

## Conference on Conservation and Development of Fishery Resources in the South China Sea: A Summary Report

ZHOU Xinchao \*

**Abstract:** The South China Sea (SCS), abundant in fishery resources, has long been a production base for fishermen in China. In recent years, disputes regarding fishing in the SCS have frequently been rising between China and neighboring countries. Due to the imperfect service support system, exacerbated by looting of Chinese fishermen by some neighboring countries, this region has seen lagging fisheries production growth and even a declining tendency. The development and management of fishery resources in the SCS is not only related to safeguarding China's sovereign rights to the area's biological resources, but also has great significance and value for maintaining national maritime rights and interests. In such a context, the Conference on Conservation and Development of Fishery Resources in the SCS sponsored by the Shanghai Jiao Tong University Center for Oceans Law and Policy (SJTU-COLP) and organized by SJTU Joint Institute of East Asian Marginal Seas (JIEAMS), CMT International Maritime Research Center and the *China Oceans Law Review* (COLR) was held in Conference Room 401, SJTU KoGuan Law School during May 5–6, 2012. Scholars, government officials and representatives of the fishing industry from both sides of the Straits gathered for in-depth discussions on the issues concerned. This article is a summary of the conference on conservation and development of fishery resources in the South China Sea.

**Key Words:** South China Sea; Fishery resources; Conservation; Development

The South China Sea (SCS), abundant in fishery resources, has long been a production base for fishermen in China. In recent years, disputes regarding fishing in the SCS have frequently been rising between China and neighboring countries. Due to

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\* ZHOU Xinchao, Shanghai Jiao Tong University KoGuan Law School. E-mail: laozhousjtu@yahoo.com.cn.

the imperfect service support system, exacerbated by some neighboring countries looting of Chinese fishermen, this region has seen lagging fisheries production growth and even a declining tendency. The development and management of fishery resources in the SCS is not only related to safeguarding China's sovereign rights to the area's biological resources, but also has great significance and value for maintaining national maritime rights and interests. In such a context, the Conference on Conservation and Development of Fishery Resources in the SCS sponsored by the Shanghai Jiao Tong University Center for Oceans Law and Policy (SJTU-COLP) and organized by SJTU Joint Institute of East Asian Marginal Seas (JIEAMS), CMT International Maritime Research Center and *China Oceans Law Review* (COLR) was held in Conference Room 401, SJTU KoGuan Law School on May 5-6, 2012. The Conference was presided over by the KoGuan Chair Professor of Law Kuen-chen Fu, who is also Editor-in-Chief of the *China Oceans Law Review*, while Vice-President and Professor Zheng Chengliang delivered the opening address. Scholars, government officials and representatives of the fishing industry from both sides of the Straits gathered for in-depth discussions on the issues concerned. For further reference and study, this document provides a summary of the presentations delivered and discussions generated during the Conference.

## **I . SCS Fishery Resource Utilization: Investigation and Development Strategies**

### *A. Environmental and Biological Resources in the SCS (Nansha Islands in particular)*

Researcher Chen Qingchao from the South China Sea Institute of Oceanology, Chinese Academy of Sciences presented a report on the current environmental and biological resources in the SCS, suggesting that according to the abundance ratio of coral reefs, mangroves, seagrass, fishes and plants in the marine flora and fauna, the SCS is an area endowed with one of the most abundant biological resources in the world, with a large number of islands, atolls, lagoons, shoals and reefs, while a complex ecosystem encompassing a large number of species has been maintained in the flora and fauna of the coral reefs. It has also been an important fishing ground, and the neighboring countries have heavily relied on its fishery resources.

According to Researcher Chen's report, the disputes between China and its neighboring countries on the sovereignty over the Nansha Islands, coupled with political instability and an accelerated industrialization process, have led to a series of en-

vironmental problems in the SCS, for a variety of human activities (military exercises, fishing, marine transportation, offshore exploration, mineral extraction and tourism) have exerted great impact on the environment. Key issues related to the environment include animal and plant seining (especially the excessive coral reef fishing), sewage discharging, oil spills, and habitat and mangrove destruction. Further, the accelerated exploitation of biological and non-biological resources by the dense population along the coastline has led the fisheries industry to a crisis.

