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The China-Philippine Bilateral Consultative Mechanism on the South China Sea: Prospects and Challenges

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EXECUTIVE SUMMARY

- An outcome of the turnaround in China-Philippine relations since Philippine President Rodrigo Duterte assumed office in June 2016 is the Bilateral Consultative Mechanism (BCM) on the South China Sea.
- China, firmly opposed to the involvement of extra-regional powers or third parties in the South China Sea disputes, regards the BCM as the most practical and feasible way to manage disputes among concerned parties.
- The two BCM meetings held so far have apparently resulted in the two countries convening technical working groups to work on possible cooperative initiatives. Details have not been made public.
- In the closely watched oil and gas sector, the two countries are still in the consultative and exploratory stage. The two countries appear mindful of the “painful” lessons from their last collaboration in this same area in 2004-2008.

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INTRODUCTION

China has always been opposed to the multilateralisation or internationalisation of the South China Sea issue. More specifically, this refers to its firm opposition to the involvement of extra-regional powers, namely, the United States or intervention by third parties such as the Arbitral Tribunal that announced its award in July 2016.

An oft-cited example is China's refusal to participate in the deliberations of the Arbitral Tribunal when it convened over a three-year period from 2013 to 2016. China even excoriated the Tribunal's verdict, calling it a "political farce"¹, regarding it as "null and void" with "no binding force",² and worst, as "just a piece of paper".³ Former Chinese Vice Foreign Minister Liu Zhenmin even asserted that the composition of the Arbitral Tribunal was seriously flawed (as none of the five judges came from Asia) and further questioned the professional conduct of the judges (by asking who had hired them).⁴

In stark contrast to its denouncement of the role of third parties, China has been quick in re-affirming its preferred alternative which is a bilateral approach involving the parties directly concerned. It was the Philippines that provided China with the opportunity to showcase its preferred model when President Rodrigo Duterte assumed office in June 2016 and ended the Philippine policy of confrontation with China.

An outcome of the improved China-Philippine relations is the convening of the Bilateral Consultative Mechanism (BCM) on the South China Sea. The BCM essentially provides a platform for working-level officials from both China and the Philippines to come to the table to primarily manage their differences over the South China Sea and also, to some extent, to exchange views on other issues of concern to either side. It further seeks to promote collaboration in areas of mutual interest. Although this is not a high-level body, China has stressed on numerous occasions that the BCM is the proper, and by extension, the only way to go in addressing its disputes with ASEAN claimant states. It is committed to make it work judging from the two meetings held so far.

BCM DEVELOPMENTS

The idea of a BCM was mooted during President Duterte's state visit to China in October 2016 which was touted by the two countries as a "milestone visit" to "infuse new energy to bring tangible benefits to the peoples of the two countries".⁵ In the joint statement issued after the visit, it was stated that:

Both sides agree to continue discussions on confidence-building measures to increase mutual trust and confidence and to exercise self-restraint in the conduct of activities in the South China Sea that would complicate or escalate disputes and affect peace and stability. In this regard, in addition to and without prejudice to other mechanisms, a bilateral consultative mechanism can be useful, which will meet regularly on current and other issues of concern to either side on the South China Sea. Both sides also agree to explore other areas of cooperation (para 42 of the joint statement).

Riding on the momentum of President Duterte's state visit, the two countries resumed their 20th Foreign Ministry Consultations in Manila a few months later in January 2017 which had been stalled since the 19th Foreign Ministry Consultations in 2013.⁶ At the January 2017 meeting, the Philippines and China followed through on their leaders' earlier endorsement and agreed to establish a BCM on the South China Sea. The stated purpose of the BCM is to promote mutual trust and confidence, and cooperate for peace and stability in the region. The two sides also reached preliminary consensus on the Terms of Reference (TOR) of the BCM.

