Framework Agreements for Transboundary Hydrocarbon Resources: Norway\Russia Agreement in the Barents Sea

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Outline

- Traditional approach to transboundary reservoirs in delimitation agreements
- Recent framework agreements
  - Typical scope and key concepts
- Key concepts as applied to the Barents Agreement
  - Agreement as to the existence of a TB reservoir
  - Unitization & reserves apportionment
  - Dispute settlement and institutions of the agreement
- Comparative observations and conclusions
Traditional approaches

• Step one

• Unity of deposit clause in delimitation agreement (UK\Norway, 1965)

  – [1] If any single geological petroleum structure or petroleum field ...extends across the dividing line and the [2] part of such structure or field which is situated on one side of the dividing line is exploitable, wholly or in part, from the other side of the dividing line, [3] the Contracting Parties shall, in consultation with the licensees, if any, [4] seek to reach agreement [4a] as to the manner in which the structure or field shall be most effectively exploited and [4b] the manner in which the proceeds deriving therefrom shall be apportioned
Traditional approach

– Still commonly used (eg NZ\Australia, 2004)
– But many agreements completely silent

• Some unity of deposit clauses in delimitation agreements are more complex
  – Germany\Netherlands (post N Sea CS Cases)

• Step two
  – Supplementary, field-specific North Sea agreements
  – Frigg (1976), Statfjord (1979), Murchison (1979), and Markham (NL) (1992)
Recent framework agreements

- Framework Agreement between the UK and Norway concerning Cross-Boundary Petroleum Co-operation (2005)
- Agreement between Canada and France Relating to the Exploration and Exploitation of Transboundary Hydrocarbon Fields (2005)
- Framework Treaty relating to the unitization of hydrocarbon reservoirs that extend across the delimitation line: Trinidad & Tobago\Venezuela (2007)
- Treaty between Norway & Russia concerning Maritime Delimitation and Cooperation in the Barents Sea and Arctic Ocean (2010)
  - Annex II deals with Transboundary Hydrocarbon Deposits
- Agreement between the US and Mexico Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico (2012)
- Premise in each case is an agreed boundary; these are not JDZs (Art 74(3) and 83(3), LOSC.
- A framework agreement is an agreement that establishes a detailed procedure for confirming the existence of, and the procedure for developing and operating, a transboundary petroleum resource.

- 35pp (UK\Norway); 3pp (Norway\Russia)
Not all similarly situated

- **UK\Norway**
  - Mature basin; transboundary infrastructure
  - A number of existing agreements
  - How to optimize production and infrastructure in the median line corridor
  - Goes beyond just transboundary deposits

- **Other agreements**
  - Little or no exploration
  - The goal is to provide certainty & a clear framework
  - Confined to transboundary deposits
The baguette or key delimitation (1992)
Topics typically addressed

(1) Scope
(2) Purpose and objectives
(3) Identification of transboundary accumulations **
(4) Authorization of production **
(5) The role of unitization **
(6) Determination of reserves & apportionment **
(7) Technical issues (measurement etc.)
(8) Fiscal issues (royalties and taxation)
(9) Infrastructure issues
(10) Environmental issues
(11) Institutions and dispute resolution **
(12) Decommissioning
(13) Duration and termination.
• Key concepts as applied to the Barents Agreement
  – Agreement on the existence of a TB reservoir
  – Unitization & Reserves apportionment
  – Dispute settlement and institutions of the agreement

• Text of treaty: Norwegian and Russian with English translation
(1) Agreement on the existence of a TB reservoir

- Treaty, Article 5(2)
  - Discovery on A’s shelf
  - B considers that discovery may extend to its shelf
    - B submits data
  - Parties to engage in discussions
    - Both A & B to use best efforts to ensure that all information shared
  - If deposit extends and if it can be exploited from either side, or if exploitation by A would affect exploitation by B then, the Parties must reach agreement on exploitation and apportionment
  - Disputes submitted to ad hoc arbitration
(2) Unitization and reserves apportionment

- Treaty Article 5; Annex II, Article I

- The Annex provides minimum content for a unitization agreement between the Parties
  - Definition of the deposit, total amount of reserves and apportionment
  - Duty of each Party to require its licensees to enter into a JOA & appoint an operator for approval by both Parties
  - Duty not to withhold approval for wells required to facilitate delineation and apportionment of reservoir
  - No changes to licences and licensee without prior consultation
  - No production absent unitization (8)

- Failing agreement on the terms of Unitization?
  - Ad hoc arbitration (annex II, Article 3)

- Failing agreement on apportionment?
  - Expert determination (annex II, Article 4)
(3) Dispute settlement and institutions

- Ad-hoc Arbitration
- Expert Determination
- Joint Commission
Ad hoc Arbitration

- Annex II, Article 3
  - A failure to reach agreement on the terms of unitization
  - Referred by either Party to an ad hoc arbitral tribunal
  - Clear, enforceable procedure for appointing
  - Decisions of the tribunal are binding on the Parties and a unitization agreement is to be concluded in accordance with the decision(s)
Expert Determination

• Annex II, Article 3
  – If the parties fail to reach agreement on apportionment
  – “They” shall appoint an expert
  – The decision of the expert shall be binding
  – Procedure for appointment and whether requires a joint trigger not clear
Joint Commission

• Annex Article 1 (13)
  – Each unitization agreement should establish a Joint Commission for consultation between the Parties
  – Objective is to facilitate continuous consultation and exchange of information
Comparative Observations & Conclusions

- A detailed set of rules for dealing with the possible existence of transboundary hydrocarbon deposits
- More state-centric than other framework agreements
- Demonstrates a sophisticated approach to institutions and dispute resolution but:
  - No overarching standing institutional body
  - Ad hoc arbitration
  - The Joint Commission is deposit-specific
- The independent expert procedure seems to require joint referral from both Parties
- Arbitration provisions
  - Better developed than the expert procedure
  - Broad in scope with the exception of apportionment decisions
Observations (continued)

• The practice paradox in delimitation agreements (no trend)
  – Many modern delimitation agreements silent
  – Many modern agreements use a simple unity of deposit clause
  – At the same time we see a series of complex framework agreements

• The ILC paradox
  – There is some opportunity to develop “best practice” provisions for transboundary hydrocarbon resources for delimitation agreements
  – UN ILC and shared resources
  – Watercourses Convention
  – Shared aquifers
  – Declined to proceed with consideration of transboundary petroleum resources
  – Too political