

The background features a dark blue gradient with faint, light blue concentric circles and degree markings (140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260) on the left side, suggesting a circular or orbital theme.

UNCLOS PART IX AND JOINT DEVELOPMENT IN THE SOUTH CHINA SEA

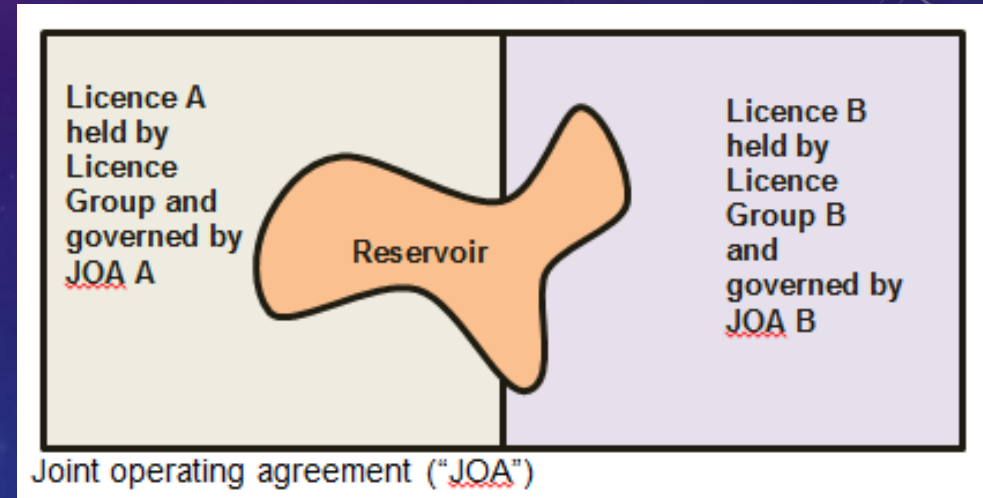
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OVERVIEW

- Joint Development (JD) of Offshore Petroleum Resources - Definition, Rationale
- International Law
 - Origins, UNCLOS, jurisprudence
 - Obligations relevant to JD
- Joint Development Agreements
- JD in the Asia-Pacific
- Key Challenges

JOINT DEVELOPMENT OF OFFSHORE PETROLEUM RESOURCES

- Definition
 - The cooperation between States with regard to exploration for and exploitation of certain deposits, fields or accumulations of nonliving resources which either extend across a boundary or lie in an area of overlapping claims.” (Guyana v. Suriname, Award, 17 Sep 2007, para. 462)
- Rationale
 - Unitization – efficiency, cost-effectiveness, fairness
 - Dispute management, prevention
 - Avoid suspension of economic development



Source: Kenyon, AK. "Unitisation – the oil and gas industry's solution to one of geology's conundrums."

INTERNATIONAL LAW

- North Sea Continental Shelf Cases, Judgment 20 Feb 1969, para. 99:
 - “The Court considers that [overlapping continental shelf areas] must be accepted as a given fact and resolved either by an agreed, or failing that an equal division of the overlapping areas, or by agreements for joint exploitation, the latter solution appearing particularly appropriate when it is a question of preserving the unity of the deposit.”
- Eritrea v. Yemen, Award 17 Dec 1999, para. 86
 - The parties “should give every consideration to the shared or joint or unitized exploitation of [mineral] resources”

INTERNATIONAL LAW

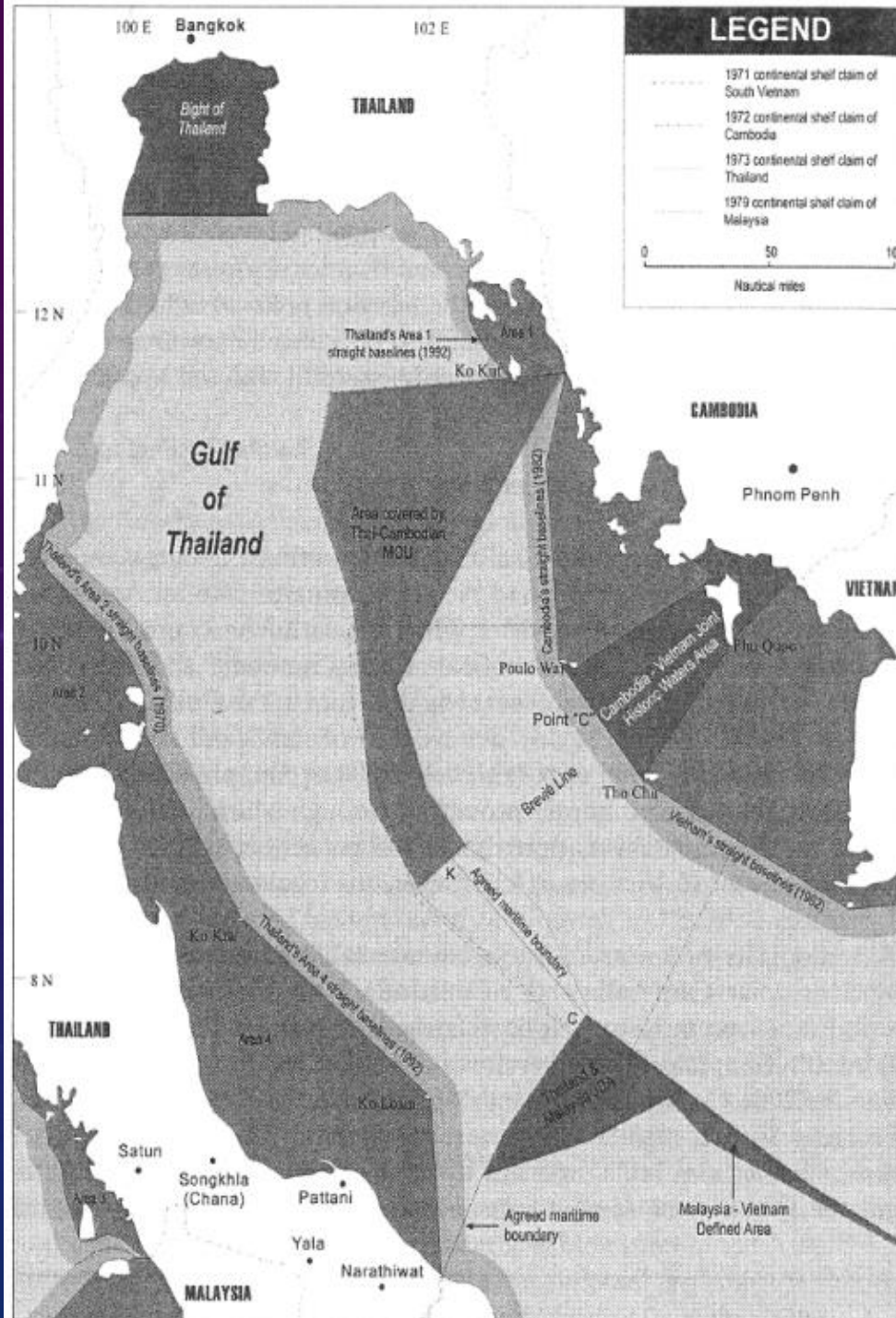
- UNCLOS Art. 74(3) and 83(3)
 - “Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of final agreement. Such arrangements shall be without prejudice to the final delimitation.”
- Guyana v. Suriname, Award 17 Sep 2007, para. 459-70
 - “Twin obligations simultaneously attempt to promote and limit activities in a disputed maritime area.”
 - States are required to make “every effort”:
 - To enter into practical provisional arrangements prior to concluding final delimitation agreements (i.e., JDA)
 - Not to jeopardize or hamper the reaching of final agreement” on their delimitation disputes

