

Joint Development in the South China Sea:

Lessons from the Past and Future Prospect

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I. Introduction

The South China Sea is often said to be rich in hydrocarbon reserves, although most of the deposits are unconfirmed, due in part to the multiple claims laid over them by several coastal economies. China (and Taiwan) claim sovereignty over all the islands. Vietnam, the Philippines, Malaysia, and Brunei each claim some of the land features. In addition, China also claims unspecified sovereign rights within a so-called “nine-dash line”, the area in which significantly overlaps exclusive economic zones (EEZs) asserted by the other claimants and Indonesia.¹ Available estimates of the hydrocarbon reserves vary greatly, partly due to the difficulty to survey in disputed waters.

Exploratory activities have long been a major cause for frictions, which—traditionally played out in unseen courts of diplomacy—have intensified in recent years into confrontations at sea.² In 2011, Chinese law enforcement vessels and fishing boats skirmished with Philippine or Vietnam seismic surveillance ships.³ In May 2014 Beijing deployed a deep-water drilling rig into waters disputed with Hanoi, triggering a two-month standoff at sea by dozens of vessels and violent anti-China protests in Vietnam. Although tensions cooled after China withdrew the rig in July and restored high-level bilateral diplomacy, relations have yet to fully recover.⁴

Beijing, however, has left Malaysia and Brunei largely unbothered, although many of Malaysia’s natural gas fields are located within China’s nine-dash line. Neither did it object to an agreement by Malaysia and Brunei to jointly develop energy resources in an area that all three claim.⁵ The differential treatment likely reflects Beijing’s implicit appreciation of Malaysia’s and Brunei’s downplaying of their disputes with China, and resentment of Hanoi and Manila’s efforts to rally international support for their struggles with Beijing.⁶

II. China’s March to the Sea

A. “Three Buckets of Oil”

China’s appetite for fossil fuels in the South China Sea grew with its hunger for energy, its overall foreign policy assertiveness and its technical capabilities. Collectively nicknamed the “three buckets of oil”, the national oil companies (NOCs)—China National Offshore Oil Corporation (CNOOC), China National Petroleum Corporation (CNPC), and China Petroleum & Chemical Corporation (Sinopec)—have led the march. Their eagerness to develop the South China Sea has been driven by potential political gains as much as economic interests, and intensified by competition among themselves.

¹ “Note Verbale to the Secretary-General of the United Nations with regard to the joint submission made by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf”, People’s Republic of China, CML/17/2009, 7 May 2009.

² For a history of hydrocarbon-driven frictions in the South China Sea, see Bill Hayton, *The South China Sea: The Struggle for Power in Asia*, (New Heaven and London, 2014), pp. 121-150.

³ *Stirring Up the South China Sea (II)*, Regional Responses, *International Crisis Group*, 23 April 2012, pp. 14-16.

⁴ *Stirring Up the South China Sea (III)*, A Fleeting Opportunity for Calm, *International Crisis Group*, 7 May 2015pp. 4-13, 20-23.

⁵ *Stirring Up the South China Sea (II)*, op. cit., p. 16.

⁶ Author interviews, Chinese analysts, Beijing, August and October 2014.

The NOCs are under the supervision of the State-owned Assets Supervision and Administration Commission (SASAC) of the State Council, but the Central Organisation Department of the Chinese Communist Party (CCP) appoints their top executives, who are also the companies' leading party cadres and typically rank at the vice ministerial-level.⁷ It is not rare for NOC executives to ascend to prominent political positions.⁸ Economic and commercial interests, therefore, may not be the only drivers when NOC executives make business decisions. "They could have hoped to use achievement in South China Sea to propel their political careers," said a Chinese maritime policy analyst.⁹

CNOOC is China's largest offshore oil and gas producer and was established in 1982 with the exclusive right to offshore exploration, development, production and sales.¹⁰ Due to technical constraints and political consideration, CNOOC's operations in the South China Sea were confined to shallow and undisputed waters until recently.

CNOOC lost its offshore monopoly in 2004, when CNPC obtained permissions from the government to explore and develop eighteen South China Sea blocks, some in the disputed Spratly region. Sinopec was reported to have also submitted applications for offshore permits, including in areas in the South China Sea. A competition among the three NOCs in the South China Sea began.¹¹ Executives lobbied the government for permission and support, often in the name of asserting Chinese sovereignty.

In 2008, CNOOC decided to invest about \$32 billion in the following ten to twenty years in developing the South China Sea, which CEO Fu Yucheng declared a "priority". During the National People's Congress session the following March, delegate and CNOOC executive Song Enlai urged the central government to boost policy and financial support for deep-water exploration in the South China Sea, a task he said had acquired urgency as other claimant countries were engaged in "predatory exploitation" in Chinese waters.¹² During that year's Chinese People's Political Consultative Conference, held at the same time as the congress, delegate and former CNPC Vice President Jia Chengzao said, "China already has the technical capability for large-scale oil and gas exploitation in the South China Sea. It is necessary for the state to treat it as a priority and provide policy support".¹³

The share of imports exceeded 50% in China's oil consumption in 2009, prompting the National Development and Reform Commission to convene experts to evaluate the prospect hydrocarbon exploitation in the South China Sea in early 2010. Soon after, Sinopec allotted about \$28.3 million to acquire a surveillance vessel to enhance its maritime exploratory capability. The three NOCs' race in the South China Sea intensified.¹⁴

Despite their enthusiasm, drilling far away from the Chinese shore is politically sensitive when disputes are involved, technologically demanding where the water is deep and far from the logistical base, and financially risky when the deposits are unproven. A Chinese energy analyst said in 2011 that "China would rather go to Africa", as drilling in the South China Sea was "too troublesome".¹⁵ The NOCs at the time also lacked indigenous capability for drilling in areas deeper than 300 metres. Providing logistical support to oil platforms thousands of kilometres from China's coast could be technically challenging and financially prohibitive.

Back then, Beijing implicitly placed a higher priority on good neighbourly relations, quietly calling off controversial projects. In 1994, CNOOC abandoned a joint exploration project with U.S. firm Crestone Energy near the Spratlys after Vietnam protested.¹⁶ In 2009, Sinopec backed away from a plan to drill the following year in an area dis-

⁷ Kjeld Erik Brødsgaard, "Politics and Business Group Formation in China: The Party in Control?" *China Quarterly*, September 2012, pp. 633-634. Wang Yupu (王玉普), who was appointed chairman of Sinopec in May 2015, retained his ministerial-level ranking from his previous position as deputy secretary of the party leadership group and vice president of the Chinese Academy of Engineering. "三桶油同日宣布换帅 中石化送走改革派迎来技术派", 《新京报》 ["Three buckets of oil" announce changes to commanders same day, Sinopec sent off reformist and welcomes technocrat], *The Beijing News*, 5 May 2015.

