



Time to Revive the Joint Marine Seismic Undertaking in the South China Sea?

By Carlos Santamaria / *Issue Briefings* 15 / 2016

A decade ago, China and the Philippines demonstrated that they had the resolve to cooperate on joint exploration projects, but nationalist outcry in the Philippines derailed these efforts. Now that the Philippines v. China arbitration case has concluded, reviving the Joint Marine Seismic Undertaking (JMSU) or a similar program may once again offer a win-win solution.

The dust has begun to settle after the Tribunal in the Philippines v. China arbitration case ruled in favor of the Philippines regarding its 200-nautical mile Exclusive Economic Zone (EEZ) in the South China Sea and declared that China's historic nine-dash line claims have no lawful effect where they exceed its entitlements under UNCLOS.¹ Now, both countries must figure out how to move forward with their disputes under the new administration of President Rodrigo Duterte in the Philippines, including through joint exploration as suggested by China.² Just days before the verdict was handed down, newly appointed Philippine Foreign Secretary Perfecto Yasay announced³ that the Philippines and China could "share" resources such as potential oil and natural gas reserves as well as fishing grounds within the EEZ. Following a nationalist uproar

over these and subsequent comments, Sino-Philippine relations remain at a low.

This is a far cry from the situation a bit over a decade ago, when both countries along with Vietnam signed the Joint Marine Seismic Undertaking (JMSU), a landmark agreement to jointly explore the EEZ in search of the huge potential oil and gas reserves that most geologists believe lie under the South China Sea.

China and the Philippines agreed on the first version of the JMSU in 2004, and a year later Vietnam decided to join the accord under the framework of the 2002 ASEAN-China Declaration on the Code of Conduct (DOC) in the South China Sea, as the exploration area off the coast of Palawan overlapped its own claims in the Paracel Islands. The agreement avoided directly mentioning sovereignty, and only stated that it

¹ Spangler, Jonathan and Olga Daksueva (eds.), "Philippines v. China Arbitration Case: Summary of the Philippines' Submissions and Tribunal's Awards," South China Sea Think Tank, July 14, 2016, <<http://scstt.org/features/2016/863>>.

² Ranada, Pia, "Duterte: China offering to build Manila-Clark railway in 2 years." Rappler, June 21, 2016, <<http://www.rappler.com/nation/137177-duterte-china-build-manila-clark-railway>>.

³ Malakunas, Karl and Ayee Macaraig. "Philippines willing to share South China Sea." Agence France-Presse/ABS-CBN News, July 8, 2016, <<http://news.abs-cbn.com/news/07/08/16/philippines-willing-to-share-south-china-sea-yasay>>.



shall not undermine the basic position held by the government of each party on the SCS issue.⁴ Furthermore, the JMSU was limited to marine scientific research, and it did not include any provision on exploiting resources in the area.

The JMSU Tripartite Agreement was signed on March 14, 2005 by the presidents of the national oil companies of China, the Philippines, and Vietnam in a ceremony in Manila. The parties agreed to survey the seabed for potential hydrocarbon deposits as part of an overall strategy to turn the disputed area into a zone of peace, stability, cooperation, and joint development under the non-binding DOC and the UN Convention on the Law of the Sea. The survey—which included a three-phase program of data gathering, consolidation, and interpretation of two-dimensional seismic data—started in August 2005 but was not extended after the second phase ended in June 2008. Joint exploration efforts were carried out over three years in a 143,000-sq.-km area of the South China Sea, about 80% of which is within the Philippine-claimed EEZ. Costs were shared equally and amounted to \$7.14 million.⁵

China provided a number of economic incentives for the Philippines to accept the deal.⁶ Although the terms were never made public, it is

widely suspected that then House Speaker Jose de Venecia, at the time a close ally of President Gloria Macapagal Arroyo, returned from a visit to Beijing with generous Chinese commitments in terms of official development assistance, soft loans to upgrade infrastructure, and investment plans including funds for two expressways, a railway project, and a national broadband network to be installed by Chinese telecommunications provider ZTE.⁷ None of this is surprising considering that Arroyo's term in office has been called the 'golden age' of ties with China, which at the time was also aware that the Philippines was failing to attract international investors to develop indigenous oil and gas fields off Mindanao and Palawan.

