

Understanding the Hard Realities and Promising Possibilities of **Joint Resource Development** The Next Step for Philippines and China?

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Joint Development: The Basic Concept

- “...the cooperation between States with regard to exploration for an exploitation of certain deposits, fields or accumulations of non-living resources which either extend across a boundary or lie in an area of overlapping claims.” – *Guyana v. Suriname arbitration*
- Rationale for JD
- NOTE: No universal form
 - Only one state serves as the operator?
 - Unitization + joint ventures?
 - Establishment of a sui generis institutional framework?
 - Others?

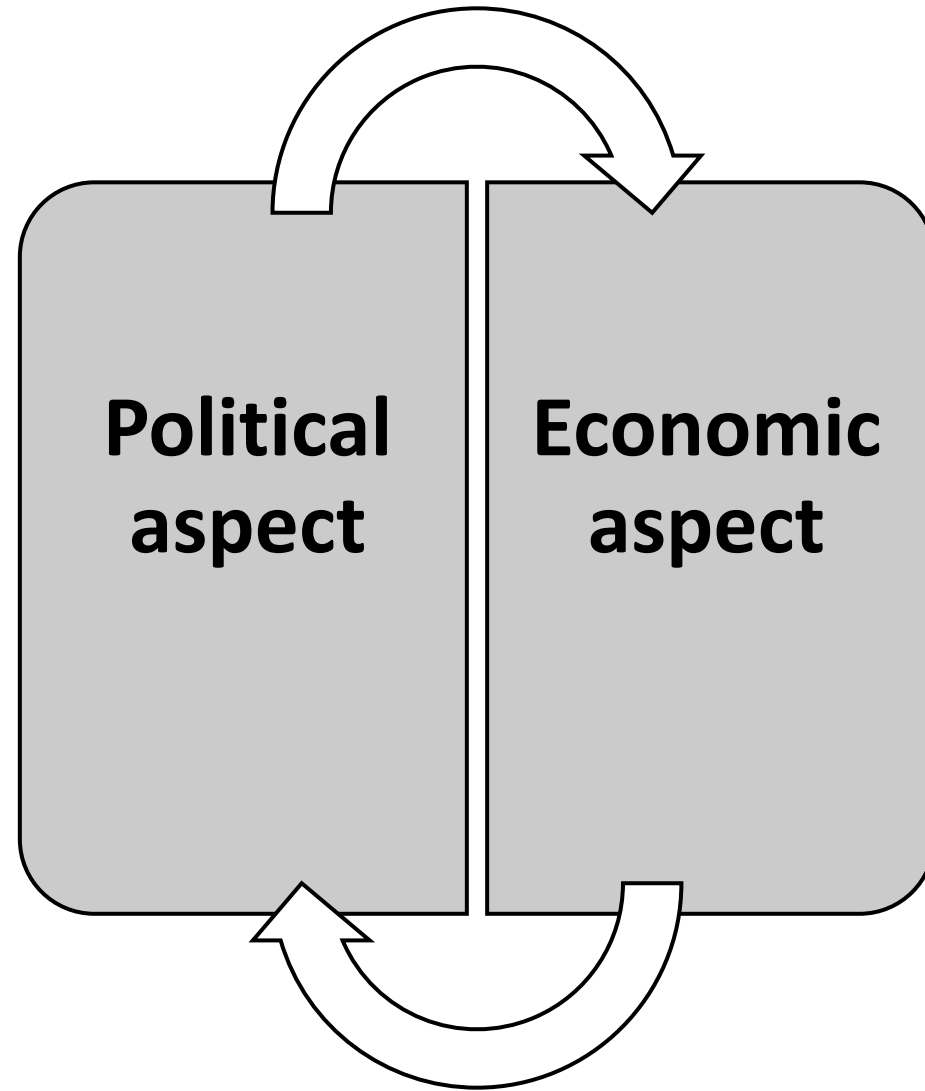
Legal Basis under the UNCLOS




“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.” – UNCLOS Art. 74(3) and Art. 83(3)

- Cf. Duty to cooperate under UNCLOS Art. 123
- Guyana vs. Suriname
- Eritrea vs. Yemen

Is there merit to pursuing a Philippines-China Joint Development Arrangement?