⁸ Zhou Yongkang, CNPC general manager from 1996 to 1998, for example joined the leadership top rank by becoming a member the CCP's Politburo Standing Committee in 2007 and China's domestic security czar. In retirement, however, he fell to corruption charges in 2015. "周永康简历", 人民网 ["Resume of Zhou Yongkang," *People's Daily* (online)], 29 July 2014. "Profile: China's fallen security chief Zhou Yongkang", *BBC*, 11 June 2015.

⁹ Author interview, Beijing, October 2014.

¹⁰ Lianying Feng, Yan Hu, Charles A.S. Hall and Jianliang Wang, *The Chinese Oil Industry: History and Future*, (Springer, New York, Heidelberg, Dordrecht, and London, 2013), pp. 36-37.

¹¹ "中石油'出海'悄然获批 三大巨头展开海上角逐", 《北京晨报》 ["CNPC quietly obtains permit to 'put out to sea', three giants begin maritime competition"], *Beijing Morning Post*, 7 July 2004.

¹² "宋恩来代表: 建议加大南海油气资源开发力度 [Rep. Song Enlai: Suggest Strengthening Oil and Gas exploration in the South China Sea]", *China.com*, 10 March 2009.

¹³ "中石油前副总: 中国已具备大规模开发南海油气田能力 [Former CNPC VP: China has capability for large-scale oil and gas exploitation in South China Sea]", *chinanews.com*, 9 March 2009.

¹⁴ "中石化挺进深海, 10.6 亿新购海洋物探船", 《21 世纪经济报道》 ["Sinopec marches toward deep-water, spends 1-billion on maritime surveillance vessel"], *21 Century Business Herald*, 6 August 2010.

¹⁵ Author interview, Hainan, November 2011.

¹⁶ Author interview, Hainan, November 2011.

puted with Vietnam, after Hanoi protested upon anonymous company sources leaking the information to the press.¹⁷

That is to say, exploration of the South China Sea could not take off without the state providing policy support and underwriting the risk. Such government sponsorship materialized as China grew richer, more powerful, hungrier for energy, and bolder in its quest for resources in the South China Sea. The year 2012 in hindsight proved pivotal. “The 12th 5-Year Plan for the Development of National Strategic Emerging Industries”, issued by the State Council that year, included the goal of obtaining indigenous capability for the design and manufacturing of deep-water resources exploitation equipment by 2015.¹⁸ During the 18th party congress in November that year when the CCP completed its once-in-a-decade leadership transition, the party stated it as its goal to build China into “a maritime power”.¹⁹ In June, responding to Vietnam passing a maritime law with new navigation regulations covering the disputed Parcel and Spratly Islands, CNOOC offered oil exploration leases in nine blocks located within the disputes areas for bidding.²⁰

It may not be a total coincidence that Haiyangshiyou (HYSY) 981, China’s first indigenously designed and manufactured ultra-deep-water semi-submersible drilling platform, began operations May 2012, drilling its first well in the Liwan gas field, 198 nautical miles from Hong Kong. Ten years and roughly \$1 billion in the making, the oil rig is owned by CNOOC and operated by its subsidiary China Oilfield Services and said to leapfrog China’s deep-water drilling capability from 300 to 3,000 metre in depth.²¹ Despite the fanfare, however, HYSY981 spent part of 2013 in repairs.²²

Said to be “born for the South China Sea”, HYSY 981’s mission has been more than commercial from the beginning. Upon its commission, then CNOOC Chairman Wang Yilin called the drilling platform “mobile national territory” that would help “ensure our country’s energy security, advance maritime-power strategy and safeguard our nation’s maritime sovereignty”.²³ In May 2014, China deployed the HYSY 981 to waters 17 nautical miles from the south-western-most island in the Parcel group, also claimed by Beijing.²⁴

The ferocity of Vietnam’s pushback and a chorus of regional criticism prompted Beijing to quietly adjust its tactics, and become more judicious with HYSY981’s deployment.²⁵ It was sent to the Bay of Bengal February to April 2015.²⁶ In June, it was again deployed to an area where Chinese and Vietnamese claims overlap, but on the Chinese side of the medium line between the two countries’ coasts. Hanoi thus largely remained mute.²⁷

China, however, has hardly given up its ambition in developing the South China Sea. In July 2015, construction of HYSY 982 began. Expected to be delivered in the second half of 2016, HYSY 982 is said to be a sixth generation deep-water semi-submersible drilling rig specifically designed to survive “hazardous weathers in the South China Sea”.²⁸ Nor have the NOCs been the only ardent supporters and participants.

¹⁷ “中石化计划明年在南海钻探第一口深水油气井”, 《东方早报》[“Sinopec plans to drill the first deep-water oil and gas well in the South China Sea”, *Dongfang Daily*], 17 June 2009. Author interview, Chinese maritime strategy analyst, Beijing, October 2014.

¹⁸ “The 12th 5-Year Plan for the Development of National Strategic Emerging Industries”, article 4, State Council, 9 July 2012.

¹⁹ “十八大在京开幕 胡锦涛作报告”, 财新网 [“Eighteenth part congress opens in Beijing, Hu Jintao delivers report”, *Caixin* (online)], 8 November 2012.

²⁰ “中海油公布南海招标区块”, 中新社 [“CNOOC announced SCS blocks open for bids”, *China News Service*], 27 June 2012.

²¹ “我国首座深水钻井平台“海洋石油 981”首钻成功”, 新华社 [“China’s first deep-water drilling platform ‘HYSY 981’ successfully conducts first drill”, *Xinhua News*], 9 May 2012; “海洋石油 981’建造记: 为南海而生”, 《瞭望东方周刊》[“The building of ‘Haiyangshiyou 981’: Born for the South China Sea”, *Oriental Outlook*], 21 July 2014.

²² James Manicom, “The Energy Context behind China’s Drilling Rig in the South China Sea”, *China Brief*, Vol. 14, Issue 11, 4 June 2014.

²³ “中国骄傲: 记“海洋石油 981”深水半潜式钻井平台”, 《经济日报》[“China’s pride: The story of “Haiyangshiyou 981” deep-water semi-submersible drilling platform, *Economic Daily*], 8 August 2012; “China’s first deep-water drilling platform ‘HYSY 981’ successfully conducts first drill”, *op. cit.*

²⁴ *Stirring up the South China Sea (III)*, *op.cit.*, p. 4.

²⁵ *Ibid.*

²⁶ “海洋石油 981’孟加拉湾完成海外首秀”, 《人民日报》[“‘HYSY 981’ completes its first overseas drilling in the Bay of Bengal”, *People’s Daily*], 13 April 2015.

²⁷ “中国再次在南海部署“海洋石油 981”钻井平台”, 财新网 [“China redeploys ‘HYSY 981’ in South China Sea”, *Caixin* (online)], 27 June 2015. “China’s HD-981 Oil Rig Returns, Near Disputed South China Sea Waters”, *The Diplomat*, 27 June 2015. Author interview, Vietnamese analyst, Hanoi, August 2015.

²⁸ “大船集团‘海洋石油 982’钻井平台开工 [DSIC began construction of ‘HYSY981’]”, *chinaship.cn*, 27 July 2015.