INTERNATIONAL LAW

- UNCLOS Art 123.
 - States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate international organization:
 - (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
 - (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
 - (c) to coordinate their scientific research policies and to undertake where appropriate joint programmes of scientific research in the area;
 - (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in the furtherance of the provisions of this article.

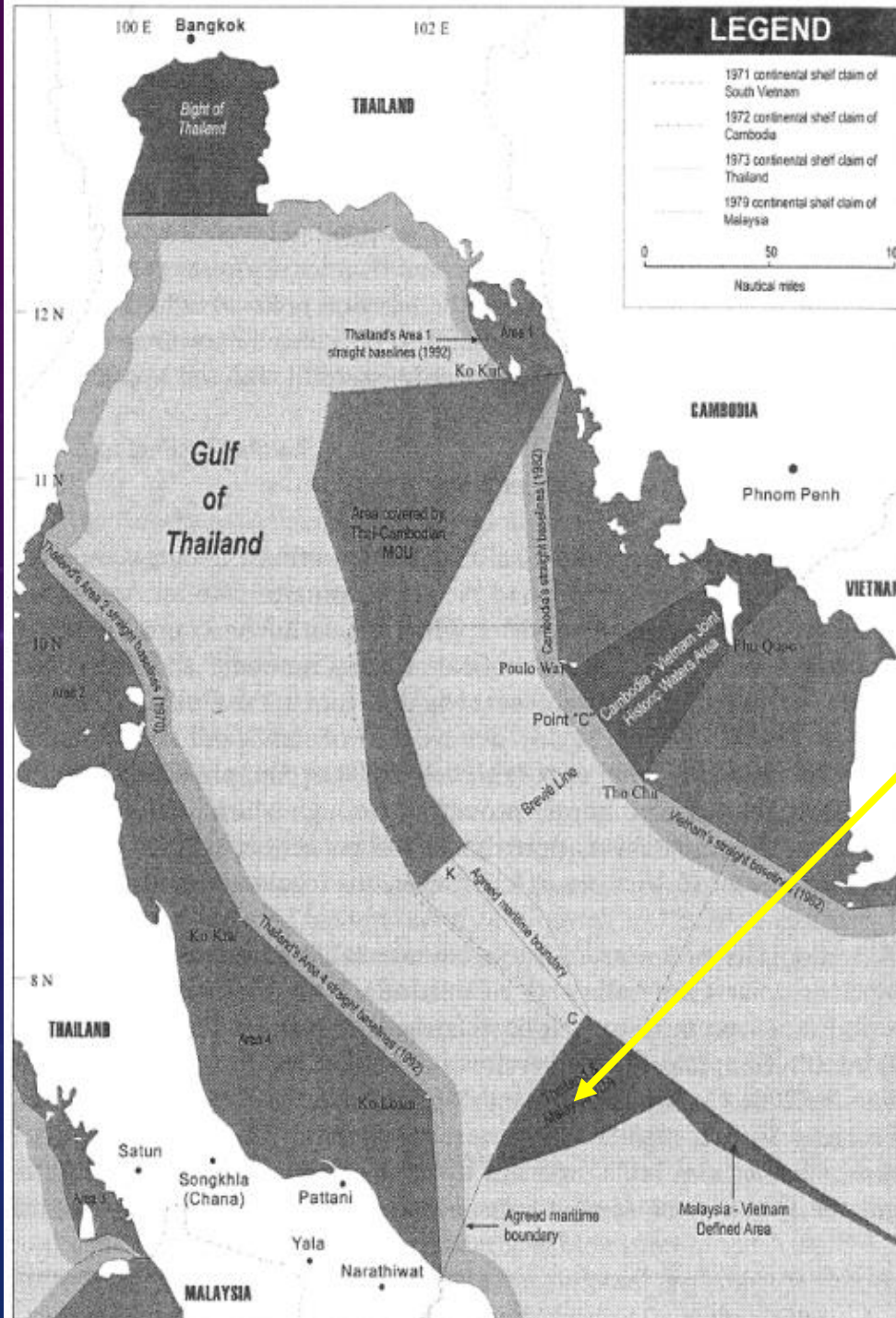
JOINT DEVELOPMENT AGREEMENTS

- Agreements to jointly explore/exploit shared petroleum resources in a designated zone/area to which both parties may be entitled under international law
- 3 basic forms
 - One State as operator of a shared resource for another State, paying the latter its share in resources
 - Compulsory unitization and joint ventures between operators for exploitation of shared deposits
 - Sophisticated institutional frameworks to facilitate extensive cooperation in exploitation of shared deposits