Nationalist Outcry

When the agreement was announced in the Philippines, the opposition almost immediately called it a sellout of national sovereignty to China. Arroyo was accused of treason for allowing China and Vietnam to survey the EEZ seabed, arguing this would undermine any future sovereignty claims.⁸ The sovereignty issue was at the heart of the lack of political support for the deal, despite the fact that the Philippines is the partner that stands to benefit the most from oil and gas

⁴ International Crisis Group, "Stirring up the South China Sea (IV): Oil in Troubled Waters," *Asia Report* 275, January 26, 2016, p. 18.

⁵ Thao, Nguyen Hong and Ramses Amer, "A New Legal Arrangement For The South China Sea?," *Ocean Development & International Law* 40(4), 2009, p. 338.

⁶ Yung, Christopher D. and Patrick McNulty, "An Empirical Analysis of Claimant Tactics in the South China Sea," *Strategic Forum* 289, August 1, 2015, p. 5.

⁷ Bower, Ernest, "The JMSU: A Tale of Bilateralism and Secrecy in the South China Sea," *Southeast Asia from the Corner of 18th & K Streets* 1(23), July 27, 2010, <<https://www.csis.org/analysis/jmsu-tale-bilateralism-and-secrecy-south-china-sea>>..

⁸ Mak, J. N., "Sovereignty in ASEAN and the problem of maritime cooperation in the South China Sea," in *Security and International Politics in the South China Sea*. Bateman, W. S. G and Ralf Emmers (eds), London: Routledge, 2009, p. 121.



exploration given the country's lack of energy resources.

Another problem was lack of transparency. The opposition in Manila accused Arroyo of shady tradeoffs that violated the Constitution, and when the government finally decided to make public the results of the survey in late 2007 it was already too late. The Arroyo administration was further embarrassed when a foreign journalist exposed⁹ the supposedly secret location of the expedition.

The murkiness of the deal gave the opposition yet another reason to impeach Arroyo, whose popularity had plummeted by early 2008 amid allegations her husband had profited from the botched \$329 million ZTE broadband accord leaked by De Venecia, whose son Joey was pushed out of the deal by First Gentleman Mike Arroyo. The president decided to protect her spouse by replacing De Venecia Sr. as House Speaker and pushing to pass the Archipelagic Baselines Law to alleviate the public uproar over sovereignty concessions to China and Vietnam. The law was finally passed in February 2010, shortly before Arroyo stepped down, and now legally "restricts the government from entering into future JMSU-like agreements without due process".¹⁰ Nationalist critics also denounced the JMSU for breaching the 40% cap on foreign

ownership of any business venture established by the 1987 Constitution, and claimed that the agreement should never have been approved by a government agency like the Philippine National Oil Company (PNOC) without having been ratified first by the Senate. While Senate ratification is mandatory for any international agreement, the JMSU was signed by then PNOC Chairman Eduardo Manalac, a veteran expert who enjoyed a relationship of mutual trust with the Chinese¹¹ and had worked for Conoco Phillips in China.

The political infighting in the Philippines was underpinned by nationalism. The rise and fall of the JMSU demonstrates how agreements for functional cooperation can be perceived as weakening a state's sovereignty claims. Even other ASEAN member states criticized the Philippines for selling out to China, despite the fact that multilateral cooperation is a viable technical solution that follows the ASEAN approach to conflict management. Sovereignty is therefore the fundamental problem. As we have seen with other territorial disputes in Asia and elsewhere, nationalism can become a major stumbling block for conflict resolution and functional cooperation, since public expressions of nationalism destroy political will and work against cooperation and dialogue that might be

⁹ Wain, Barry, "Manila's Bungle in The South China Sea," *Far Eastern Economic Review*, January/February 2008, <http://www.viet-studies.info/kinhte/Manila_South_China_Sea.htm>.