B. Hainan Province

China's island province Hainan proclaims to have governed all of South China Sea islands and the surrounding waters since 1988.²⁹ Its officials often come from maritime background. Current governor Liu Cigui served as director of the State Oceanic Administration and political commissar of the coast guard.³⁰

A booming resort island, Hainan relies on natural gas for power generation and transportation. It is highly dependent on CNOOC production from the South China Sea and faces a growing supply and demand deficit. As of 2011, offshore fields supplied 97 per cent of the island's annual natural gas consumption.³¹ In 2014, CNOOC estimated Hainan's annual natural gas consumption had grown to 5.6 billion cubic meters' (bcm) while the supply remained at 4.4 bcm, leaving a deficit of 1.2 bcm filled with imported LNG.³²

Unsurprisingly, Hainan has long pushed for more aggressive development of the ocean. In January 2006, then Hainan's Governor Wei Liucheng, formerly CEO of CNOOC, proposed to promote tourism, far-sea fishing and energy exploration in the South China Sea as part of the province's next five-year development plan.³³ In March that year, during the 4th session of the 10th National Political Consultative Conference, Hainan delegates proposed a bill calling for expanding exploration southward in the South China Sea further away from the Chinese shore, stating that such a step would be vital to the defense of China's maritime rights and interest.³⁴

In 2014, Hainan's Political Consultative Standing Committee proposed to "push the central government to partially decentralize the rights of energy development in the South China Sea; support Hainan's participation in the development of South China Sea...actively support CNPC, CNOOC and Sinopec's energy surveillance and development in the South China Sea...and encourage large-scale offshore oilfield service companies to set up offices in Hainan."³⁵

C. The Ship Builder

China Shipbuilding Industry Corporation (CSIC), also state-owned, is China's largest shipbuilder. It is the manufacturer of the HYSY 981, which was dispatched to waters disputed with Vietnam in 2014. When HYSY 981 was delivered in 2012, it was hailed as a major boost to China's shipbuilding industry, which was facing overcapacity and hung its hope on "a rapid expansion of the offshore equipment market".³⁶

It is only natural then that CSIC has been a strong advocate for hydrocarbon exploration in the South China Sea. During the March 2014 National People's Congress, CSIC Chief Engineer Yan Kai, representing Jiangsu Province, said the lack of Chinese ocean infrastructure has handicapped economic development, including "oil and gas exploitation in central and southern South China Sea". He proposed that China "urgently" build multiple sea bases to provide "comprehensive support" for the development of the South China Sea and the defence of China's sovereign claims.³⁷ Around that time, China began large-scale construction of artificial islands in the Spratlys that Beijing said would serve both civilian and defence purposes.³⁸

²⁹ "Overview of Hainan", provincial government website, http://en.hainan.gov.cn/englishgov/AboutHaiNan/200909/t20090910_7125.html.

³⁰ "Resume of Liu Cigui", Archive of Chinese leaders and officials, <http://cpc.people.com.cn/gbzl/html/121000987.html>.

³¹ "海南迎天然气消费时代, "气荒"问题将解决", 《中国日报》 ["Hainan welcomes the era of natural gas, 'gas famine' will be solved", *China Daily*], 1 August 2011.

³² "海南液化天然气项目完成, 八月底向全岛供气", 《海南日报》 ["Hainan completes LNG project, supply starts island-wide late August", *Hainan Daily*], 7 August 2014.

³³ 卫留成, "关于海南省国民经济和社会发展第是一个五年规划纲要的报告" [Wei Liucheng, "Report on the 11th Five-Year Plan for Hainan's socioeconomic development"], 16 January 2006.

³⁴ "海南全国政协委员联名提议: 加大南海资源开发", 新华社 ["NPCC delegates from Hainan propose to step up development of South China Sea resources", *Xinhua News*], 5 March 2006.

³⁵ "省政协: 海南打造 21 世纪海上丝绸之路南海基", 人民网 ["Provincial Consultative Standing Committee: Hainan to become South China Sea base for 21 Century Maritime Silk Road", *People's Daily* (online)], 21 January 2015.

³⁶ "深水钻井平台运行平稳 造船业角逐海工装备市场", 新华社 ["Deep-water drilling platform operates smoothly, shipbuilding industry competes in offshore equipment market", *Xinhua News*], 24 August 2012.

³⁷ "全国人大代表呼吁提高南海基础设施水平 建议建设南海辐射基地", 中国日报网 ["NPC delegate calls for enhancement of South China Sea infrastructure, proposes construction of South China Sea radius bases", *China Daily* (online)], 9 March 2014.

³⁸ *Stirring up the South China Sea (III)*, op. cit., pp. 7-8.

III. Vietnam's Reliance on Oil

Vietnam ranks fourth in South East Asia for oil and gas production, after Indonesia, Malaysia and Brunei. The bulk of its reserves are offshore in the South China Sea and Gulf of Thailand. The country is a net exporter of crude oil, but a net importer of oil product, with domestic oil consumption increasing year-over-year with its robust economic growth and overall by more than 70 per cent from 2004 to 2013. The country has been self-sufficient in natural gas, but its demand is projected to surpass the supply, particularly in southern Vietnam. Vietnam's 2011 Gas Master Plan includes initiatives to promote natural gas in the primary energy mix, gas production and consumption targets, and detailed infrastructure plans for gas gathering systems, pipelines, and gas processing facilities.³⁹

Post-war Vietnam has given high priority to developing South China Sea's economic resources. A series of policy directives by the top echelon of the Vietnamese Communist Party since the early 1990s specified that "becoming a strong marine economy" was the party's "strategic goal". A number of official documents set guidelines for the development of sea-related industries, especially hydrocarbon and fisheries, for the implementation. The most important has been the "Vietnam Maritime Strategy Toward the Year 2020", adopted by the VCP Central Committee in February 2007, which set the target that sea-related economic activities account for 53-55 per cent of Vietnam's GDP and 55-60 per cent of its exports by 2020.⁴⁰

A. PetroVietnam

Oil and natural gas production is undertaken by Vietnam Oil and Gas Group, known internationally as PetroVietnam and wholly owned by the central government, or through its joint venture with other companies.⁴¹ By the early 2010s, PetroVietnam had become Vietnam's largest corporation, accounting for about twenty per cent of the country's GDP and generating up to 25 to 30 per cent of the government's annual revenue.⁴² The chairman of PetroVietnam is a member of the Central Executive Committee of the Communist Party of Vietnam and the General Director—equivalent to CEO—is appointed by the PetroVietnam Members' Council with the Prime Minister's approval. PetroVietnam thus has a major role in the development for laws, regulations and policy concerning the oil and gas industry.⁴³

Given the outsized share of oil export in Vietnam's overall exports, GDP, and government revenue, recent decline on oil prices put pressure on Vietnam to increase oil production.⁴⁴ PetroVietnam has in recent years intensified its exploration and exploitation activities with the hope of bringing new fields into production in the deep water.⁴⁵

