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?
Political aspect

Economic aspect
Legal Pitfalls and Political Challenges
2016 Award in Philippines-China Arbitration
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