JDA'S IN THE GULF OF THAILAND

Source: Beckman, et. al. 2013



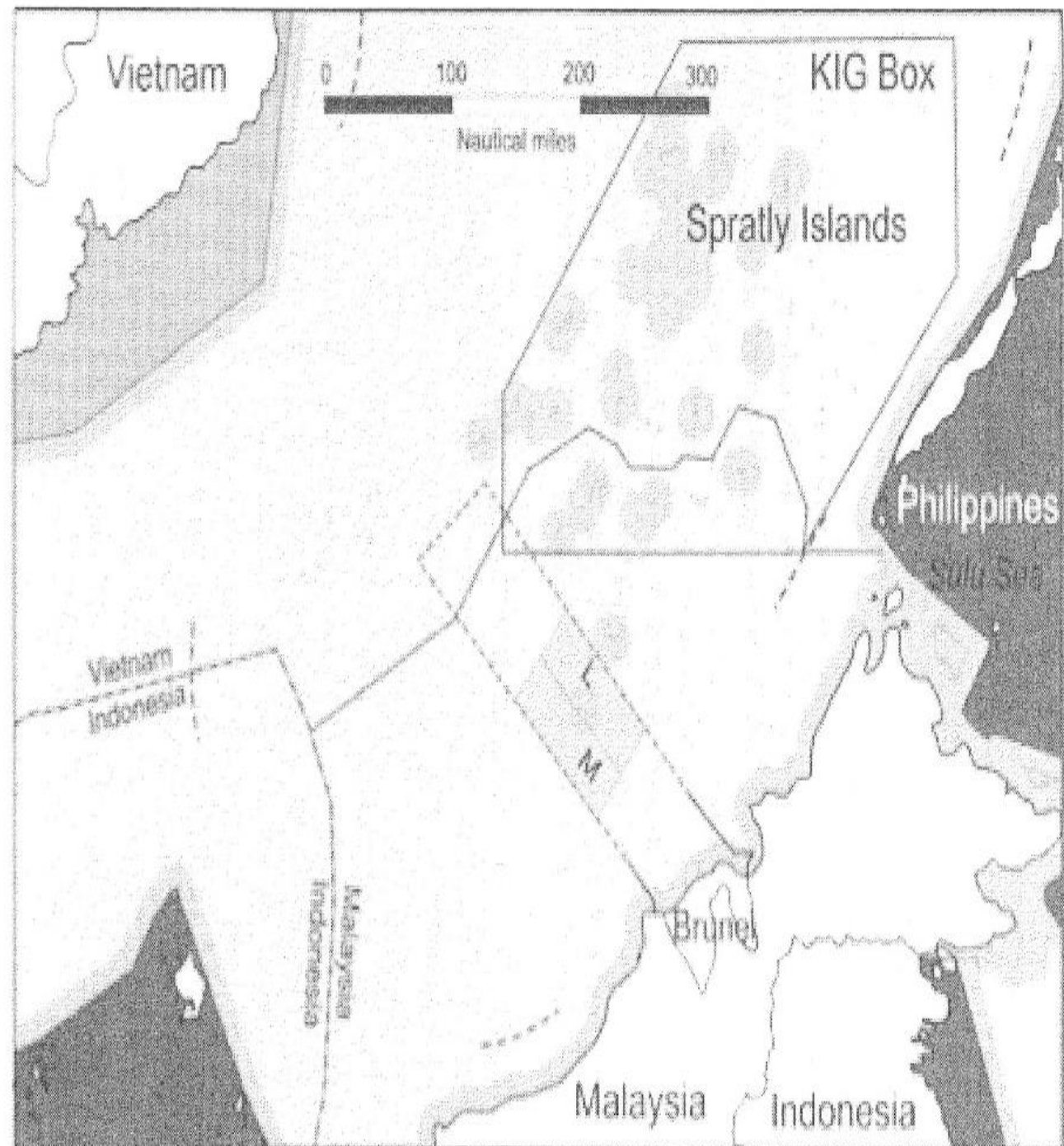
JDA'S IN THE GULF OF THAILAND

Malaysia & Thailand

- est. by 1979 MOU / 1990 JDA
- complex institutional framework:
 - Joint Authority with regulatory powers within JD area
 - special petro. regime
- 50/50 sharing of costs and benefits
 - 10% royalty on gross to JA, 50-60% cost recovery for contractor
 - 50/50 profit share