B. Foreign Partners

With claims significantly overlapping those of China's, Vietnam's endeavours into the South China Sea have frequently resulted in frictions with China. Partly to insulate itself from pressure from Beijing, PetroVietnam has actively courted foreign partners, and has signed 100 exploration and production contracts with foreign companies from around the world by 2013.⁴⁶ But Beijing has utilised its economic clout to press PetroVietnam's partners to back out of projects. Leaked U.S. State Department cables revealed Chinese campaigns since 2006 to pressure oil companies such as BP, Chevron, ConocoPhillips, and Exxon Mobile to cancel oil exploration deals with Vietnam. The companies reacted differently. BP and Chevron, both with significant investment in China, halted and cancelled their operations after Beijing delivered warnings—although BP insisted its actions were based on a purely "commercial decision". ConocoPhillips divested its interest in South China Sea blocks. Exxon Mobil, which has limited stakes in China, continued on with exploration together with PetroVietnam, despite Beijing's warnings.⁴⁷

³⁹ "Vietnam country analysis", U.S. Energy Information Administration, updated November 2014. "Oil and gas law in Vietnam: An overview", Norton Rose Fulbright, July 2013.

⁴⁰ Le Hong Hiep, "Vietnam's South China Sea Disputes with China: The Economic Determinants", *The Korean Journal of Defense Analysis*, vol. 2, no. 2, June 2014, p. 178.

⁴¹ "Vietnam country analysis", U.S. Energy Information Administration, updated November 2014.

⁴² Le Hong Hiep, *op. cit.*, p. 179.

⁴³ "Vietnam country analysis", *op. cit.*

⁴⁴ "Vietnam may raise crude oil output in pursuit of economic growth", *Thanh Nien News*, 30 June 2015.

⁴⁵ "Vietnam Sees Oil Output in 340,000 Barrel Range for 'Few Years'", Bloomberg, 1 December 2013. Le Hong Hiep, *op. cit.*, p. 180.

⁴⁶ "Oil and gas law in Vietnam", *op. cit.*

⁴⁷ "2008 Recap of the Sino-Vietnam South China Sea Territorial Dispute", U.S. embassy Hanoi cable, 20 January 2009, as made public by Wikileaks. "China Flexes Might With Energy Giants", *Wall Street Journal*, 16 July 2014. Bill Hayton, *op. cit.*, pp. 121-150.

In 2006, ONGC Videsh (OVL), an Indian state-owned oil exploration corporation, obtained permission from Vietnam to explore several blocks in the South China Sea, including Block 128, located in waters claimed by both China and Vietnam. In 2011, China warned OVL that its exploration activities in Block 128 were illegal and violated China's sovereignty.⁴⁸ In June 2012, OVL sought to abandon its lease on Block 128, citing lack of economic viability for oil exploration. The Indian foreign ministry reportedly pressured the state-owned corporation to maintain its presence in the South China Sea, and OVL has since extended its lease on Block 128 three times. Its current lease will expire in June 2016.⁴⁹ According to Vietnamese analysts, "Chinese pressure has made India dig in and become more determined to work with PetroVietnam," even though the commercial value of the block is questionable.⁵⁰

IV. The Philippines's Hunger for Energy

The Philippines imports more than 90 per cent of its crude oil and petroleum products, as the country produces a minuscule amount domestically. State-owned Philippines National Oil Company (PNOC) is the primary operator in the country's oil and gas industry.⁵¹ The PNOC Chairman is appointed by the President of the Philippines and serves simultaneously as Secretary of the Department of Energy.⁵²

The Malampaya natural gas field—jointly operated by PNOC, Shell and Chevron—is the country's largest source of energy and provides 30 per cent of its power needs.⁵³ But production from Malampaya has been in steady decline since 2012 and the field is expected to deplete by 2020. Without new supply and unable to afford costly liquefied natural gas (LNG) imports, the Philippines will have to rely more heavily on coal for power generation.⁵⁴

Developing new energy sources has proven to be extremely challenging, if not impossible, to the Philippines. Such projects—financially risky, capital intensive and technologically demanding—are impossible without foreign partners, as "even the biggest Philippine company doesn't have that kind of resources or experience."⁵⁵ Most blocks with potential hydrocarbon reserves are "marginal", meaning small, thus unattractive to large conglomerates. The only sizable commercial grade natural gas reserves are located on the Reed Bank, which Manila claims to be part of its EEZ and is within Beijing's nine-dash line.⁵⁶

Therefore, despite five rounds of campaigns offering blocks for bidding since early 2000s, the Philippines failed to attract large investors. "We went around the world to attract bidding. Nobody came. Not a single bid", said Eduardo Manalac, former undersecretary of energy recalling the disappointment after the first round of bidding that opened in 2003. He relayed that many foreign companies stayed away because they feared that maritime boundary dispute with China would jeopardise their investment. "We throw a party and nobody came", Manalac later recalled with chagrin.⁵⁷

In fact, the companies' concerns about Chinese interference have proven to be justified. Forum Energy, a UK incorporated upstream oil and gas company with a focus on the Philippines, acquired a 70 per cent interest in a service contract awarded by the Philippine government for the exploration of block Service Contract 72 (SC-72), on the Reed Bank. Formerly known as the Sampagua field, SC-72 is known for indications of natural gas based on previous drilling by PNOC. After obtaining the requisite license and contract, Forum began seismic surveillance of the area in 2011. In March that year, two Chinese law enforcement vessels confronted a Philippine surveillance and maneuvered aggressively to force it to leave the area.⁵⁸

Exploration has since stalled. In fact, Forum Energy confirmed in March 2015 that the Department of Energy had ordered it to halt activities on SC72, as the area is subject to an UN arbitration that Manila had initiated against

⁴⁸ "ONGC gets one-year extension to explore Vietnam block in South China Sea", *The Economic Times*, 27 August 2015.

⁴⁹ "ONGC looks for equity partner in Vietnam project", *livemint.com*, 6 April 2014. "ONGC gets one-year extension to explore Vietnam block in South China Sea", *op. cit.*

⁵⁰ Author interviews, Hanoi, August 2015.

⁵¹ Created by presidential decree in 1973 following the global oil crisis, its original mission was to secure an adequate supply of oil, and its charter was later amended to include oil exploration and development. The company later branched out into gas and other areas as a "total energy" company. "About PNOC", company official website.

⁵² Author interviews, former and current officials at the Philippine Department of Energy, Manila, June 2015. Confirmed in review of recent PNOC Chairmen from PNOC website.

⁵³ "The Philippines Country Analysis", U.S. Energy Information Administration, updated December 2014.

⁵⁴ Author interview, attorney and former senior official at the Department of Energy of the Philippines, Manila, June 2015.

⁵⁵ Author interview, former undersecretary, Philippine Department of Energy, Manila, June 2015.

⁵⁶ Author interview, attorney and former senior official at the Department of Energy of the Philippines, Manila, June 2015.

⁵⁷ Author phone interview, Eduardo Manalac, former undersecretary, Philippine Department of Energy, June 2015.