¹⁰ Bower, Ernest, "The JMSU: A Tale of Bilateralism and Secrecy in the South China Sea," *Southeast Asia from the Corner of 18th & K Streets* 1(23), July 27, 2010.

¹¹ Baviera, Aileen S. P., "The Influence of Domestic Politics on Philippine Foreign Policy: The case of Philippines-China relations since 2004," S. Rajaratnam School of International Studies, *RSIS Working Paper Series* No. 241, June 5, 2012.



perceived as compromising national sovereignty.¹²

Duterte and China

As is customary in Philippine politics, President Benigno Aquino sought out to reverse most of Arroyo's policies when he became president in 2010. He almost immediately adopted a more aggressive policy on the South China Sea that influenced his administration's handling of the 2012 Scarborough Shoal standoff, the Philippines' push for ASEAN to press China harder on the dispute, and finally the decision to pursue international arbitration over the EEZ. These actions were met with strong domestic support and placated nationalists, but they infuriated Beijing and led to the lowest point in bilateral relations with China since diplomatic ties were established in the 1970s.

Enter new President Rodrigo Duterte, a tough-talking former mayor elected last May to replace Aquino and who is unfazed by the opposition. Before and after the award in the arbitration case, Duterte and his top diplomat Yasay repeatedly made it clear they want to try a new way of dealing with China in regards to the SCS, which could include China funding the construction of a railway between Manila and the former US airbase in Clark in exchange for resuming joint

exploration, probably in the Reed Bank, which is well within the Philippine EEZ as concluded by the Tribunal but not recognized by China. Another sign that the new administration may consider reviving the JMSU or pushing for a similar scheme is that Duterte is open to reforming certain provisions of the 1987 Constitution, among them the 60/40 corporate ownership law, so joint exploration efforts could eventually lead to an eventual partnership to exploit potential oil and gas reserves. The timing seems right, but the devil is in the details.

Maritime cooperation has largely failed as an alternative mechanism for conflict resolution in the South China Sea. Fear of losing sovereignty—especially of areas potentially rich in hydrocarbon resources—means states see ownership of these zones “in zero-sum terms”¹³ and are reluctant to share resources they feel they are fully entitled to. In the Philippines, nationalist politicians are wary of China's intentions, and suspect Beijing wanted to use the JMSU “as a springboard to extend their claims into other hydrocarbon-rich areas well beyond the scope of the agreement”.¹⁴ National sovereignty concerns extend to the other ASEAN members (Brunei, Malaysia and Indonesia), diplomatically isolated by an agreement that broke ranks within the bloc and thus threatened ASEAN unity at the time on the South China

¹² Bateman, W. S. G and Ralf Emmers, *Security And International Politics In The South China Sea*, London: Routledge, 2009, p. 241.

¹³ Mak, J. N., “Sovereignty in ASEAN and the problem of maritime cooperation in the South China Sea,” in *Security and International Politics in the South China Sea*. Bateman, W. S. G and Ralf Emmers (eds), London: Routledge, 2009, p. 121.

¹⁴ Heydarian, Richard J., “Dear President Duterte: Blueprint for an Independent Philippine Foreign Policy,” *Huffington Post*, June 12, 2016, <http://www.huffingtonpost.com/richard-javad-heydarian/dear-president-duterte-bl_b_10432094.html>.



Sea.¹⁵ On the other hand, China insists that disputes should be set aside to pursue joint exploration.¹⁶

After six years of confronting China, Duterte now wants to pursue a different Philippine foreign policy on the South China Sea. However, rapprochement and the possibility of renewing joint exploration with China has been met with fierce opposition from some nationalists, especially those who believe the arbitration ruling has settled the case once and for all. Despite China's rejection of the award, Beijing seems willing to work with the Duterte administration, especially if the ruling is set aside for now.