Source: Beckman, et. al. 2013

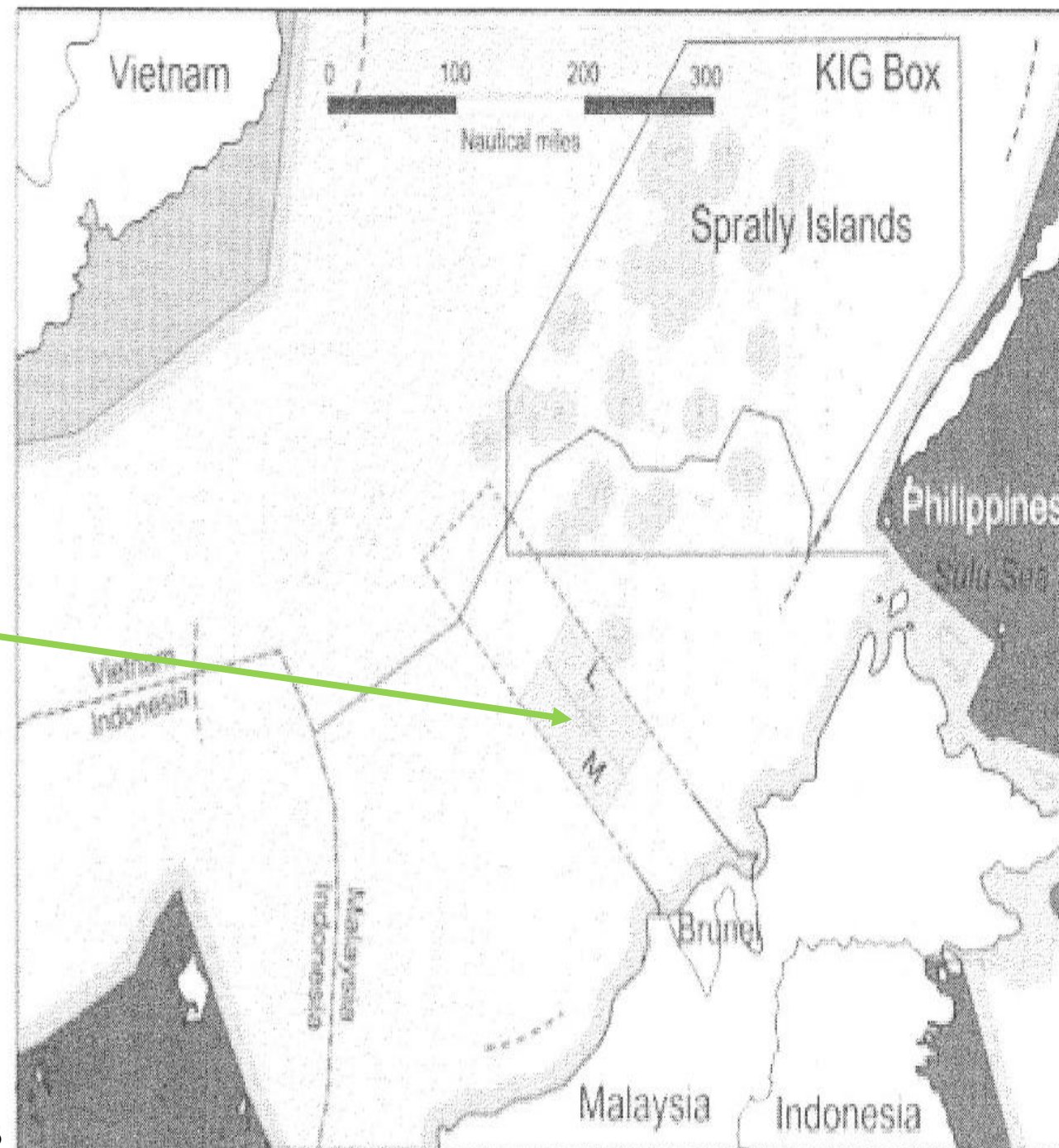
2009
MALAYSIA-BRUNEI
ARRANGEMENT



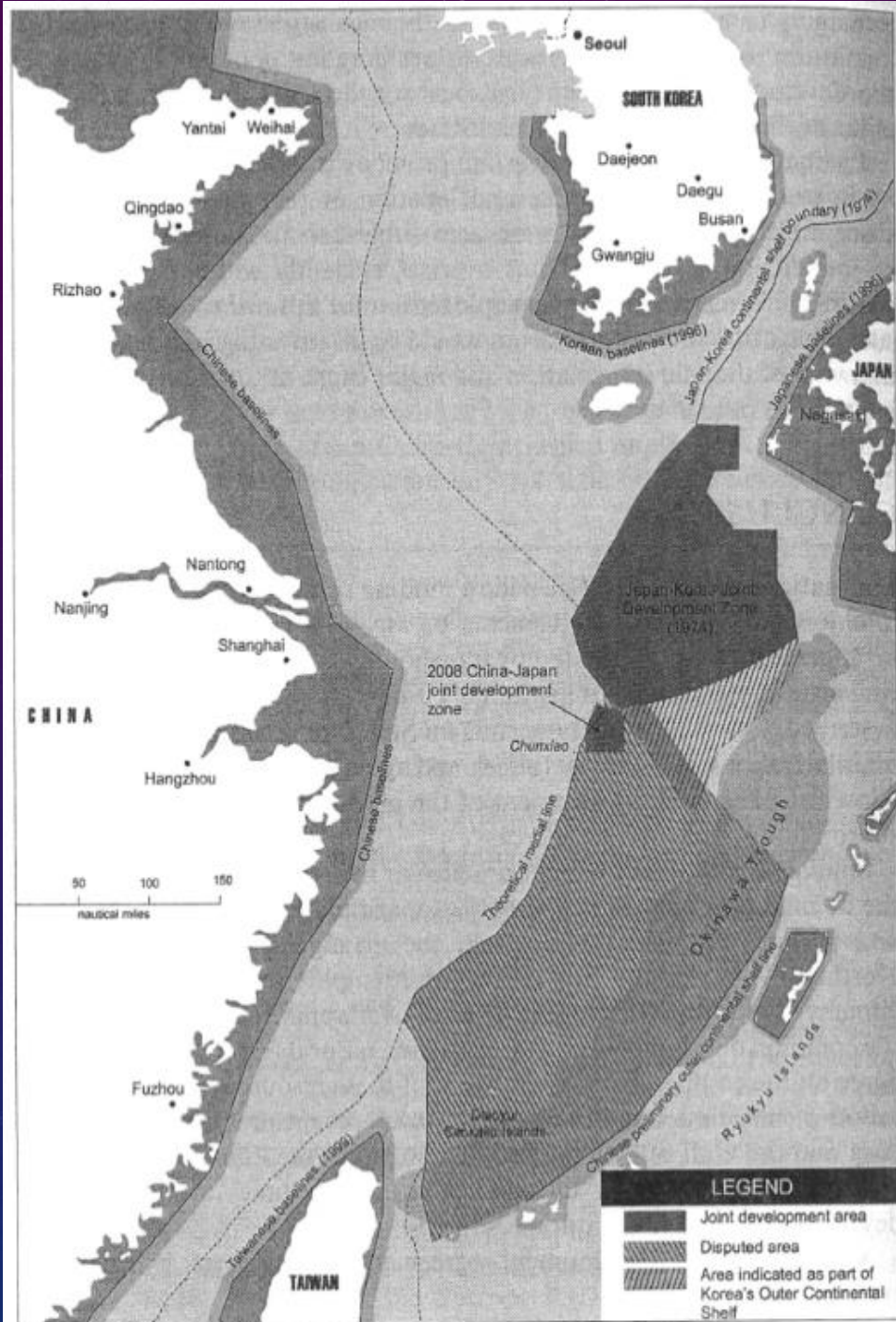
Source: Beckman, et. al. 2013

2009 MALAYSIA-BRUNEI ARRANGEMENT

- est. by 2009
- Exchange of Letters
- joint commercial arrangement between parties:
 - coordinated contracting of 2 blocks
 - sharing of costs and benefits not revealed