The BCM held its first meeting in May 2017 followed by a second meeting the following year in February 2018. At the first meeting in Guiyang, co-led by Chinese Vice Foreign Minister Liu Zhenmin and the Philippine Ambassador to China Jose Santiago L. Sta. Romana, the two sides initialled the TOR of the BCM; reviewed their experience on the South China Sea; exchanged views on current and other issues of concern to either side; discussed the possibility of practical maritime cooperation and establishment of relevant technical working groups; and agreed that the BCM will comprise equivalent officials from the respective foreign ministries and relevant maritime affairs agencies who will meet alternatively in China and the Philippines once every six months.⁷

At the second meeting in Manila held in February 2018,⁸ led by Vice Foreign Minister Kong Xuanyou on the Chinese side⁹ and Undersecretary for Policy Enrique A. Manalo on the Philippine side, both sides gave a positive review of the BCM. They seemed to have made progress beyond their first meeting with "intensive discussions" held on mutually beneficial joint initiatives and agreement reached on the convening of technical working groups in areas such as fisheries, oil and gas, marine scientific research and marine environmental protection, and political security. It was also mentioned that the technical working groups have further identified a number of possible cooperative initiatives although the details of these initiatives were not made known.¹⁰

Among the areas of possible cooperation identified above, the one that has generated the most public attention is oil and gas. The two countries have reportedly agreed to set up a special panel to work out how they can jointly explore oil and gas in the South China Sea without prejudice to their disputed claims in the area. It is worth highlighting that they are still in the initial stages of exploring how to collaborate in this sector.

In an effort to put things in perspective, the Ambassador Jose Santiago L. Sta. Romana, while describing the agreement to explore collaboration on oil and gas as a "breakthrough", was quick to dampen expectations by remarking that this was "just the start of a process".¹¹ Separately, the Philippine Foreign Affairs Secretary Alan Peter Cayetano publicly gave the assurance that any planned energy exploration deal with China in the South China Sea would comply with the Philippine Constitution and international laws.¹²

CHINA'S POSITION

China has attached much importance to the BCM for a number of reasons. The first is that the BCM represents one of two major tracks under the dual track approach advocated by China on the South China Sea. Under this dual track approach, disputes related to the South China Sea should be addressed properly through negotiations and consultations among the

countries directly concerned, and that China and the 10-nation ASEAN should together work to safeguard peace and stability in the South China Sea. China regards the BCM as the most practical and feasible way to manage disputes among the parties directly concerned, i.e. between China and the Philippines, through negotiations and consultations.¹³

The second reason is that the BCM demonstrates that China and the ASEAN claimant states are capable of managing or addressing their differences over the South China Sea without the involvement of extra-regional powers, which essentially refers to the United States. China has chafed at US naval and air assets conducting freedom of navigation and overflight operations in the South China Sea especially those that have intruded into the 12 nautical mile territorial waters of the islands claimed and/or occupied by China in the South China Sea.¹⁴ In its view, the intervention by outside powers like the United States complicates and even jeopardises the peace and stability of the South China Sea.

The third reason is that the BCM reinforces the point that the South China Sea disputes involve only China and some ASEAN claimant states and does not represent the sum total of its relations with ASEAN. By its very structure, the BCM, that enables the Philippines to engage China and vice versa, helps to confine the differences between these two countries to the bilateral level and has so far not affected the overall tenor of China-Philippines relations, and by extension, ought not to affect the overall dynamics of China-ASEAN relations. Moreover, China is itself engaged in some form of bilateral talks or engagement with the other ASEAN claimant states over their territorial and maritime differences and interests.¹⁵

The fourth reason is that the BCM marks a distinct break from the previous confrontational policy of Philippine President Benigno Aquino, one which China has quickly turned the page on and is trying its level best to ensure that there is no return to this unhappy trajectory. Since then, China has stepped up its cooperation with the Philippines in many areas ranging from economic to socio-cultural to nascent defence cooperation including donating assault and sniper rifles and ammunition which were used to fight the Islamic militant uprising in Marawi. In fact, China has described the current phase under Philippine President Duterte and Chinese President Xi Jinping as the “golden age” of Philippine-China relations.¹⁶ In view of how relations have improved, China will want to maintain the momentum of the BCM to ensure tangible benefits are reaped so that this becomes the model for addressing differences between claimant states on the South China Sea.

CHALLENGES

Although the BCM has made some initial progress, it is still premature to conclude that it is a success. For one thing, the cautious attitude of senior Philippine officials mentioned above on collaboration in the energy sector is not without reason.

