

Uk government approaches to oil and gas resources



Discuss the efforts undertaken by the UK government to ensure that the development of offshore cross-border oil and gas resources in the UKCS are not delayed because of differences with neighbouring states such as Norway and the Netherlands.

Introduction

What is Unitisation?

A primary objective of Governments and International Oil Companies (IOC's) is to maximise the economic recovery of Oil and Gas from a common hydrocarbon reservoir. Thus, unitisation is an approach which has been developed to ensure that these objectives are met. ^[1] Unitisation in essence can be described as,

“ the process whereby the oil and gas reserves of a reservoir which do not sit within an area covered by a single license are treated as a single unit for the purposes of development and operation, with the resulting production from the field divided between the licensees in agreed proportions irrespective of from where within the unitised area the oil and gas has been produced.” ^[2]

As such, it essentially means that two licensees are not going to argue and instead agree between them how the reservoir is to be developed, under unitisation and a unit operating agreement (UUOA). ^[3] Thus, unitisation is a response to the common-law concept of “ rule of capture” which originated in the US where the private ownership of Oil and Gas resources resulted in the exploitation of these resources in complete disregard of common oil field

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practices. This was done by locating such wells and drilling close to the boundary of block, which would draw enough Oil from the adjoining area. However, this encouraged the proprietors of the neighbouring areas to carry out similar behaviour to maximise their own recovery, also known as competitive drilling. ^[4] Accordingly, under the rule of capture, this was permitted as “ *the owner of a tract of land acquires title to the oil and gas which he produces from wells drilled thereon, though it may be proved that part of such oil or gas migrated from adjoining lands.*” ^[5] To contest this, unitisation was subsequently adopted by IOC’s in other jurisdictions, one of which was the UK.

In the UK, where ownership is vested in the state, the crown has the sovereign right to exploit resources in the UKCS, and as such, s. 4 of the Petroleum Act 1998 allows the UK government to make regulations prescribing Model Clauses unless otherwise as ‘ he thinks fit to modify to exclude them in any particular case’ to be incorporated in any such licence. To which, they also have the power to impose unitisation between licensees if it is in the interest for the purposes of ensuring maximum recovery of Oil and Gas and to avoid unnecessary competitive drilling. ^[6] The government will then issue a written notice to the licensees to prepare a development scheme for developments of the Oil Field as a unit by the licensees – the notice must contain description of the area and a deadline for submission to the government. ^[7] However, in practice such a notice, has never had to be served, as the mere existence of these powers has ensured that the licensees concerned have taken the initiative in this regard.

Cross-border Unitisation agreement

JOA

International Law in agreements

Bilateral treaties

- UK-Norway
- UK and Netherlands

2005 Approach

This approach can be seen as the best practice, as it is very pro-active and as such, there is not a lot of scope for confusion. It is one of the best examples of a framework treaty covering cross-border Oil and Gas development, as it contains specific provisions regarding unitisation. As such, it was used by UK and Norway in 2005[8]for two cross-border fields, these being Enoch and Blaine as an alternative way to harmonise regulations and simplify the administration with Oil and Gas cross-boundary projects. The treaty includes an obligation on each Government to unitise in accordance with the terms of the Framework Agreement, unless it has been agreed between them that should not, and as such, to require their licensees to enter into a Licensees' Agreement to regulate the exploitation of a transboundary reservoir.[9]It's main aim is in securing economic benefit for both States and separate provisions are made for the possibility of such a development by infrastructure located on one side of the boundary e. g. the Boa field mostly in Norway and Playfair fields, mostly being entirely in UK. So far, the treaty only applies to cross-border boundary fields, but it has been

hopeful to extend the procedures to all projects in UK-Norway, as they would have the potential to reduce costs significantly for the Oil and Gas industry.

[10]

Third Party resolution approach

There are certain situations where States cannot reach such an agreement after negotiations have dragged for years. As such, they may through agreement refer the dispute for third party resolution to the International Court of Justice, arbitration panels or as a last resort, group experts due to the sovereign nature.[11]Resulting in this approach being used by Nigeria and Sao Tome and Principe to develop cross-border upstream co-operation or Joint Developing Zones through the unitisation of Ikanga and Zarifo fields. [12]The government of Sao Tome and Principe has claimed archipelagic status under Article 46 of the 1982 UNLOS based on a 200-mile exclusion zone limited by a median line in the North East and North West as being the meridian line between Sao Tome and Principe and Nigeria.

The Government based their claim on the Exclusive Economic Zone Act and EEZ which overlapped with Sao Tome and Principe's zone, therefore they agreed to resolve their differences by developing a JDZ around the overlap enabling exploration and licensing to proceed. Article 3 of the Treaty provides provisions for petroleum unitisation and considers it from three perspectives. Firstly, where a geological petroleum structure or petroleum field extends across the dividing line between the zone and the exclusive maritime area of one of the States parties; or, between any contract areas within the zone; and lastly, between the zone and an exclusive maritime

area of a third State. Therefore, under the Nigeria – Sao Tome Treaty, the principles that involve joint development are recommended to include joint control by the States parties of the exploration as well as, exploration of resources with the aim of achieving commercial unitisation.

[1]Andrew Kenyon, ' Unitisation – The Oil And Gas Industry's Solution To One Of Geology's Many Conundrums | Lexology' (*Lexology. com* , 2014) accessed 20 March 2017.

[2]Nicola MacLeod ' *Unitisation* ' in Oil and Gas Law at 414 quoting Michael Taylor and Sally Tyne, *Taylor And Winsor on Joint Operating Agreements* (2nd edn, Longman 1992).

[3]Nicola Macleod ' *Unitisation* ' in Greg Gordon, John Paterson and Emre Usenmez, *Oil And Gas Law: Current Practice & Emerging Trends* (2nd edn, Edinburgh University Press 2010) 13. 6.

[4]John Lowe *et al* , *Cases And Materials On Oil And Gas* (4th edn, West group 2002) 786.

[5]" The Rule of Capture and Its Implications as Applied to Oil and Gas" (1935) 12 Tex. 1,. Rev. 391 at 393.

[6]Petroleum Licensing (Production) (Seaward Areas) Regulations 2008, Model cl. 27(1).

[7]Petroleum Licensing (Production) (Seaward Areas) Regulations 2008, Model cl. 27(2).

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[8]Nicola Macleod ' *Unitisation* ' in Greg Gordon, John Paterson and Emre Usenmez, *Oil And Gas Law: Current Practice & Emerging Trends* (2nd edn, Edinburgh University Press 2010) 439 - 441

[9]Ibid, 439

[10]' UK/Norwegian Co-Operation In Relation To Cross-Boundary Petroleum Development' (*Cms-lawnow. com* , 2005) accessed 20 March 2017.

[11]Perry A: Oil and Gas deposits at international boundaries - New ways for governments and oil and gas companies to handle an increasingly urgent problem (Vol. 5 OGEL 2007); O Igiehon, Present International law on delimitation of the Continental shelf (Sweet & Maxwell 2006

[12]Ibid