JDAS IN NORTH EAST ASIA

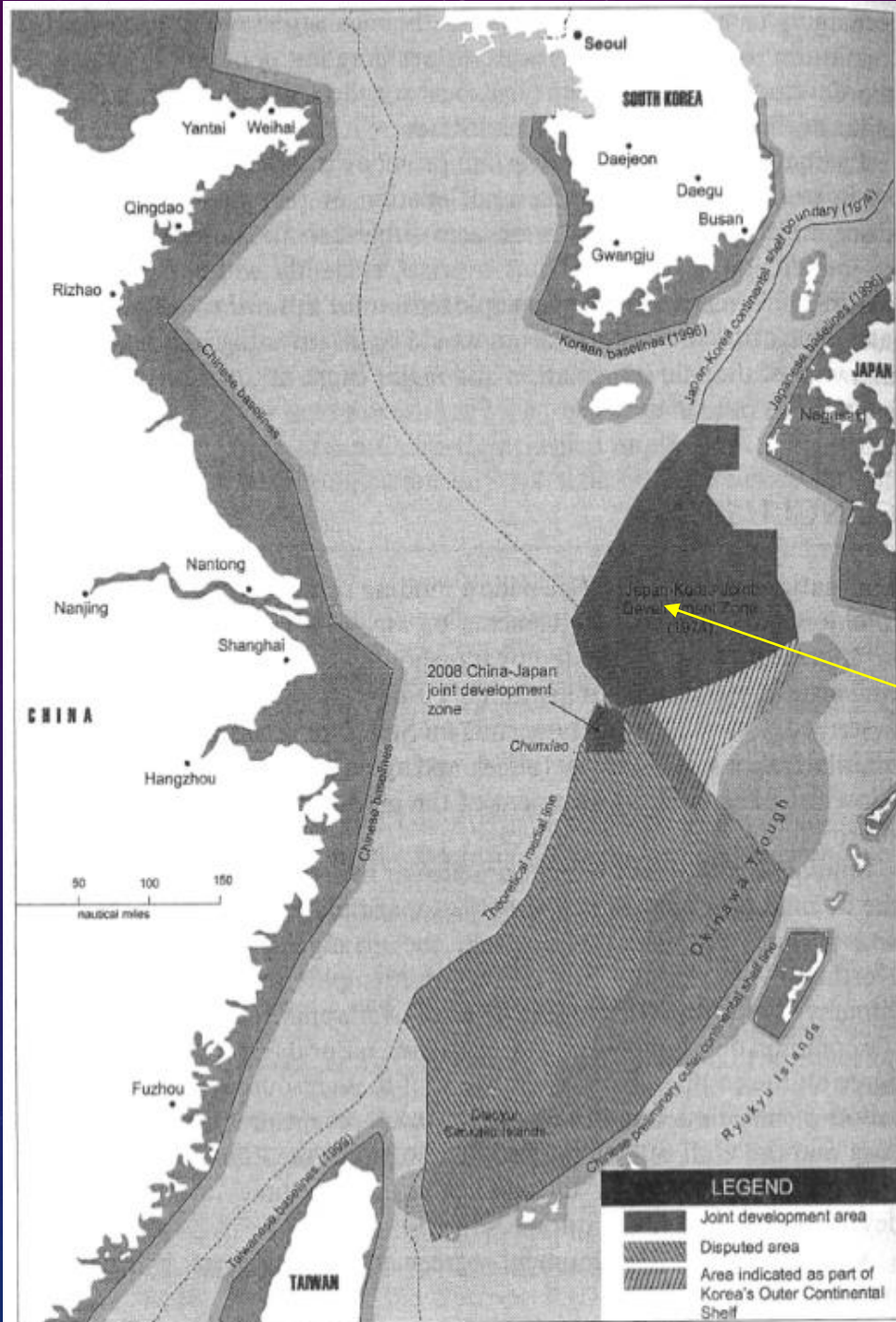


Source: Beckman, et. al. 2013

JDAS IN NORTH EAST ASIA

Japan & South Korea

- est. by two 1974 Agreements
- simplified institutional arrangements:
 - Joint Commission, recommendatory function
 - concessionaires authorized by parties to enter into operating agreements, designate operator
- 50/50 sharing of costs and benefits