The last collaboration by China and the Philippines in this area was during the Gloria Arroyo administration, and that did not end well. Way back in 2004, the Philippine National Oil Company signed a deal with China National Offshore Oil Corporation for Joint Marine Seismic Undertaking on Certain Areas in the South China Sea. This bilateral arrangement became a trilateral one when Vietnam Oil and Gas Corporation came on board in 2005.¹⁷ However, the three companies could not proceed beyond the initial phase of the seismic

survey because the Gloria Arroyo administration became mired in domestic political controversy.

President Arroyo was accused of the “treasonous act” of selling out Philippine interests and sovereignty by including in the seismic survey parts of the Philippine continental shelf that China and Vietnam did not even claim. Arroyo was also accused of receiving kickbacks in the form of other Chinese investment projects in the Philippines in return for signing on to the 2004 deal.¹⁸ Due to such controversies, the tripartite arrangement could not continue beyond 2008.

Therefore, under the current BCM framework that oversees oil and gas collaboration, there are many details that remain to be sorted out such as what specific projects to work on, who to involve, how to collaborate and where to site the projects. At this stage, the Philippines and China are at the exploratory and consultative stage and certainly not anywhere near the stage of joint development.

For any eventual project collaboration, there is a further need to comply with the existing Philippine law stipulating that oil and gas projects must be 60 per cent Philippine-owned, and any move to amend or to get around this requirement could result in political reactions and opposition against the Duterte administration.

The BCM is further limited in its scope. Although it has also been touted as a platform for the exchanging of views on current and other issues of concern to either the Philippines or China beyond the South China Sea issue, it is not as encompassing as stated even on maritime matters concerning the two countries. A case in point is the lingering tussle between the Philippines and China over the Philippine Rise (previously known as Benham Rise), situated to the east of Luzon in the Philippine continental shelf and exclusive economic zone. Most recently, in February 2018, the Philippine Presidential Spokesperson Harry Roque reportedly said that the Philippines has objected to China’s proposed names for five features in the Philippine Rise.¹⁹

In response, Chinese Foreign Ministry spokesperson Geng Shuang publicly denied knowledge of the objection raised by the Philippines. According to him, the Subcommittee on Undersea Feature Names (SCUFN), which is a specialised international organisation that China is a member of, is responsible for establishing standards on naming undersea geographic features. Based on the rules of SCUFN, Geng Shuang said that relevant countries may submit naming proposals on the unnamed features lying 12 nautical miles away from the littoral states.²⁰ In other words, Geng Shuang is saying that the names China submitted on the unnamed features in the Philippine Rise is in line with established international practice and the mandate of SCUFN.

Notwithstanding the merits of the arguments by China and the Philippines over the naming of unnamed undersea features in the Philippine Rise, this episode demonstrates that there are limits to how effective the BCM can be in addressing differences over maritime matters. On this matter, it would appear that China and the Philippine could have better coordinated their positions or at the very least, worked out something behind the scenes through the BCM, and avoided the verbal sparring in public. Some observers are further of the view that China’s naming of undersea features in the Philippine Rise, outside of the nine-dash-line map has raised questions about China’s intentions in the area to the east of the Philippines.²¹

CONCLUDING REMARKS

The BCM has made some progress since its two meetings. China and the Philippines have convened technical working groups that have apparently identified a number of possible cooperative initiatives. In particular, a special panel is exploring how the two countries can jointly explore oil and gas in the South China Sea. However, much work needs to be done before they can move to the next stage of joint activity, not to mention joint development.

¹ “Remarks by Chinese Foreign Minister Wang Yi on the Award of the So-called Arbitral Tribunal in the South China Sea Arbitration”, China’s foreign affairs ministry, 12 July 2016 (accessed 22 February 2018).

² “Statement of the Ministry of Foreign Affairs of the People’s Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines”, China’s foreign affairs ministry, 12 June 2016 (accessed 22 February 2018).

³ “Vice Foreign Minister Liu Zhenmin at the Press Conference on the White Paper Titled China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea”, China’s foreign affairs ministry, 13 June 2016 (accessed 22 February 2018).

⁴ Ibid.

⁵ “Joint Statement of the Republic of the Philippines and the People’s Republic of China”, the Philippine Department of Foreign Affairs, 21 October 2016 (accessed 22 February 2018).