⁵⁸ "Philippines halts tests after China patrol challenge", BBC, 8 March 2011.

Beijing in January 2013.⁵⁹ Energy department officials said the order came from the Department of Foreign Affairs, which is concerned that exploration at the Reed Bank would undermine Manila's position in arbitration.⁶⁰

Ironically, Chinese NOCs have become the Philippines' best and only hope to develop natural gas reserves on the Reed Bank. Therefore, parallel to a history of frictions and confrontations, hydrocarbon exploration in the South China Sea has also been a tale of repeated attempts at cooperation.

V. Joint Development

"Setting aside disputes and pursuing joint development" has been a central and enduring component of China's proposition for managing maritime disputes since the 1970s. The policy, coined by Deng Xiaoping, proposes that "when conditions are not ripe to bring about a thorough solution to a territorial dispute, discussion on the issue of sovereignty may be postponed", while "the territories under dispute may be developed in a joint way".⁶¹ Subsequent Chinese leaders have repeatedly promulgated "joint development" as an effective means of managing South China Sea disputes.⁶²

The concept thus has acquired hefty political significance and has become a habitual and obligatory policy prescription by Chinese analysts. "China is very keen on joint development, even if it's just a symbolic gesture and nothing of substance is achieved. It shows China's contribution to maintaining regional peace and promoting regional cooperation," said a Chinese analyst on Asia-Pacific security.⁶³ But because the concept has been endorsed by a long succession of leaders, objective analysis of the obstacles it faces can be politically perilous. Instead, Chinese analysts often cursorily attribute the lack of success to rival claimants' preference for unilateral development at China's expense.

A. Obstacles

1. China's Precondition

The other claimants have their concerns. Beijing's proposition comes with a precondition: "The sovereignty of the territories concerned belongs to China."⁶⁴ Such a term makes other claimant countries balk, fearing that participating in joint development would amount to consenting to Chinese sovereignty. "Vietnam and other countries can't accept that," said a Vietnamese foreign ministry official.⁶⁵ A Philippine politician said, "In principle we are open to joint development, but the dilemma is that joint development necessitates we recognize hereto unrecognized claims of China."⁶⁶

2. Vietnam's Suspicion

The undefined nature of Chinese claims present another obstacle, especially to Vietnam, which deeply mistrusts China and 60 to 70 per cent of whose claimed EEZs overlaps with the area included in China's nine-dash line. The line loops down from the Chinese coast to take in most of the South China Sea's surface area— 60 to 90 per cent depending on the assumed geographic extent of the sea.⁶⁷ Beijing has not clarified the geographic coordinates, the sovereign rights it intends to claim within the line or its legal basis. The line also contradicts a fundamental principle—known as "the land dominates the sea"—of the 1982 United Nations Convention on the Law of the Sea (UN-

⁵⁹ "DOE stops oil drilling in West Phl Sea", *The Philippine Star*, 4 March 2015. On events leading to Manila initiating the arbitration case and its aftermath, see *Stirring up the South China Sea (III)*, op. cit., pp. 14-19.

⁶⁰ Author interviews, Manila, June 2015.

⁶¹ "Set aside dispute and pursue joint development", Chinese foreign ministry.

⁶² As recently as November 2014, Chinese premier Li Keqiang promoted the concept at the East Asia summit in Naypyitaw. "李克强: '双轨思路'处理南海问题", 《新京报》 ["Li Keqiang: 'Dual-track thinking' for South China Sea issues, *The Beijing News*], 11 November 2014.

⁶³ Author interview, Beijing, October 2014.

⁶⁴ "Set aside dispute and pursue joint development", op. cit.

⁶⁵ Author interview, Hanoi, September 2014.

⁶⁶ Author interview, Manila, September 2014.

⁶⁷ Based on the definition by the International Hydrographic Organization of the South China Sea, bordered, clockwise from the north, by China, Taiwan, the Philippines, Malaysia, Brunei, Indonesia, Singapore, Thailand, Cambodia and Vietnam, the U.S. Department of State estimates the nine-dash line encompasses 62 per cent of the South China Sea. "China: Maritime Claims in the South China Sea", *Limits in the Sea*, no. 143, U.S. Department of State, 5 December 2014, p. 4. "Limits of Oceans and Seas", International Hydrographic Organization, 1953, pp. 30-31. Media reports often refer to estimates of 80 to 90 per cent. See, for example, "Analysis, China's nine-dashed line in South China Sea", Reuters, 25 May 2012.

CLOS).⁶⁸ According to the principle, a coastal State claims maritime zones based only on land territory over which it has sovereignty.

Hanoi therefore fears that participating in joint development with China, without establishing according to the UNCLOS truly disputed areas, would amount to recognising the legality of the nine-dash line. A Vietnamese foreign ministry official commented:

Joint development is one of the practical and provisional steps towards settling disputes. But the number one thing we need to do is to verify claims. If a partner can't show me which area it claims with reasonable legal ground, we can't do joint development. We can't accept ambiguous claims without clarification. We can't just accept some dotted lines.⁶⁹

Without receiving Beijing's clarification, Hanoi suspects that "China wants the greater South China Sea to be open to joint development and wants to develop on Vietnam's EEZ", especially the resource rich area in the south.⁷⁰ "Vietnamese people and leaders see that as our backyard. It's what we own. Someone comes in and say we want to do joint development in your backyard. It's not acceptable."⁷¹

3. The Philippine Law

Oil and gas exploration and development involving foreign companies are governed in the Philippines by the constitution of 1987 and The Oil Exploration and Development Act of 1972. The constitution stipulates that the exploration, development, and utilization of natural resources be under the full control and supervision of the State. The State may enter into co-production, joint venture, or production-sharing agreements with private companies, but Filipino citizens, corporations or associations have to own at least 60 per cent of the total capital.⁷² In addition, the Oil Exploration and Development Act specifies that the government retain at least 60 per cent of the net profit.⁷³ Collectively, the Philippine law stipulates that at least 60 per cent of capital for and net proceeds from the exploitation of petroleum resources should be Filipino—known as the 60/40 rule. The law, however, allows the government to provide a variety of financial incentives to the investing companies, including service fees, cost reimbursement, and tax exemption.⁷⁴

The net effect is that foreign investors could still receive financially advantageous contracts despite the 60/40 rule. But when it comes to joint development in disputed waters, agreeing to abide by the Philippine law would mean consenting to Filipino majority ownership of the project and the resources concerned and imply accepting Philippine sovereignty.⁷⁵

Late 2014, a bill was introduced in the Philippine Congress to loosen the 60/40 rule in the constitution. Known as the Charter change—or Cha-cha—resolution, the legislation would add the phrase "unless provided by law" in the foreign-ownership provision. That is to say, Congress would be able to enact laws to modify or remove the 60/40 rule. Proponents argued that constitutional restrictions on foreign ownership impeded investment and thwarted economic development. Opponents charged that the Cha-cha resolution would lead to foreign possession of Philippine land.⁷⁶ Despite support by the Aquino administration and among businesses, the resolution's prospect appears dim, especially with politicking heating up ahead of the May 2016 general election. "Waiting for it to succeed is like waiting for the sun to become the moon."⁷⁷

Yet despite these obstacles, there have been attempts at joint development albeit with scant success.