In order to maintain environmental stability in the SCS, China has proposed to create a trust system among different countries, including building marine parks, establishing SCS institutes, implementing joint investigation for mutual benefits, mineral and hydrocarbon exploitability assessment, maritime security monitoring, among other measures. According to Mainland China's proposition, it is required to strengthen the management of fishery habitats and safeguard the sustainable development of degraded fishery resources in the SCS. Since 1999, a two-month fishing moratorium has been implemented every year north of 12°N in the SCS. Since 2002, Mainland China has created two more mangrove natural reserves, while Hong Kong has established five marine protected areas. Likewise, a marine park was built by the Taiwan Government in the Dongsha Islands in 2007. The estuaries, near-shore areas and coral reefs in the SCS have witnessed fish over-exploitation and utilization. However, large quantities of tuna, sierra, bonito pelamyds, swordfishes, and other oceanic fishes subsist in the subsurface and intermediate layers of open waters and/or among islands and coral reefs in the SCS, which biological resources can be effectively utilized in the future.

In order to accurately assess the resources in the SCS, regular survey should be implemented, which includes tracking and researching according to the layers and seasons as per relevant norms. For example, trawl prior to the fishing moratorium and record the composition and quantity of the catch; and upon the end of the fishing moratorium, trawl a second time and analyze whether the marine resources are effectively protected. Due to the restrictions on ships' seaworthiness and their access to the ocean, fishing is generally concentrated in the inshore area, so the inshore fishery resources call for more urgent protection. In determining the 12°N latitude as the cut-off line during the fishing moratorium, the protection of resources is taken as the basis, and as it has no conflict with the U-shaped line, the determination of such cut-off line is practically made. Nevertheless, in the event fishermen from foreign countries are found in the marine preserved area during the fishing moratorium, the government can only strengthen the management and guarding, but it is still unfeasible to prevent fishing by lots.

### *B. Suggestions on Developing and Utilizing Oceanic Fishery Resources in the SCS*

According to the report entitled “Suggestions on Developing and Utilizing Oceanic Fishery Resources in the SCS”, presented by Researcher Qiu Yongsong from the South China Sea Fisheries Research Institute, Chinese Academy of Fishery Sciences, due to the over-exploitation of offshore fishery resources in the northern part of the SCS, it is urgently needed to reduce fishing intensity and a large number of fishing vessels and fishermen have to find a new way out. While the offshore fishery resources are over-exploited, oceanic fishery resources (such as purpleback flying squids and tuna) in the vast waters of the SCS have not been fully utilized. The development and utilization of such resources will create a new point for economic growth in the fishery industry, which may not only substantially increase the output of open sea fisheries but also partially divert the fishing pressure on the offshore waters.

There is a considerable number of oceanic fishery resources in the upper layer of the abyssal area outside of the SCS continental shelf, which provides an allowable purpleback flying squid<sup>①</sup> catch of 1.4 ~ 2 million tons each year, equivalent to RMB 10 ~ 14 billion. In 2011, the total catch of purpleback flying squids by China and neighboring countries in the SCS was less than 50,000 tons, a fact from which it can be inferred that the purpleback flying squid resources in the SCS is still underutilized, with promising potential for development. In recent years, the three Southern China provinces have utilized light falling nets to catch purpleback flying squids, putting local fishermen in a favorable position to utilize purpleback flying squid resources.

The oceanic fishery resources in the SCS also include tuna. According to the current resource assessment, the allowable catches of large and small tuna in the SCS are approximately 17,000 tons and 216,000 tons respectively. Nowadays, tuna resources in the SCS are mainly exploited by fishing vessels from Taiwan Province and Vietnam, and large tuna resources have been fully exploited. None of the tuna catching longline vessels are from Southern China, but the newly developed light falling nets can be used off the coast to catch both jumbo flying squids and tuna, which is, however, lesser in quantity and more dispersed. Vietnam started later than China in