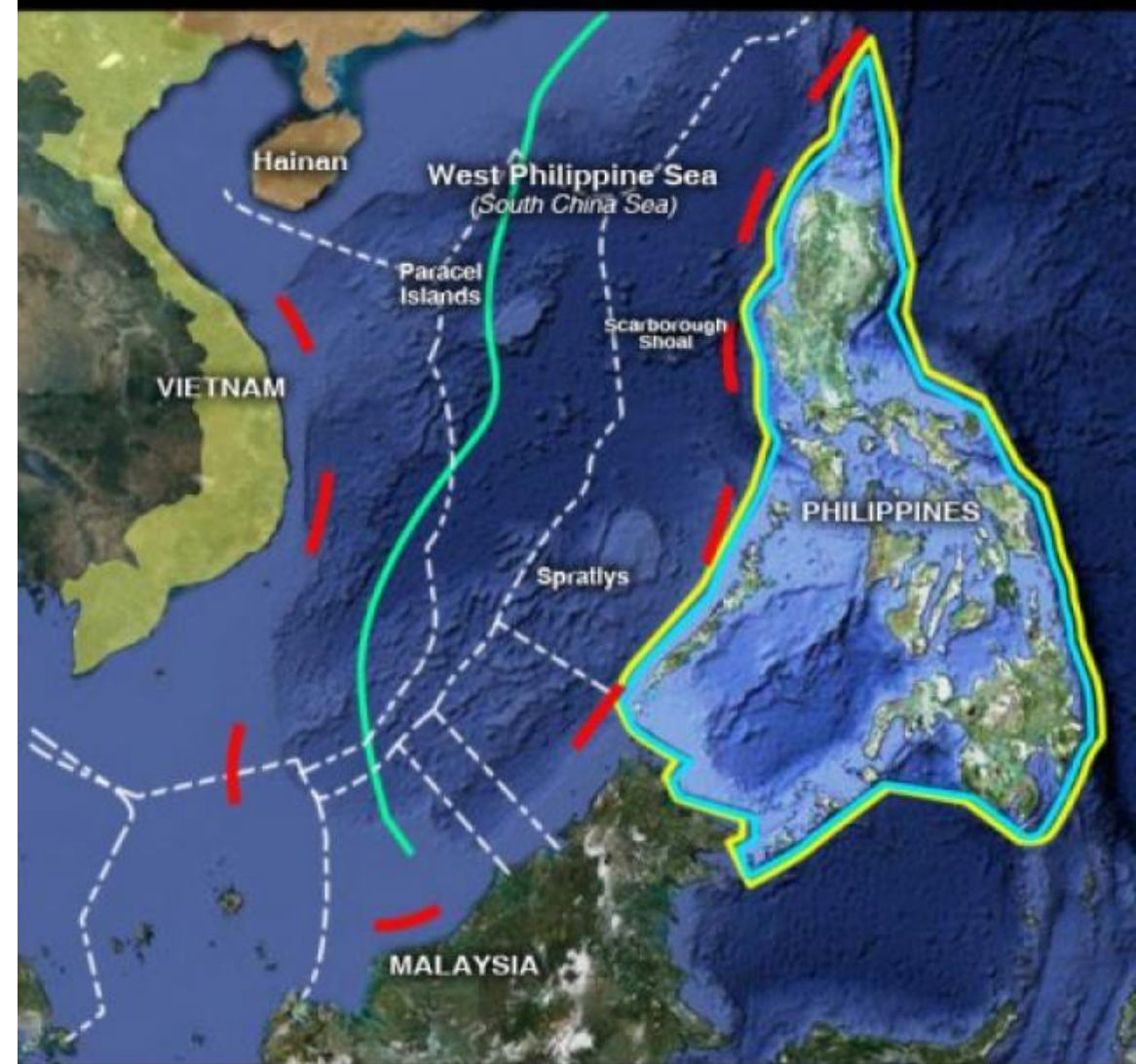
-  Licences
-  Gas fields
-  Gas pipeline to Batangas onshore gas facility



Legal Pitfalls and Political Challenges



2016 Award in Philippines-China Arbitration



LEGEND:

China's claim

EEZ - Exclusive Economic Zone(200m)

Baseline

Continental Shelf

Archipelagic Waters

Territorial Sea



Map from Google Maps

Reference: Beckman 2011, OIL-NUS

Department of Foreign Affairs

UNCLOS, CIA



Constitutional Issues

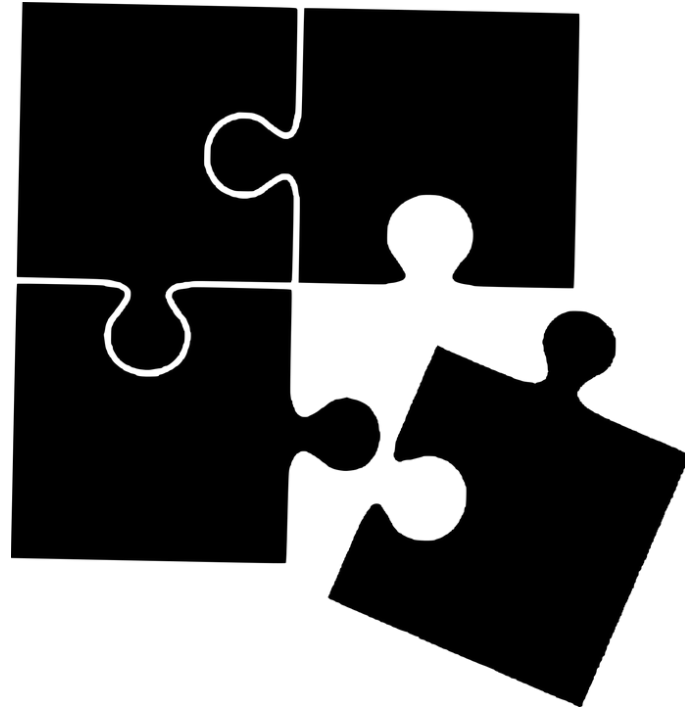
- Limitations on foreign participation in the exploration, development, and utilization of natural resources (Article XII, Sec. 2)
 - Small-scale vs large-scale
 - Location restrictions
- Clarifications made by a 2004 Philippine Supreme Court (La Bugal B'laan vs Ramos, G.R. No. 127882) re: "Financial and Technical Assistance Agreement"

Philippine Oil Exploration and Development Act (Presidential Decree No. 87)

- Establishes service contract system
- Fundamentally incompatible with JDA
 - Contract area
 - Contract duration
 - Profit sharing
 - Application of laws and jurisdiction



Effects on Multilateral Cooperation Efforts





**A Philippines-
China JDA
as part of a
“regional peace
infrastructure”?**

CONCLUSION

- Joint development concept in a vacuum = good
- BUT: context is key
 - Philippines-China JDA faces tough legal and political hurdles
- Failure to address legal and political issues at earliest stage obviates potential benefits
 - CROSSROADS!
- Future possibility: a legally and politically acceptable JDA can become part of a “regional peace infrastructure”



Thank
You