B. Attempts at Joint Development

Despite diplomatic, political and legal obstacles, there have been attempts among claimants at joint development.

⁶⁸ More on the nine-dash line and its contradiction with UNCLOS, see *Stirring up the South China Sea (I)*, op. cit., pp. 3-4.

⁶⁹ Author interview, Hanoi, September 2014.

⁷⁰ Author interview, Vietnamese foreign ministry official, Beijing, September 2014.

⁷¹ Author interview, Vietnamese scholar, Hanoi, September 2014.

⁷² "The 1987 Constitution of the Republic of the Philippines", Article XII, section 2, 2 February 1987.

⁷³ Presidential Decree No. 87, section 18.b, 2 October 1987.

⁷⁴ Presidential Decree No. 87, sections 8, 12, October 1972

⁷⁵ Author interview, Chinese maritime scholar, Beijing, August 2014.

⁷⁶ They also charged that the Char-char resolution was a ploy by Aquino's allies to enable him to run for another term, as it was a gateway to changing another provision in the constitution that limits the terms of the president. "House to fast track constitutional amendments to allow foreign ownership", *The Philippine Star*, 9 February 2015. "House fails to vote on Cha-cha resolution", *The Philippine Star*, 11 June 2015.

⁷⁷ Author interview, attorney and former senior official at the Department of Energy of the Philippines, Manila, June 2015.

1. The Joint Marine Seismic Undertaking

In 2003, Manila was short on options after failing to attract international investors to develop indigenous hydrocarbon resources. “At that time, the situation in the Philippines was such that we imported almost 99.9 per cent of crude oil and petroleum products, mostly for transportation. It was ... the era of \$100 per barrel of oil. We wanted indigenous oil but couldn’t explore ourselves in our backyard,” said Manalac, then PNOC president and CEO and undersecretary of energy. During his tenure at Phillips Petroleum, Manalac worked with Chinese NOCs in joint projects. “I was close to the Chinese companies. My instinct was, why can’t I ask these guys to help out with joint development? So I presented this to the president and she enthusiastically approved of it.”⁷⁸

Then President Gloria Macapagal-Arroyo was presiding over a “golden age” of Sino-Philippine relations underwritten with generous Chinese infrastructure loans.⁷⁹ During her state visit to Beijing in September 2004, PNOC and CNOOC signed the Agreement for Joint Marine Seismic Undertaking (JMSU) to collaborate on seismic surveillance.⁸⁰

The agreement covers an area of 142,886 square kilometres. According to Manalac, the parties tried to look for an area only the two sides claimed but “couldn’t find anything that’s of significant size” due to China’s nine-dash line and Vietnam’s smaller but also substantial claims.⁸¹ The area covered by the bilateral agreement ended up overlapping with Vietnam’s claims. After six months of strong objection, Hanoi reluctantly joined the deal in order to “make the best of an unsatisfactory situation”.⁸²

Under the tripartite agreement, CNOOC collected data using its geological surveillance vessels. The data then was processed in Vietnam and subsequently brought to the Philippines for interpretation. All three parties were present at each step. “One of the strongest incentives of the tripartite agreement was the confidence building among the countries. We worked together to demonstrate it could be done. We succeeded at that,” said Manalac.⁸³

Late 2007 and early 2008, when the JMSU was up for renewal and when surveillance data arrived in the Philippines for interpretation, the agreement faced backlashes. According to a then undersecretary of energy, a press conference was staged in Manila to celebrate “good leads and indications” of commercial-grade deposits. “It was then the media asked about the location of the area and the controversy began.”⁸⁴

Although the size of the area the JMSU covered had been made public, its location was confidential under the terms of the agreement. The deal was accused of secrecy, but the energy official said it was not meant to deceive. “It was done among the companies. The foreign ministries advised the process. The negotiations were very technical...I don’t think it was necessary to divulge everything to the public. It was normal business activities,” he said.⁸⁵

A series of press articles, chief among them one published by the *Far Eastern Economic Review* in early 2008, revealed details of the JMSU, including its location. The author claimed that the Philippines had “made breathtaking concessions in agreeing to the area for study”, alleging that “about one-sixth of the entire area, closest to the Philippine coastline, is outside the claims by China and Vietnam”.⁸⁶

Manalac admitted that the Philippines may have appeared to have made too many concession. “The real question, however, is what’s our national interest? If there’s no joint development, nobody will come to help up develop it. We don’t have the money to explore it ourselves...Who else will com if China claims it?”⁸⁷

Around the same time, public sentiment was turning against Arroyo and Chinese investments, which were criticised for the lack of transparency and suspected of corrupt practices. Arroyo and her husband were accused of corruption in a \$329 million telecommunications deal with a Chinese company.⁸⁸

⁷⁸ Author phone interview, June 2015.

⁷⁹ Aileen S.P. Baviera, “The Influence of Domestic Politics on Philippine Foreign Policy: The case of Philippines–China relations since 2004”, RSIS Working Paper, 5 June 2012.

⁸⁰ “An Agreement for Joint Marine Seismic Undertaking in Certain Areas in the South China Sea by and between China National Offshore Oil Corporation and Philippine National Oil Company”, September 1, 2004.

⁸¹ Author phone interview, Eduardo Manalac, former undersecretary, Philippine Department of Energy, June 2015.

⁸² Quote attributed to Rodolfo Severino, former secretary-general of ASEAN. Barry Wain, “Manila’s Bungle in The South China Sea”, *Far Eastern Economic Review* (January/February 2008).

⁸³ Author phone interview, Eduardo Manalac, former undersecretary, Philippine Department of Energy, June 2015.

⁸⁴ Author interview, Manila, June 2015.

⁸⁵ Author interview, Manila, June 2015.

⁸⁶ Barry Wain, “Manila’s Bungle in The South China Sea”, *Far Eastern Economic Review* (January/February 2008). Other reports specify the one-sixth of the JMSU area in undisputed Philippine territory as approximately 24,000 square miles. For instance, see Yvonne T. Chua and Ellen Tordesillas, “Six RP-occupied islands covered in controversial Spratlys deals”, *Vera Files*, 9 March 2008.

⁸⁷ Author phone interview, June 2015.

⁸⁸ The contract with China’s ZTE Corp. to establish a national broadband network was allegedly overpriced by as much as 100 per cent in order to account for kickbacks to officials, as well as to Arroyo and her husband. Arroyo cancelled the deal in 2008. “Philippine officials implicated in telecom kickbacks”, *The New York Times*, 18 September 2007; “The Philippines: Impeachment Charge”, *The New*

Revelation about the JMSU further energized Arroyo's critics. Opposition lawmakers in congress filed resolutions seeking probes into whether the administration compromised Philippine sovereignty and sold out national territory in exchange for an \$8 billion loan package from China. Some called for the impeachment of the president.⁸⁹

Critics also challenged the constitutionality of the agreement. They alleged that, given the location, the JMSU failed to abide by the 60/40 rule.⁹⁰In addition, opposition lawmakers argued that the JMSU should have been treated as an international agreement rather than a commercial contract, and thus, according to constitutional requirements, required ratification by the Senate.⁹¹

In fact, according to Manalac, those involved in negotiations had foreseen the legal troubles and sought to forestall them with a play on word.