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① Also known as red squids, *omastrephidae*, widely distributed in the equatorial and subtropical waters of the Indian Ocean and the Pacific Ocean, especially the SCS and the northwestern waters in the Indian Ocean.

the tuna fishing, processing and foreign trading system. Still, in recent years it has occupied an advantageous position in tuna resource utilization in the SCS, with an output up to RMB 1.9 billion. China has lagged far behind Vietnam, regardless of the number of fishing vessels or their output. As for Southern China, not only has its tuna fishing share in the SCS been nearly zero, but also tuna and jumbo flying squid catches in the SCS have not yet entered the national fishery statistical records. Further, more attention should be paid to the fact that tuna is a highly migratory species, which is usually managed by international custom using a per fishing quota allocation. Regional fishery organizations mainly conduct quota allocation according to national or regional historical catch and their contribution to the investigation and conservation of fishery resources. In this regard, the principle of joint development has always been advocated by China. If the principle of joint development and management is applied to the exploitation of oceanic fishery resources in the SCS in the future, Mainland China will be at a disadvantage because of its zero catch in historical records. Therefore, the development and utilization of fishery resources in the SCS is also necessary in order to highlight fishery presence and safeguard China's national maritime rights and interests.

Suggestions on developing oceanic fishery resources in the SCS mainly include the following: (1) focus on developing large fishing vessels equipped with light falling nets; (2) adjust fishery management measures to promote the oceanic fishery development in the SCS; (3) build more fishery facilities for use in the open sea to ensure the security of fishing vessels; and (4) accelerate the research and development of key oceanic fishery resource utilization technologies to support the fishery development in the open sea.

In light of Researcher Qiu Yongsong's report, Mr. Lei Tsu-kang, a representative of Taiwan's fishing industry, noted that light falling nets indeed provide an effective approach to develop purpleback flying squid resources. However, as the jumbo flying squids would easily corrupt and discolor, refrigeration equipments should be provided during the fishing process. The current price of jumbo flying squids is relatively high, which can assure smooth purchasing, and according to the practice of the fishing industry in Taiwan, it is suggested to gather small fishing vessels in a certain port, which would facilitate not only the statistical work, but also concentrated processing, freezing and distribution, thus enhancing both product quality and market share. In the meantime, the output of cuttlefish resources has been declining during recent years, so its conservation and orderly utilization also merit our attention.

Mr. Chen Chu-lung, a representative of Taiwan's fishing industry, believed that tuna caught with a light falling net is just incidental catch, for such a net can only be

used to catch yellowfin tuna in shallow waters, whereas large scale tuna development should be based on longline fishing. In the last few years, Vietnam has dominated tuna fishing in the SCS, and Taiwan has already given up fishing. Meanwhile, Mainland China does not present technical problems in increasing tuna resources exploitation in the SCS, while most captains of longliners are from the Mainland. In fact, not a few fishery companies from this region are operating on the Fiji Islands in the South Pacific, something that indicates that the Mainland is competent in terms of technology or manning. Finally, Hainan Island could also be used as a base for tuna processing, while Japan would provide a broad market for bigeye tuna.

It was pointed out by Associate Professor Chang Shui-kai from the Institute of Marine Affairs, National Sun Yat-sen University, Taiwan that yellowfin and bigeye tuna are highly migratory species, and that tuna in the SCS and that in the Mid-Pacific Ocean belong to the same species. Bigeye tuna resources have already been depleted and yellowfin tunas are also diminishing. Under international conventions, tuna fishing is bound to be restricted by quotas. Before such fishing is allowed to take place, a new tuna development program should be discussed and approved by the WCPFC<sup>①</sup>, on the premise that related data and planning should also be provided. During tuna fisheries development, attention should also be paid to protecting sharks, sea turtles and other marine organisms, or else fishing activities would be hampered by animal protection agencies.