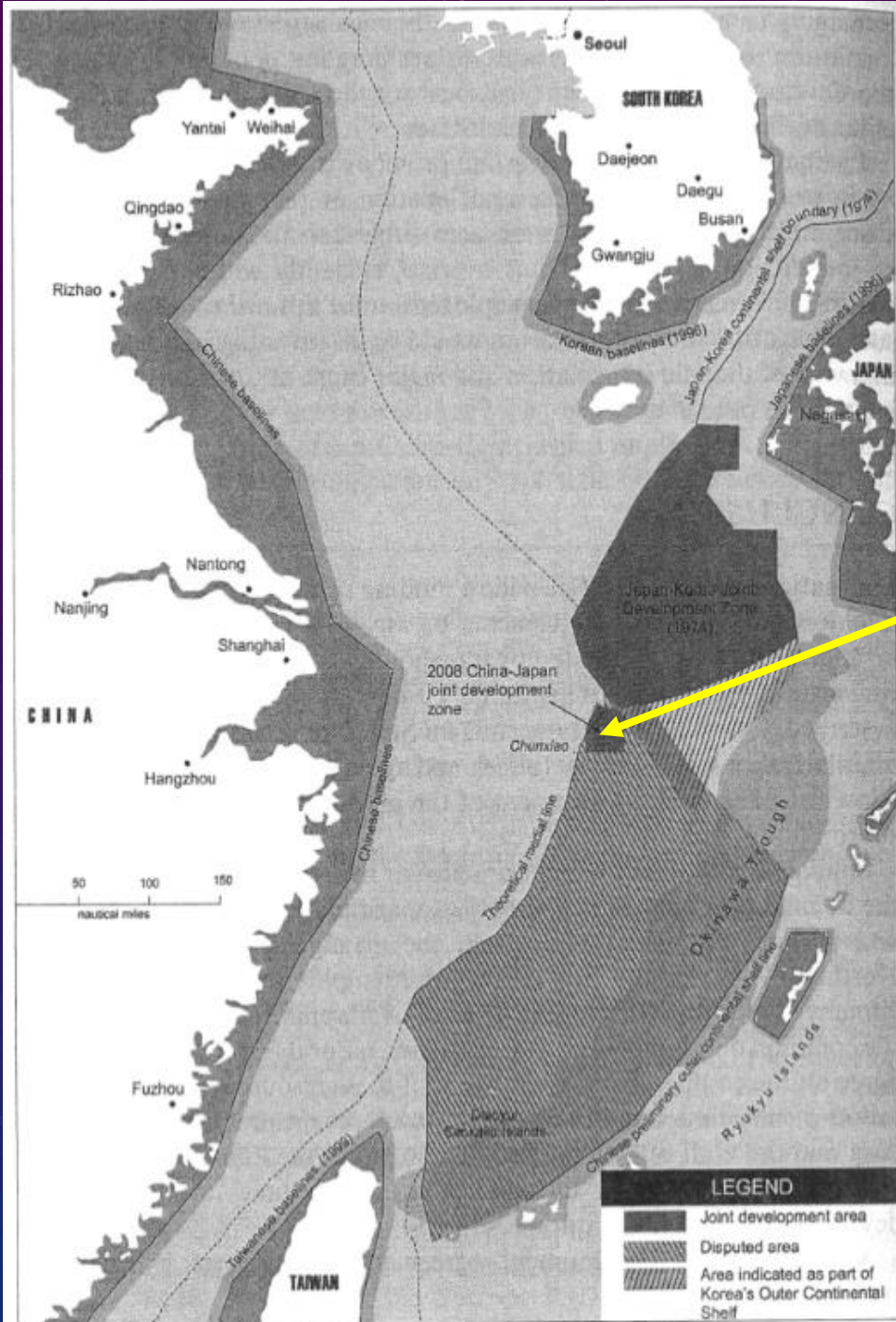


Source: Beckman, et. al. 2013

JDAS IN NORTH EAST ASIA

Japan & China

- est. by 2008 agreement
- only preparatory stage reached
- stalled by current tensions