The title of the agreement was Joint Marine Seismic Undertaking. There's no mention of oil exploration, so we said this had nothing to do with petrol exploration. It was an undertaking. The Philippines said there could be no mention of exploration.⁹²

Indeed the Arroyo administration asserted that the data gathering under JMSU was "pre-exploration" activities and therefore outside the purview of constitutional requirements for exploration and development.⁹³ But legal challenges came nonetheless. A group of petitioners in May 2008 filed for the Supreme Court to nullify the JMSU, alleging it violated the constitution's 60/40 rule among other charges.

Amid legal challenges and political pressure, the JMSU, which had reportedly been on operational hold since March 2008, expired on 1 July 2008.⁹⁴ Although China and Vietnam were keen on renewing the deal, the Arroyo administration, besieged by political troubles, chose not to extend it.⁹⁵

Even if the three parties had managed to push forward, said Manalac, the 60/40 rule could be insurmountable, as the next stage would have to involve drilling and claiming it was not exploration would be too far-fetched.⁹⁶ By this report's publication, more than nine years after the agreement's expiration, the challenge to JMSU's constitutionality is still pending before the Philippine Supreme Court and can thwart future joint projects.⁹⁷

2. China-Vietnam

In 2006, CNOOC and PetroVietnam reached an agreement on joint exploration in the Tonkin Gulf, which lies at the north-western corner of the South China Sea and in which China and Vietnam had agreed on the boundary delimitation.⁹⁸ Joint exploration has been ongoing in the Gulf since 2007. The two sides agreed in June 2013 to extend the agreement until 2016 and expand the area for cooperation from 1,541 km² to 4,076 km², with each contributing an equal amount of area across the boundary line. The settlement of the boundary made cooperation uncontroversial, but despite seismic surveillance and the drilling of one well, the project has not produced findings of commercial-grade deposits.⁹⁹

York Times, 13 November 2007; and "Philippines: Former President Faces New Round of Charges", *The New York Times*, 29 December 2011.

⁸⁹ "Lawmakers seek Senate, House probes on Spratlys deal", *Philippine Daily Inquirer*, 7 March 2008.

⁹⁰ Ian Storey, "Trouble and Strife in the South China Sea Part II: The Philippines and China", *China Brief* 8:9, 28 April 2008.

⁹¹ "Lawmakers seek Senate, House probes on Spratlys deal", op. cit. "Malacanang open to probes on Spratlys deal", *ABS-CBN News*, 9 March 2008. According to Article VII, Section 21 of the Philippines' 1987 Constitution, "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate". See "1987 Constitution of the Republic of the Philippines", 2 February 1987.

⁹² Author phone interview, June 2015.

⁹³ "Spratlys' seismic survey is not oil exploration – DoJ chief", *Philippine Daily Inquirer*, 9 March 2008. "Joint Statement of former Energy Secretary Vince Perez and former PNOOC President Eduardo V. Manalac", press release, Philippines' Presidential Communications Operations Office, 9 March 2008; and "No sell-out in Spratly deal – energy execs", *Philippine Daily Inquirer*, 8 March 2008.

⁹⁴ Abigail L. Ho, "RP-China-Vietnam exploration deal on Spratlys lapses", *Philippine Daily Inquirer*, 11 July 2008; and "Malacanang open to probes on Spratlys deal", *ABS-CBN News*, 9 March 2008.

⁹⁵ "RP-China-Vietnam exploration deal on Spratlys lapses", *Philippine Daily Inquirer*, 11 July 2008; and "Malacanang open to probes on Spratlys deal", *ABS-CBN News*, 9 March 2008. Author phone interview, Eduardo Manalac, June 2015.

⁹⁶ Author phone interview, June 2015.

⁹⁷ "Colmenares prods 7-year-old petition vs joint marine seismic undertaking with China", *InterAksyon*, 16 March 2015.

⁹⁸ China and Vietnam signed "Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Tonkin (Beibu) Gulf" on 25 December 2000, and their respective legislatures ratified it in 2004. See: "Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Tonkin (Beibu) Gulf", unofficial translation in appendix to Zou Keyuan, "The Sino-Vietnamese Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin", *Ocean Development & International Law*, vol. 36, issue 1, 2005.

⁹⁹ "Vietnam, China to Extend Oil Project", *Wall Street Journal*, 20 June 2013.

Cooperation outside the mouth of the gulf, where the boundary is unsettled, has proven to be more challenging. In October 2011, China and Vietnam agreed to speed up the demarcation of waters off the Tonkin Gulf and to discuss joint development in these waters.¹⁰⁰ During Chinese Premier Li Keqiang's visit to Vietnam in October 2013, he urged that the two sides "try to make substantive progress" on jointly developing the outer mouth of the Tonkin Gulf by the end of that year to "demonstrate to the world that China and Vietnam have the ability and wisdom to maintain peace in the South China Sea".¹⁰¹ The two governments agreed to set up a working group to facilitate the effort.¹⁰² Yet despite seven rounds of consultations, there has been little progress.

Beijing and Hanoi disagree on the priorities. China presses for progress on joint development first, while Vietnam insists on demarcation before moving forward on joint development.¹⁰³ On demarcation, the two sides vaguely agree to the principle of a medium line between China's Hainan Island and Vietnam. But Hanoi insists that the line be drawn between each country's territorial sea baselines while Beijing wants to draw the line between the coasts, resulting in a difference of about ten to twenty nautical miles.¹⁰⁴

Further, knowing the political significance Beijing attaches to joint development, Hanoi seeks to use it to open negotiations on the Paracel Islands. Both claim the island group, but China occupies it, denies they are disputed and refuses to negotiate on it.¹⁰⁵ "The ultimate issue is the Paracel. Joint development is Vietnam's leverage, but China doesn't want to discuss the Paracel, so it's deadlocked."¹⁰⁶

3. China-Philippines

The Philippines's hunger for domestically produced energy and inability to produce on its own have continued to fuel its desire to cooperate with China. As Philippine Energy Secretary Jericho Petilla put it, "The alternative [to joint activities with China] is not to drill, probably forever".¹⁰⁷

In May 2012, Philex Petroleum—a private Philippine company and majority shareholder of Forum Energy—held initial talks with CNOOC, offering it an investor role in SC-72 on the Reed Bank. CNOOC reportedly responded "positively", yet ultimately rejected the offer, as participating as an investor could be interpreted as recognizing ownership by Philex and Philippine sovereignty by extension.¹⁰⁸ Talks have continued on-and-off, with the most recent round taking place in July 2014, but yielded no agreement.¹⁰⁹

The Aquino administration has staked an unyielding stance, stating that any prospective Chinese partner for the development of Reed Bank must recognize Philippine sovereignty and that all royalties go to the Philippines.¹¹⁰ Further, Foreign Affairs Secretary Albert del Rosario has stressed, "Any exploration agreement in the West Philippine Sea must be in accordance with Philippine law", i.e. the 60/40 rule.¹¹¹

Given these terms, Sino-Philippine partnership is unlikely under the Aquino administration, but the next president—to be elected in May 2016—could be more flexible. When asked about joint development, Jejomar Binay, vice president and presidential candidate, said in April, "China has all the capital and we have the property so why don't we try and develop that property as a joint venture?"¹¹² Senator Grace Poe, another contender and frontrunner, said she expected a Senate committee to "recommend new approaches to solve the conflict that may include regional cooperation, joint exploration based on parity and law and continuing dialogue."¹¹³

¹⁰⁰ "VN-China Basic Principles on Settlement of Sea Issues", press release, Vietnam American embassy, 14 October 2011.