The Dean of the College of Marine Sciences, Shanghai Ocean University, Xu Li-xiong believed that Mainland China should also take security issues into account, adding accordingly fishery administration ships as escort during tuna resource exploitation, and at the same time accelerate their production and processing so that the SCS resources can be combined with those of the Indian Ocean, thus forming a perennial fishing ground. At this point, the key problem lies in the fact that the tuna fisheries development capacity of Mainland China is zero according to the record, so it is necessary to compete for resources through all available approaches in order to protect the interests in fishery resources in the SCS as much as possible. On the other hand, Professor Dai Xiaojie from Shanghai Ocean University suggested that the domestic market be developed via the distribution of tuna caught in the SCS by various means, including sashimi and canned food processing. Resource protection should be accorded great importance through all stages of planning and development, including conduction of scientific research, establishment of scientific data, and obtaining ves-

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① Western and Central Pacific Fisheries Commission, of which both Mainland China and Taiwan are members.

sel and catch statistics, all constituting an important basis for applying for a greater quota. In addition, he stated that sharks may be by-catch in tuna fishing, so the protection of sharks and turtles in the SCS should not be ignored.

A new idea about safeguarding maritime rights was put forward by Mr. Zheng Zhihua, a doctoral student from SJTU, who stated that under the existing legal framework, we could appeal to the WCPFC to address the issues related to the excessive catch carried out by Vietnam, and that regarding China's access to the market, it is feasible to take initiatives to investigate Vietnamese IUU<sup>①</sup> fisheries and set limitations on their distribution channels. Furthermore, Mr. Zheng stated that maintaining an active approach in asserting China's maritime rights and interests should be accorded an importance just as great as that accorded to resource development.

According to the response from Mr. Guo Jinfu, Deputy Director of the Administration of Fishery and Fishing Harbor Supervision of the SCS, Ministry of Agriculture, Vietnam's fishing in the SCS is not entirely productive, presents heavy political complexities, and has gone beyond the range of normal fishing activities in many cases. In this respect, two ideas were proposed by Researcher Song Yann-huei from the Academia Sinica of Taiwan: (1) establish a regional fishery defending management system led by China in the SCS; and (2) under the WCPFC's framework, Mainland China and Taiwan establish a derivative committee that allows both sides to lead the development of yellowfin tuna and purpleback flying squids, which should both complement and counterbalance the WCPFC and include Vietnam and other countries. Researcher Song also stressed that records of historical and traditional fishing activities, as key data in quota allocation, are of great importance for establishing similar committees in the future.

Questions on the volume of tuna resources in the SCS and detailed scientific data were raised by Dr. Chu Xiaolin from Shanghai Ocean University. On the one hand, she mentioned, the development and sustainability management of the resources in the SCS require data support; on the other hand, if the SCS is to be included in the WCPFC management scope, scientific data are also indispensable. Such data should be mainly provided by China, or China might become a passive actor. According to Professor Dai Xiaojie's reply, as the current static fishery management is inapplicable to tuna, dynamic monitoring may be adopted for tuna in the future, including monthly reports/logs, scientific observer programs, vessel monitoring systems, catch CPS system, etc. as maintained by the Shanghai monitoring team.

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① IUU (Illegal, Unreported, Unregulated) refers to illegal, unreported and unregulated fishing.

## II. SCS Fishery Resource Joint Development and Bilateral Fisheries Agreement Draft

Mr. Zheng Zhihua from SJTU presented his report entitled “Considerations to Be Taken into Account When Concluding Bilateral Fisheries Agreements”, as well as his proposal for an SCS Fisheries Agreement between the People’s Republic of China and the Republic of the Philippines intended to address the SCS-related disputes between the two parties. Being influenced by international political, legal, economic, geographic, technological, historical and other factors, the delimitation of the exclusive economic zone and the continental shelf is an extremely complicated and sensitive issue. Therefore, according to Mr. Zheng, delimitation is impossible to be easily completed in the short run. He advanced that, when it turns difficult to make substantive progress in maritime delimitation, to establish a common fishing zone in the overlapping area of the two countries would be an easier solution. Mr. Zheng also pointed out that, according to the provisions and spirit of the United Nations Convention on the Law of the Sea, a tentative fisheries agreement could be concluded in order to prevent over-exploitation on fishery resources in the overlapping area, protect the marine environment and ecology, achieve sustainable utilization of marine biological resources (including fish), control potential fishery-related conflicts, cool down regional hot spots, avoid jurisdictional conflicts and the instability that arises therefrom, and maintain good neighboring relations and a fair, stable and harmonious and orderly fisheries order.