Not Time ... Yet

Joint exploration could navigate around the current impasse, but reviving the JMSU or negotiating a similar agreement will not be easy. On one hand, seismic surveys of the seabed in the South China Sea are bound to happen at some point to appraise the potential reserves, but whether those activities are unilateral, bilateral or multilateral is an entirely different matter. On the other hand, even if the three governments are willing to have another go at it, oil-rich claimant states will oppose it as they fear sharing their own resources in the future. Moreover, the JMSU was implemented during a time of excellent bilateral ties between China and the Philippines, during

which the issue of sovereignty was shelved, unlike the current situation marked by a high level of tensions and a legal ruling that has infuriated China and made the Philippines uneasy about how to use it as leverage.

There are, however, reasons for optimism moving forward. Beijing's political motivation and Manila's economic incentives for maritime cooperation have not changed. Given that the Malampaya gas field will soon be exhausted and that local oil executives are eager to resume development in the Reed Bank, Manila may have no other option but to reach an accord with Beijing to start drilling in the offshore field, which could contain as much as 8.8 trillion cubic feet of gas, three times more than Malampaya, which provides 40% of the power for the main Philippine island of Luzon. However, a suspension order on drilling by local company Philex and CNOOC in the Reed Bank has been in effect since December 2014, and even if it is lifted, foreign firms are not willing to risk going in without China's explicit or at least tacit approval, so some industry players are open to reviving the JMSU with CNOOC.¹⁷

If bilateral ties do improve under the Duterte administration, the Philippines may see the award not as a silver bullet but as a tool to negotiate better terms with China. As for nationalist pushback in the Philippines, Duterte enjoys far

¹⁵ Roberts, Christopher, "China and the South China Sea: What Happened to ASEAN's Solidarity?," *IDSS Commentaries*, April 26, 2005.

¹⁶ Shen, Hongfang, "South China Sea Issue in China-ASEAN Relations: An Alternative Approach to Ease the Tension." *International Journal of China Studies* 2(3), December 2011, pp. 585-600.

¹⁷ Dela Cruz, Enrico, "Philippines' oil still in troubled waters after South China Sea ruling." Reuters, July 22, 2016, <<http://www.reuters.com/article/us-southchinasea-ruling-philippines-ener-idUSKCN1020HK>>.



wider congressional and popular support than Arroyo did in 2008, and over the next six years he will have to nominate several Supreme Court justices who may rule in his favor if the constitutionality of an eventual JMSU-type deal is again questioned by the opposition.

For joint exploration to return as a viable alternative for conflict management in the South China Sea, China should first abandon current unilateral exploration efforts in contested areas such as CNOOC drilling activities in the Paracel Islands and, when a more conducive environment is restored, commit to not harassing Filipino fishermen within the Philippine EEZ.¹⁸ Notwithstanding the (unlikely) possibility that the Philippines will agree to China's request to not discuss the arbitral award when both sides eventually sit down to talk, it is not in anyone's interest for China to force a military resolution of the conflict. Under this assumption, there is scope to pursue confidence-building measures that in the near future may lay the groundwork for reviving the JMSU or a similar type of agreement for joint exploration in the South China Sea. Since it may not be the right time yet for proposals such

as a regional organization in which claimants would pool funds to conduct joint exploration missions, at this point it seems wiser to support Track II discussions about viable cooperation frameworks like the workshops hosted by Indonesia and funded by Canada in the 1990s, confidence building measures within ASEAN, or working first on 'softer' types of deals like a fisheries agreement as a first step before proceeding to oil and gas.

An analysis of the JMSU experience demonstrates that joint exploration can work, but only when sovereignty concerns are set aside, diplomatic ties are stable, and the risk of conflict is low. While nationalist forces contributed to derailing the deal over a decade ago, it is still in the interest of the Philippines to determine if its seabed does in fact hide the enormous reserves of crude oil and natural gas that geologists have predicted. If the new Philippine government can learn from the mistakes of the past and look to the future without animosity and with a true spirit of cooperation, reviving the JMSU could be a win-win solution – in the long term.

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¹⁸ Tiezzi, Shannon, "Vietnam to China: Move Your Oil Rig out of the South China Sea," *The Diplomat*, April 9, 2016,

<http://thediplomat.com/2016/04/vietnam-to-china-move-your-oil-rig-out-of-the-south-china-sea/>.

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