¹⁰¹ "中越：正磋商共同开发争议海域[China, Vietnam are discussing jointly developing disputed sea areas]", inewsweek.cn, 17 October 2013.

¹⁰² "Vietnam, China issue joint statement", *Vietnam Plus*, 15 October 2013; and "新时期深化中越全面战略合作的联合声明", press release, Chinese foreign ministry, 15 October 2013.

¹⁰³ Author interviews, Vietnamese officials and scholars, Chinese scholars, Beijing and Hanoi, August and September 2014, August 2015.

¹⁰⁴ Author interviews, Vietnamese scholars, Hanoi, August 2015.

¹⁰⁵ Author interviews, Vietnamese foreign ministry official and analysts, Hanoi, September 2014 and August 2015.

¹⁰⁶ Author interview, Vietnamese scholar and former foreign ministry official, Singapore, July 2015.

¹⁰⁷ "Oil Companies Try to Collaborate in Spite of S. China Sea Disputes", Voice of America, 1 November 2013.

¹⁰⁸ CNOOC was granted exploration rights to an overlapping area by the Chinese government. Theresa Martelino-Reyes, "Chinese firm rejects MVP offer for share in PH project in Reed Bank", *ABS-CBN News*, 9 March 2014.

¹⁰⁹ Iris C. Gonzales, "MVP sees start of exploration at Recto Bank", *The Philippine Star*, 28 October 2013; Iris C. Gonzales, "As territorial dispute heightens: Talks between MVP Group, China oil firm stalled", *The Philippine Star*, 4 April 2014; and "Neil Jerome C. Morales, 'Philex Pet, China oil firm restart talks'", *The Philippine Star*, 19 July 2014.

¹¹⁰ TJ Burgonio, "Aquino open to joint oil dev't of Recto Bank, but...", *Philippine Daily Inquirer*, 14 January 2013.

¹¹¹ Foreign Affairs Secretary Albert del Rosario, quoted in Tarra Quismundo, "Philippines 'cautious' on China's offer to jointly explore for oil in Spratlys area", *Philippine Daily Inquirer*, 7 January 2013.

¹¹² "VP Binay open to exploring for oil with China in disputed sea", GMA News, 24 April 2015.

¹¹³ "Will the next Philippine government be nicer to China?" Bloomberg News, 27 May 2015.

A willing president could supply the political will, but joint development with China would still face nationalist pushback—Binay was accused of being a “Manchurian candidate” after his remark—and legal obstacles, including the 60/40 rule and the challenge to the JMSU pending before the supreme court.¹¹⁴

Supporters of cooperation with China tend to be energy officials and industry executives. But they often have a tendency to discount the political and legal difficulties. For example, a former undersecretary of energy said, “At the end of the day, it’s the economics that matter. It’s about whether we can find oil and gas. CNOOC only wants oil and gas out.”¹¹⁵

Chinese actions in recent years—seizing control of the Scarborough Shoal, blocking the Philippines’s access to the Second Thomas Shoal, refusing to participate in international arbitration that Manila initiated, and building large-scale artificial islands in the Spratlys—have also made joint development less palatable to the Philippine public and politically more perilous to its leaders. “Joint development is China’s preferred approach, but it requires trust and confidence. For the Philippines, China has not done anything recently that could generate trust. In fact, China’s actions have only deepened suspicion that joint development is just another ploy.”¹¹⁶

VI. Conclusion

Beijing is an eager proponent of joint development but lacks appreciation for the political, technical and legal obstacles and other claimants’ legitimate concerns. The precondition China sets implies participating in joint development amounts to acceptance of Chinese sovereignty; its unwillingness to clarify its expansive claims make potential partners suspect that, rather than confidence building, Beijing uses joint development to access resources in what they consider their indisputable EEZs. These concerns could be allayed if relations are stable, flashpoints are kept under check, and diplomacy functions unimpeded, as the JMSU demonstrated. These conditions clearly have been spoilt in recent years with several rounds of tension spikes.

Vietnam has been and will remain a reluctant participant. It has rich deposits and productive fields in the south and has little difficulty attracting foreign investors. It views China’s intentions with deep suspicion, which has only hardened with recent Chinese actions, especially the deployment of HYSY 981. Hanoi, therefore, does not have strong incentives to push for successful implementation of joint development, although it uses symbolic participation as a goodwill gesture and to gain leverage on demarcation.

The Philippines has the most dire need for indigenous energy and a foreigner partner—for which China appears the only option. But such an initiative would face nationalist backlash, legal challenges and could be fodder for electoral politicking, thus would require strong top-level political will and a stable foundation for bilateral relations. None of these ingredients currently exists. The Philippine law governing oil and gas exploration and production poses terms unacceptable to a potential Chinese partner and limits the extent of cooperation.

However, the fact that China, the Philippines and Vietnam—claimants with the testiest relations—have cooperated on the exploration in contested waters in the past, means that joint development should not be written off as a viable confidence-building measure. But parties should have realistic expectations on implementation.

Beijing and Hanoi still have nominally active consultations on joint exploration outside of the mouth of the Tonkin Gulf. Even if China is reluctant to clarify its claims outright, it should use UNCLOS principles in discussions on potential areas for cooperation, which can pave the way for demarcation. In exchange, Hanoi should keep the dispute over the Paracel Islands out.

Both Beijing and Manila have incentives—political for China and economic for the Philippines—to cooperate, but any such initiative likely has to wait for a new president in Manila and its prospect depends on how both sides handle the arbitration ruling, expected in 2016. Successful implementation also takes creative interpretation of or changes to the Philippine law—efforts the next administration has to lead.

Most important, the parties have to manage flashpoints, refrain from provocation, and invest in diplomacy in order to create the regional environment in which national leaders have the confidence to invest political capital in cooperation.

¹¹⁴ “Is Binay the Manchurian Candidate?” *Global Nation Inquirer*, 24 April 2015.

¹¹⁵ Author interview, Manila, June 2015.

¹¹⁶ Author interview, Philippine scholar, Manila, September 2014.

