand jointly develop the model

Thailand common development mode in the disputed waters is located in the bay of Thailand, in 1971, the bay of Thailand is explored is rich in oil and gas resources, making the surrounding countries of the bay of Thailand to the dispute into heated, the surrounding countries of Thailand and Malaysia in the bay of Thailand produced a total area of about 7300 square kilometers overlapping disputed waters. And Malaysia and Thailand dispute the focus of Thailand whether the rat island as an international law recognized the island, Thailand claims rat island meet the requirements of the United Nations convention on the law of the ocean (hereinafter referred to as the convention) about the elements of the island, can be used as the basis point of the territorial sea baseline, enjoy the corresponding exclusive economic zone and continental shelf. Malaysia takes the view that the rat island does not meet the requirements of the Convention on the islands, so the island has no impact on the demarcation, and advocates the principle of "equal distance-intermediate line", based on the coast of the two countries, evenly dividing the continental shelf, so the dispute arises (He Hairong, 2015).

Malaysia and Thailand have granted exploration rights to parts of the disputed waters to a third party, thus facing double licensing for joint development. The essence of recognizing the previous agreement has not changed much, except for the other parties added to the agreement.

(2) The Russian and Norwegian model

In the early 21st century, Russia and Norway according to the United Nations convention on the law of the sea, has developed and introduced a series of the arctic region including the barents sea area, strategic policy, until 2010, Russia and Norway agreed in the disputed waters, jointly signed the Russian federation and the kingdom of Norway in the barents sea and the arctic sea delimitation and cooperation agreement, this is a landmark, means Russia and Norway in the barents sea in the maritime delimitation issues after nearly four years of negotiations and consultations, finally successfully resolved. For the first time, the agreement creatively puts forward the principle of unified integration. In the issue of joint development of oil and gas resources, the unified development and utilization of the oil and gas fields in the disputed waters as a whole, so as to solve the possible resource imbalance of the other party

brought by the particularity of oil and gas resources flow, which is of a milestone significance. Delimit special areas and transfer the undisputed territorial jurisdiction of the two countries to create a separate "special area" of the non-disputed area for the promotion of development work.

(3) Malaysia and Vietnam jointly develop the model

Malaysia and Vietnam belong to the bay of Thailand region, the two countries under the guidance of the coast of international law rules, all use the way of straight line baseline territorial sea baseline, Vietnam to pearl island base for demarcation, Malaysia is a heat island and Vietnam to split the continental shelf of the two countries, due to the difference of the basis point, caused a large area of about 2500 square kilometers of disputed waters.

As Malaysia has previously signed three oil and gas contracts with extraterritorial oil and gas companies and actually put them into operation, Vietnam and Malaysia inevitably needs to deal with the issue of predeposit rights first. Article 3, paragraph 3, of the Memorandum states: "In view of the existing actual investment in the designated area, both parties agree to do their best to ensure that the previously granted mining rights in the joint development Zone remain valid. According to this regulation, the original contract signed contract is valid, which also shows that both parties of Malaysia and Yue directly recognize the effect of the escrow right. Although the terms of the contract are valid, the proceeds in the product-sharing contract were redistributed, stipulating that the proceeds should be shared equally between the original oil company and the Vietnam oil company.

In the Malaysia and Vietnam jointly develop the model, the disposal of escrow is more pragmatic, directly recognizing the existence of escrow. Before the development, Malaysia signed three oil and gas contracts in the disputed waters, while Vietnam did not sign the relevant contracts. Despite the recognized existence of escrow rights, Malaysia, to compensate Vietnam, is a relatively fair, fair and win-win agreement. In international practice, in addition to the reauthorization and direct recognition, we can also adopt non-authorization methods, but the third approach has the lowest cost-effective impact and is rarely considered by the countries concerned.

4. Epilogue

To sum up, in the process of joint development involved in the reasonable rights of the third party, should be under the guidance of international law to a certain reasonable guarantee, navigation, aviation and laying submarine cables and pipeline is basic rights, is the international joint development practice must deal with, its mature treatment, a consensus has been formed in the international community, processing is not difficult. There are different practices in the international practice, which is an important part of the rights of the third party. 1. The joint development process is blocked; 2. Affects the relationship between the home country and the concerned country and the enthusiasm of foreign investors to invest in the joint development area; therefore, how to properly handle the pre-storage rights of the third party plays a pivotal role in promoting the process of joint development. Due to its strategic value and limited resources, oil and gas resources in the South China Sea have become the focus of contention in the South China Sea (Wang Mingshun & Chen Mingbao, 2012). Therefore, the joint development of oil and gas in the disputed waters of the South China Sea has attracted much attention, and the joint development of the countries concerned can be achieved only by learning from Malaysia and Thailand jointly develop the model and Malaysia and Vietnam jointly develop the model on the treatment of saving rights can we proceed steadily and steadily.

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