Regarding fishing area planning, Mr. Zheng stated that the historical operating habits of fishermen and traditional fishing areas should be taken seriously. For example, it is expressly provided under both China-Japan Fisheries Agreement and China-ROK Fisheries Agreement that both parties should take traditional fishing activities and other factors into account. In delimiting fishing areas, it is required not only to facilitate management and law enforcement, but also to maintain fishermen’s historical operating habits and traditional fishing areas. Prior to concluding a fisheries agreement, full consideration has to be given to the interests and appeals of the fishermen, and in case of any conflict with a neighboring country arising from maritime delimitation, every effort should be made to secure the traditional fishing areas; even if it is decided to make a compromise after thorough consideration, all fishermen losing operating waters should be compensated reasonably and settled properly, so that their rights and benefits are adequately safeguarded. “Fishing prohibited areas” should be reserved where ecosystems are particularly vulnerable and sensitive in the common



fishing zone in order to keep any fishing vessel out. The establishment of ecological natural reserves, as well as the preservation of fish habitats in agreed waters, is required to protect and recover endangered marine species. Finally, it is also necessary to strengthen joint law enforcement in the agreed waters and ensure effective monitoring over fishing activities.

Mr. Zheng maintained that the Fisheries Agreements should be effective to settle disputes, with due consideration and response to common fisheries-related disputes involving foreign countries. For instance, when relations take a bad turn due to uncivil law enforcement of the marine administration of a foreign party, it is imperative to apply joint law enforcement and/or flag State jurisdiction and appeal to overseas fisheries development council or mutual assurance associations for their timely intervention and assistance. It is worth noting that the delimitation of fishing areas under the Fisheries Agreements is not final between the contracting parties, but deemed as only tentative arrangements in case no solution to maritime right and benefit conflicts is reached in the short run. This is meant to ensure the smooth development and conservation of marine resources in the disputed waters, which will not affect the final delimitation generally.

In addition, bilateral fisheries agreements should not only be coordinated with domestic legislation, but also be in conformity with the standards contained in existing international hard laws (multilateral treaties, bilateral agreements, etc.) and soft laws (resolutions of international organizations, joint declarations, codes of conduct, etc.), while full consideration should be given not only to the fishery industry but also to the impact of sailing, marine salvage, undersea prospecting and mining, scientific research, underwater archaeological work, etc. Only when all related factors are well balanced can disputes be properly settled and a harmonious and stable maritime order be maintained.

Furthermore, in his proposed SCS Fisheries Agreement between the People's Republic of China and the Republic of the Philippines, Mr. Zheng Zhihua suggested that the two countries should define the waters historically belonging to China and the exclusive economic zones of both countries east of 115° E, north of 8° N and south of 16° S as the waters under Sino-Philippine tentative measures or agreed waters, as well as establish a Joint SCS Fisheries Committee. This entity should develop tentative conservation and management rules for the biological resources in the agreed waters and determine the quantity of fishing vessels allowed to access into the agreed waters, the allowable catch share, the quota to which both parties are entitled, allowable target species, fishing prohibited areas, closed fishing seasons, among others. Moreover, both parties are called to boycott IUU fishing, implement the catch permit sys-

tem in the agreed waters, and observe the provisions of the Committee regarding the conservation and management of fishery resources. According to the proposal, in the agreed waters, one party is obliged to rescue and protect the other party's citizens and fishing vessels and if necessary, offer refuge.

To the aforesaid, Deputy Director Guo Jinfu pointed out that joint development of the SCS includes mining and fisheries, and cooperation in the fishery industry could be the breakthrough in this regard. In choosing the areas and cooperators, thorough consideration is required in order to achieve a balance among all factors. By way of example he mentioned that China's most powerful rival in the Beibu Gulf is Vietnam, but the latter has basically no intent to cooperate further. On the other hand, the area to be delimited as suggested in the Proposal put forward by Mr. Zheng Zhihua is too large, while more cooperative countries should be chosen.

