

The Philippines and joint development in the South China Sea by Jeffrey Ordaniel

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On the sidelines of the recently concluded [35th ASEAN Ministers on Energy Meeting](#) in Manila, the Philippines' energy secretary announced that state-owned Philippine National Oil Company (PNOC) and China National Offshore Oil Corporation (CNOOC) intend to follow their 2006 agreement on hydrocarbon exploration in the eastern side of the South China Sea. Some reports cite the deal as a sign that Manila and Beijing have moved forward with joint development in disputed waters. Yet, while the agreement says a lot about improving bilateral relations between the two countries since Duterte came to power, it does not really indicate a change of approach by China. Beijing still seems intent on ignoring the July 2016 arbitral ruling. Nevertheless, if China is serious about its long-held preference for bilateralism and for "shelving sovereignty disputes in favor of joint development," it must seize this chance with the Philippines, and use the current momentum to build a successful case. That means moving forward with actual joint exploration inside the nine-dash lines, which would require compromise and adherence to international law.

The deal between PNOC and CNOOC, crafted under Philippine law, involves the awarded Service Contract (SC) 57. It covers over 2,700 sq. miles of maritime space located around 31 miles from the northwestern-most tip of the Philippines' Busuanga Island. CNOOC's farm-in agreement with Manila's state-owned oil company, which includes a Malaysian partner, does not cover areas inside Beijing's nine-dash lines, perhaps the biggest reason why this deal was possible. SC 57 is entirely within the Philippines' 200-nm exclusive economic zone (EEZ) and therefore not considered a joint exploration. Manila still cannot operationalize service contracts inside its EEZ that are within China's nine-dash lines, such as SC58, immediately west of SC57. Nevertheless, Manila has indicated that bilateral meetings are happening and joint development will become a reality. In essence, there is mutual interest to pursue joint development, though technical details remain scarce. Philippine Foreign Secretary Alan Cayetano said, "I can't talk. Sometimes it's part of other cooperation agreements."

Looking back: JMSU Deal

This is not the first time that the Philippines has adopted China's preference in a dispute. On March 15, 2005, the Philippines, China and a reluctant Vietnam signed the "Tripartite Agreement for Joint Marine Scientific Research in Certain Areas in the South China Sea," or the Joint Seismic Marine Undertaking (JMSU). The joint exploration project initially began as a Sino-Philippine initiative, and covered an

area of 55,168 sq. miles west of Palawan, more than 9,000 sq. miles of which were undisputed Philippine waters, if measured from Palawan's baselines. JMSU expired in July 2008 when domestic politics in the Philippines could no longer accommodate Chinese preferences. JMSU was supposed to serve as a confidence building measure as provided for by the 2002 China-ASEAN Declaration on the Conduct of Parties in the South China Sea, and as a test case for joint exploration of disputed waters. It failed in both.

First, secretive diplomacy by the government in Manila meant that there was insufficient public scrutiny prior to JMSU's signing. One clause reads, "this agreement and all relevant documents, information, data and reports" shall be kept confidential for eight years. According to the Philippine Center for Investigative Journalism, JMSU was directly [connected](#) to the \$904.38 million package of investment pledges from China that included the graft-ridden Northrail construction and NBN-ZTE broadband deal, projects that were eventually cancelled. In short, Beijing made it clear to Manila that the multi-million dollar investment package was possible only if JMSU was carried out. Then-President Gloria Arroyo, desperate to quickly show economic development amidst legitimacy issues, needed those investments. But those projects resulted in corruption scandals, and she subjected undisputed areas to exploration by another state. As a result, JMSU became so unpopular that renewal was virtually impossible.

Second, JMSU circumvented the Philippine Constitution (Sec. 2 of Article XII), which mandates that the exploration, development, and utilization of natural resources "shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens." To get around this provision, the Arroyo government crafted the wording of the deal to avoid any mention of "joint exploration." Instead, it was called a joint seismic undertaking and joint scientific research, and not "joint exploration." It was eventually brought before the Philippine Supreme Court but no decision has been rendered.

The way forward

China and the Philippines should learn from history and adjust their approaches if they still believe in "shelving sovereignty disputes in favor of joint development." First, Manila and Beijing should abandon secret diplomacy. Second, both sides should separate dispute management from their overall economic relationship. And third, joint development should begin with areas outside each other's EEZs measured from their own respective baselines.

Secret diplomacy could result in unpleasant surprises, and legal challenges in the Philippines. When Cayetano told the

press that he should not talk publicly about the matter and that joint exploration initiatives could be part of other cooperation agreements with China, it sounded like JMSU all over again. Manila and Beijing should be transparent in their dealings to avoid a repeat of the JMSU fiasco.

Beijing and Manila should also separate the South China Sea dispute from overall Sino-Philippine relations. In other words, the Chinese should refrain from linking the deal to development loans and investment pledges. China should know that as Southeast Asia's fastest growing major economy, the Philippines has alternatives with fewer political strings. If China insists on linking development aid to joint exploration deals heavily favorable to itself, the Filipinos could easily turn to other overseas development assistance (ODA) sources, like Japan.

Finally, joint development in the South China Sea should begin in areas that are outside disputed EEZs but are within the nine-dash lines. This would allow Manila and Beijing to pursue joint exploration and development of energy resources without violating each other's domestic laws and the UN Convention on the Law of the Sea (UNCLOS). For instance, there is a sizable maritime space in the Spratlys that is outside the EEZ of any littoral state in the South China Sea, per the July 2016 ruling, and which was covered by the JMSU. Those areas should be explored first.

Since Deng Xiaoping, China has been pursuing joint development in disputed waters with little success. Neighboring countries have always been suspicious of the Chinese government. While the SC57 deal is not setting a precedent for future Sino-Philippine joint exploration agreements, it does show increased trust and confidence between the two countries and represents political capital useful to jumpstart a separate negotiation for an actual joint exploration in an area actually located inside the nine-dash lines. Barring impeachment or resignation, a China-friendly Filipino government will last at least until 2022. There is no better time for Beijing to establish a successful case of joint development in the South China Sea, which can serve as a model for endeavors with other countries.

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