⁶ “Philippine and Chinese Officials Meet for the 20th Foreign Ministry Consultations”, the Philippine Department of Foreign Affairs, 20 January 2017 (accessed 22 February 2018).

⁷ “Full Text: Joint Press Release for the First Meeting of the China-Philippines Bilateral Consultation Mechanism on the South China Sea”, *Xinhuanet*, 19 May 2017 (accessed 22 February 2018).

⁸ The second meeting could not be held in 2017 as the Philippine side claimed that it was busy. In 2017, the Philippines was the Chair of ASEAN.

⁹ By then, Liu Zhenmin, who led the first Chinese delegation to the BCM in May 2017, had moved on to take on the post of Under-Secretary-General for Economic and Social Affairs at the United Nations.

¹⁰ “SCS Code Negotiations to Start Next Month; PHL-China to Carry out Joint Cooperation”, *GMA News*, 13 February 2018 (accessed 23 February 2018).

¹¹ “Philippines, China to Work out How to Tap Oil, Gas that Both Sides Claim”, *Reuters*, 14 February 2018 (accessed 23 February 2018).

¹² “Cayetano: Any Energy Exploration Deal with China in South China Sea won’t Violate PHL, Int’l Laws”, *GMA News*, 16 February 2018 (accessed 23 February 2018).

¹³ “Wang Yi: ‘Dual-Track Approach’ is the Most Practical and Feasible Way to Resolve the South China Sea Issue”, China’s foreign affairs ministry, 21 April 2016 (accessed 23 February 2018).

¹⁴ In January 2018, China protested when USS Hopper (a US navy destroyer) intruded into the territorial waters of the Scarborough Shoal claimed by China and the Philippines. The Scarborough Shoal was the site of a naval standoff between China and the Philippines in 2012, a year before the Philippines lodged its case against China over the latter’s expansive claims in the South China Sea.

¹⁵ For example, China and Vietnam convened their eight round of talks in 2017 in an effort to demarcate the sea area off the Gulf of Tonkin. In 2013, China National Offshore Oil Corporation and Petroleum Brunei signed a joint venture agreement on oil field services. However, very little is known about the outcome of this joint venture.

¹⁶ “Chinese Foreign Minister Wang Yi Visits Manila”, the Philippine Department of Foreign Affairs, 28 July 2017 (accessed 26 February 2018).

¹⁷ “Oil Companies of China, the Philippines and Vietnam signed Agreement on South China Sea Cooperation”, Chinese Embassy in the Philippines, 15 March 2005 (accessed 26 February 2018).

¹⁸ “Senate Resolution No. 309 (Introduced by Sen. Antonio F. Trillanes IV)”, Senate of the Philippines, 28 February 2008 (accessed 26 February 2018). See also “Manila’s Bungle in the South China Sea”, *Far Eastern Economic Review*, vol. 171 (January/February 2008), pp. 45-48.

¹⁹ “Roque: PH rejects China naming Benham features”, *INQUIRER.net*, 14 February 2018 (accessed 26 February 2018). China is one of the members of the 12-member Subcommittee on Undersea Feature Names (SCUFN) of the International Hydrographic Organisation that includes also Germany (Chair), Japan, South Korea, New Zealand, Argentina, Chile, Mexico, Brazil,

Canada, Italy and Russia. According to a facebook post by a Philippine maritime expert in February 2018, the names that China submitted for five undersea features in the Philippine Rise were accepted by the International Hydrographic Organisation in 2017. These were the Jinghao Seamount, Tianbao Seamount, Haidonqing Seamount, Cuiqiao Hill and Jujiu Seamount. See “Palace Objects Chinese Names Given to Some PH Rise Undersea Features”, *Philippine News Agency*, 14 February 2018 (accessed 26 February 2018).

²⁰ “Foreign Ministry Spokesperson Geng Shuang’s Regular Press Conference”, China’s foreign affairs ministry, 14 February 2018 (accessed 26 February 2018).

²¹ “Why is DFA Letting China do Research at Benham Rise?”, INQUIRER.net, 14 February 2018 (accessed 26 February 2018). See also “Letting China into Benham Rise: History lessons for Duterte and Cayetano”, Rappler, 6 February 2018 (accessed 26 February 2018).

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