CHINA-VIETNAM AGREEMENT IN THE GULF OF TONKIN

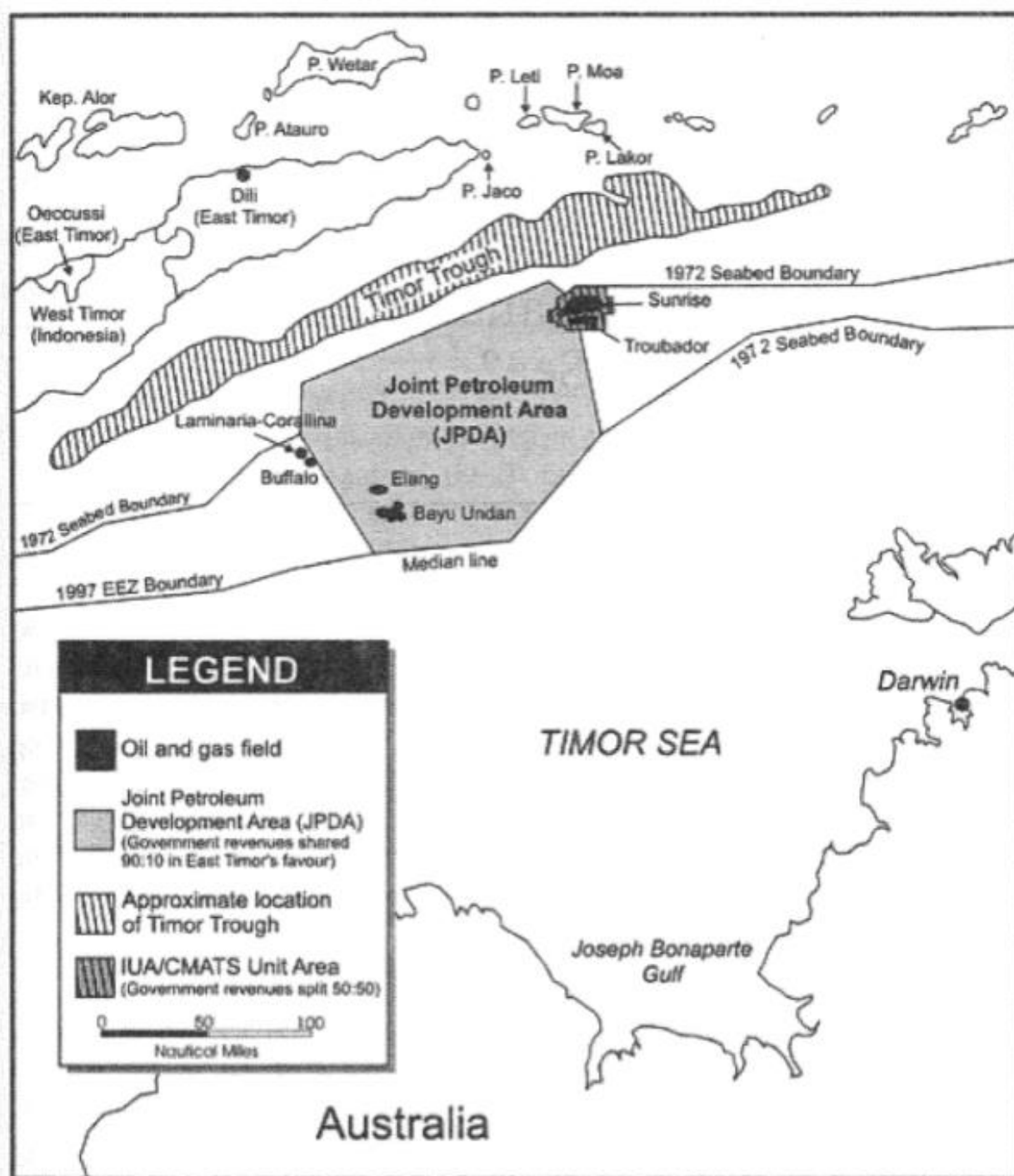
Source: Beckman, et. al. 2013



CHINA-VIETNAM AGREEMENT IN THE GULF OF TONKIN

- est. by 2000 agreement
- commitment to agree on hydrocarbon regime
- 50/50 sharing of profits
- stalled(?)