Researcher Song Yann-huei added that the SCS Fisheries Agreement is not necessarily entered into by concerned nations only, for such agreement is also applicable to Mainland China and Taiwan. Nevertheless, there is still skepticism as to whether SCS-concerned countries intend to conclude a multilateral agreement and whether such agreement can actually materialize. The Fisheries Agreement only makes tentative arrangements that ensure adequate functioning and technical treatment and address sensitive issues under special terms and conditions. If a regional fisheries management organization is to be established in the SCS, China should play a leading role and adopt similar measures to those taken by the Shanghai Cooperation Organization in this regard by shelving disputes and excluding the intervention by the United States.

Mr. Guo Wenlu, the Director in Charge of Sino-Japanese Affairs of the Administration of Fishery and Fishing Harbor Supervision of the East China Sea, Ministry of Agriculture, pointed out that fishing gears and methods have been effectively managed ever since the establishment of a pertinent law directory, contributing to the peace between the two countries from 2006 to 2009. In light of the many countries bordering the SCS, it is far more difficult to conclude a multilateral agreement with the concerned countries than with Japan and with the Republic of Korea (ROK). Mr. Guo considered that, taking into account the relationship between fisheries issues and the sovereignty issues, a longer-term plan should be developed; when dealing with neighboring countries, focus has to be put on resolving difficulties on a piecemeal basis, looking for allies with common appeals, and approaches may be taken to develop from unilateral to bilateral to multilateral agreements. Furthermore, the distribution of fisheries resources has to be based on a full understanding of the resources present in the SCS. To this end, expert-level negotiations can be the initial step to

take. Mr. Guo advised to learn from the cases of the Sino-Japanese Fisheries Agreement and the Sino-ROK Fisheries Agreement, in that any agreement to be negotiated for the SCS should be based on the current status of the fishermen of the state parties. He noted that the Sino-ROK Agreement is a negative example that fails to take into account the low qualifications of the local fishermen, resulting in its low operability and thus repeated technical violations. In addition, as the administrative enforcement systems in the two countries are different, China's fisheries sector cannot implement mandatory measures, while the excessively strict enforcement of the law by the ROK sea police can cause a counter-attack by the Chinese fishermen. In short, lessons have to be drawn from the existing fisheries agreements and inadequacies therein should be redressed.

### **III. Cross-Strait Fisheries Resources Co-Development Corporation Program**

#### *A. Cross-Strait SCS Fisheries Resources Co-Development Corporation Program*

According to the "Cross-Strait SCS Fisheries Resources Co-Development Corporation Program" reported by Dr. Chu Xiaolin, there are three major forces struggling in the SCS: SCS neighboring countries, ASEAN countries, and major powers outside the region (including the United States, Japan and India), constituting a complicated international background.

In her Program, Dr. Chu stated that making a breakthrough in the SCS impasse from fisheries resources development will be conducive to settling SCS-related disputes and safeguarding China's rights and interests. Mainland China and Taiwan have common interests in safeguarding their sovereign rights over the SCS and the fisheries resources, and their pertinent policies have been highly consistent, laying a solid foundation for the two sides to co-develop and co-manage the said resources. Moreover, both sides have actually occupied different islands and reefs. If those islands and reefs are opened to build supply bases, resource development will be considerably enhanced. In addition, they complement each other in the fisheries industry: Taiwan started earlier in pelagic fishing and has built a better equipped ocean-going fleet and developed more advanced technologies, while the Mainland has also made significant achievements in pelagic fisheries development and presents advantages in terms of deckhands and international diplomacies. On the other hand, Dr. Chu reported, the south-central fishing grounds in the open waters of the SCS (including

Zhongsha, Xisha and Nansha) are far away from the Mainland, an area where the weather and sea conditions are complex and volatile, rendering oceanic characteristics to fishing operations therein. What is more, the recent interference, assault and fishing vessel detaining by Vietnam, the Philippines and other countries have been escalating. The stern reality confronting fishermen's operations in the open waters of the south-central SCS fishing grounds, has necessitated the cooperation between the two sides, which should make concerted efforts to overcome difficulties in developing pelagic fishery resources by strengthening cooperation in terms of fisheries equipments, technology, manning, etc. Meanwhile, the cooperation between Mainland China and Taiwan in developing pelagic fishery resources in the south-central waters will also be of far-reaching significance for safeguarding the vital interests of fishermen on both sides and the sovereign rights over fisheries resources in the SCS and defending China's maritime sovereignty in the SCS.