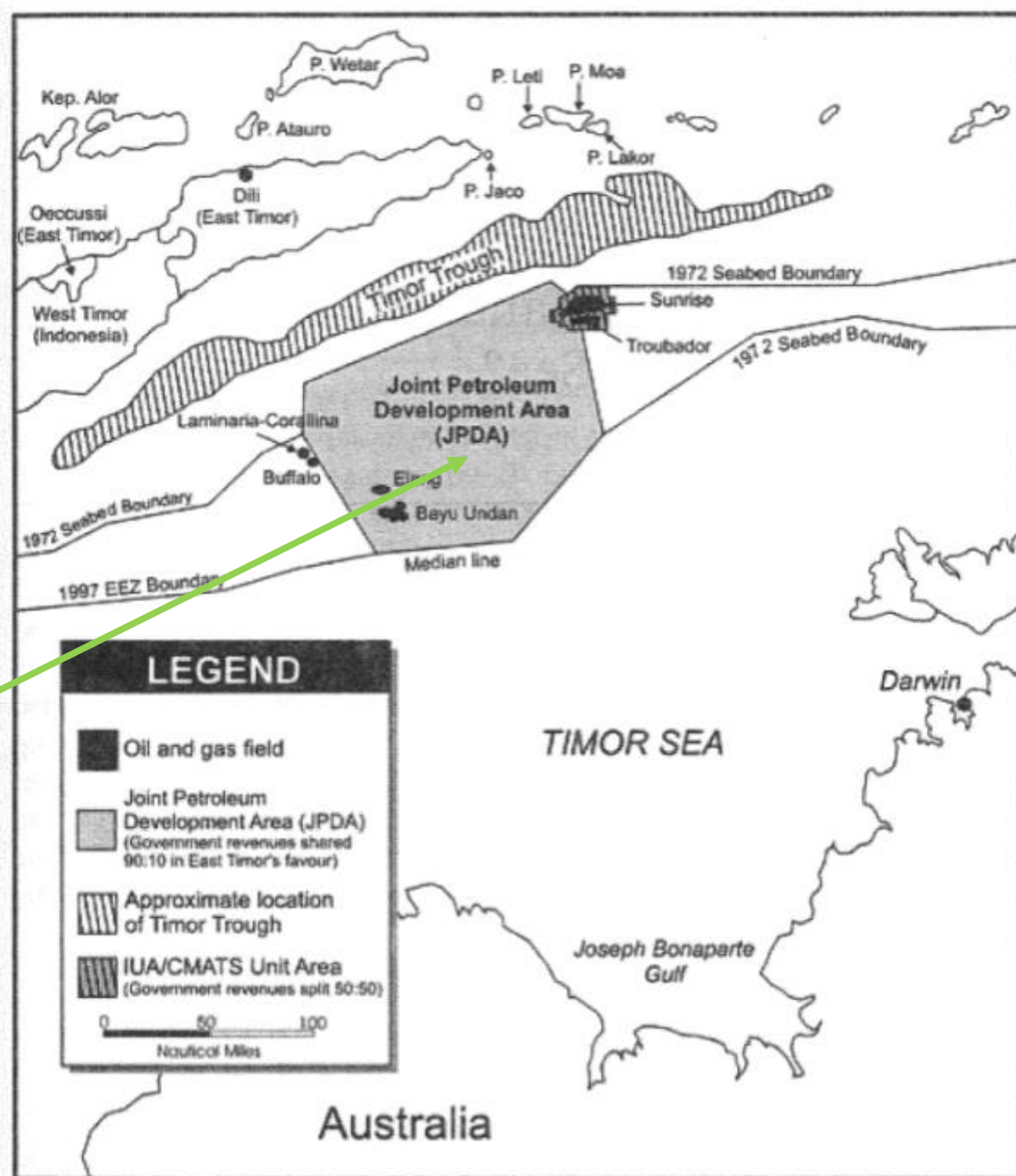
THE TIMOR SEA TREATY



Source: Beckman, et. al. 2013

THE TIMOR SEA TREATY

- est. by 1974/1994 treaties
- complex institutional arrangements:
 - Joint Commission, Designated Authority with regulatory functions
 - Timor Leste laws apply
- 90/10 sharing of costs and benefits in favor of Timor Leste
- Ongoing conciliation; will be re-negotiated



THE TORRES STRAIT TREATY

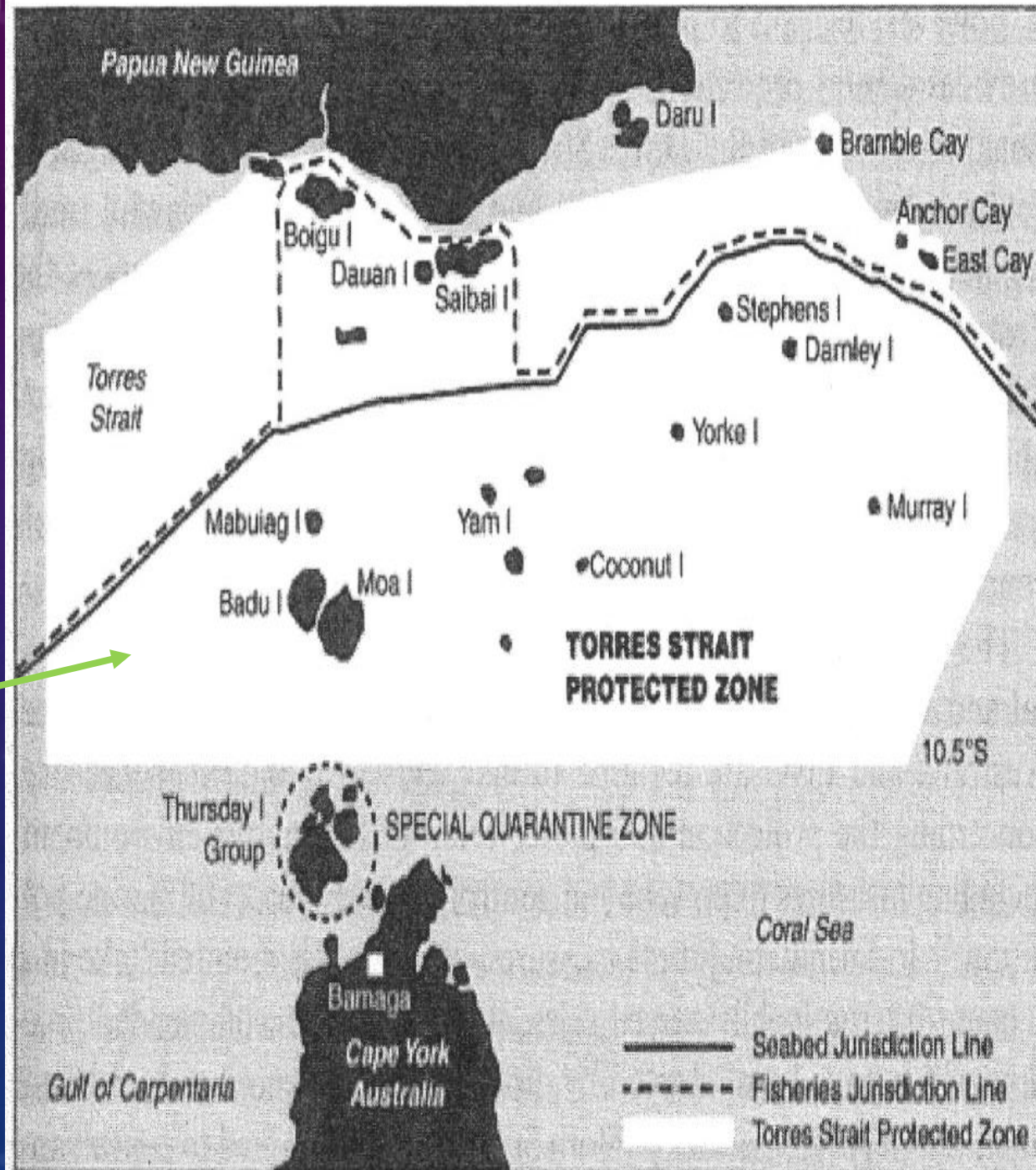


Source: Beckman, et. al. 2013

THE TORRES STRAIT TREATY

- est. 1978
- complex institutional arrangements
 - different lines for seabed, water, depending on purpose, but clearly separated
 - fisheries juris. separate from juris. over hydrocarbons
 - consideration for traditional fishing and free movement
- drilling suspended indefinitely

Source: Beckman, et. al. 2013



KEY CHALLENGES

- JD feasibility and progress directly correlates with state of relations between Parties
 - continuing and stable relations precondition for smooth implementation
 - No guarantee of better relations
- Agreement text, very important
 - specificity of expectations and obligations required otherwise will be subject of additional dispute
- Joint institutional arrangement needed for management of JD
- Information on resource reserves possibly pivotal
- Presumption of JD: legitimacy of claims, acknowledgment of possible rights