In this way, the "Cross-Strait SCS Fisheries Resource Co-Development Corporation Program" suggests to (1) establish a corporation aimed at co-developing the fisheries resources in the SCS with private capital contributed by both sides and adopt the modality of a cooperative joint venture; (2) go through the start-up proceedings in accordance with the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures and the Rules for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures and reach agreements on costs, risks and income apportionment; (3) finish investment estimates and make arrangements accordingly according to the current status of fisheries resources in the SCS, the fishing practices in the area, and the purchase quantity of fishing vessels gears, daily office accommodations, etc.; (4) set the headquarters in Hong Kong so as to minimize the interference of political factors; and (5) engage the joint venture mainly in developing fisheries resources around the islands and reefs and/or in the open waters of the SCS. The Program also proposes to establish oceanic fishery operation supply bases on the Mischief Reef (presently under the control of Mainland China) and the Taiping Island (the biggest island in Nansha and the only one endowed with fresh water resources, under the control of Taiwan) to ensure fuel supply, vessel maintenance, aquatic product freezing and other logistical support services in view of enhancing pelagic operational capability and efficiency.

According to the report entitled "Make Full Use of the Advantages of the Mainland, Taiwan and Hong Kong to Implement a Collaborative Management of SCS Fisheries Resources" presented by Professor Ho Kin-chung, Dean of the School of Science and Technology, Open University of Hong Kong, China has a long coastline covering a broad climatic zone, which is particularly suitable for developing multi-

species fishing. As Hong Kong allows for free ship registration, free overseas shipping agency registration, a less stringent incorporation approval, and a secure legal protection system, while it has an improved stock market and a fair, independent accounting and auditing system, the report recommends to establish the joint venture in Hong Kong. In 2002, the government of the Hong Kong Special Administrative Region commissioned a consultant team and initiated a discussion on the development of pelagic fishery, which led to the conclusion that it was feasible for the fishermen in Hong Kong to pursue pelagic fishery, both technically and financially. However, in order to do so, it was also necessary to adopt an enterprise operation, rather than a traditional family business scheme. In the future, Professor Ho states in his report, both fishing agencies and fishermen should give consideration to the investment and risks involved in pelagic fishery and decide on whether the business should be developed accordingly. The governments of the Mainland, Taiwan and Hong Kong should make continued efforts to provide technical support services and financial credits to help willing fishermen in this regard. And in particular, the Hong Kong government should assist fishermen in contacting the governments of the Mainland and/or foreign countries so as to promote the development of pelagic fishery.

Professor Kuen-chen Fu from SJTU KoGuan Law School suggested that the discussed joint venture raise the Flag of the Hong Kong Special Administrative Region (HKSAR) on its fishing vessels, which in this way could not only make use of the advantages in registration and seaworthiness management (which also explains why fishing vessels flying such a flag have increased operations in the SCS so much) and satisfy international requirements, but also help to enforce China's sovereignty over the SCS. In this case, an HKSAR Flag will be more helpful than a Five-Starred Red Flag. Additionally, it will be easier for the joint venture to enter the international community. Besides, fishermen will become better off through fishing knowing they are under governmental protection, which will also help to safeguard China's sovereignty over the SCS. To this, Director Zeng Xiaoguan of the Nansha Fisheries Department, Administration of Fishery and Fishing Harbor Supervision of the SCS, Ministry of Agriculture, replied that the flag also plays a role in settling disputes between fishing agencies and foreign parties, which will be easier if the Mainland chooses the diplomatic approach. Professor Fu further explained that, even if the HKSAR Flag was raised, diplomatic protection could be provided by the central government, but the Hong Kong government would still be responsible for specific operations. In that way it would become possible not only to reduce the risks of conflicts, but also to maintain diplomatic flexibility.

As for the management method to be followed by a hypothetical company en-

gaged in fishery resources development, Mr. Lei Tsu-kang pointed out that, since Hong Kongers are fond of fresh seafood, many companies based in SCS countries are engaged in the transportation of live fishes to Hong Kong. Therefore, if new companies engaged in fishery resources development are meant to survive in the Hong Kong market, the Mainland and Taiwan should share the islands so as to make rock fishing possible and transport live fishes to Hong Kong. Fishing, on the other hand, can be complemented with tourism; tourists can be transported by plane to the islands for recreational activities such as diving and fishing, which can not only promote the development of tourism, but also assert China's sovereignty over the area. Concurrently, investigator Lin Guangji, from the Office of Policy and Planning, Fujian Provincial Department of Ocean and Fishery, voiced his opinion that the joint venture should be aimed at Dongsha, Xisha, Zhongsha and Nansha Islands, and the governments of the Mainland, Taiwan and Hong Kong should establish a framework for high-level cooperation, based on which more enterprises, groups and commercial organizations will be allowed to jointly develop both the oil and fisheries industries. Mr. Lin is also of the view that the Chinese government should allow for more enterprises engaged in fishery resources development to be established in the Mainland, Taiwan and Hong Kong, in order to safeguard relevant rights and fisheries, mentioning that his provincial government supports exploration in the field.

To the above-said, Researcher Chen Qingchao replied that the issues related to the SCS are complicated. As a result of the influence of various political factors, a lot of islands and reefs are unfit to allow access. In fact, Researcher Chen stated, due to a variety of restrictions imposed by the central government on the islands and reefs in the SCS, the Ministry of Agriculture disapproves of increasing the number of fishing vessels. Consequently, he urged more prudence be exercised in determining whether in such islands and reefs fishing could indeed be allowed. According to Associate Researcher Kang Lin from the National Institute for South China Sea Studies, the possibility to develop tourism in the SCS is nearly zero. The disputes are mainly related to the Nansha Islands, while the non-disputed Xisha Islands are controlled militarily, hardly allowing for tourism development. Furthermore, Mr. Kang pointed out that even in the case of the latter islands, Chinese citizens have to apply to the government for approval of their journey and state their purpose, prior to departure, while foreign tourists are totally forbidden to travel to the area. As for Nansha, the islands are still in dispute, making it impossible to develop tourism. The aforesaid have imposed heavy restrictions on the commercial development of the SCS.

However, Mr. Chen Chu-lung believed that the joint development by Mainland China, Taiwan and Hong Kong is inevitable, for the purpose of asserting sovereignty

through fisheries protection, though holding companies are preferred to do so, rather than the joint venture scheme proposed by Dr. Chu Xiaolin. Indeed, based on the fishing capacity of fisheries companies across the Straits, fishing vessels can be rented, in order to enjoy the application of the dual nationality principle and address flag-related issues more effectively. A holding company can make use of existing equipments as well as markets, which should be protected by the government. The representative of the Fisheries Industry in Taiwan, Mr. Wang Tsai-fu pointed out that before 1977, Taiwan's trawlers had always been operating in the SCS, however, as fishing gears were cut off later by Vietnamese, Taiwanese trawlers had been driven out from the SCS ever since. Establishing an SCS Fisheries Corporation, ought to be firstly aimed at sovereignty declaration. Mainland China and Taiwan are complementary, with the former safeguarding fishing and the islands used as bases for supply and rescue, including Hainan Island as a special base.

Finally, concerning the harassment on Chinese vessels by Vietnam and the Philippines and the use of governmental fishing protection forces proposed during the discussion by Professor Kuen-chen Fu, Deputy Director Guo Jinfu replied that normalized management, rather than regular sea patrols, is being currently adopted in fishing protection and rights safeguarding, but considering the vast area of the SCS, it is still impossible to provide protection for each fishing vessel in operation.

### *B. Cross-Strait Overseas Pelagic Fisheries Co-Development Corporation Program*

The report entitled "Cross-Strait Overseas Pelagic Fisheries Co-development Corporation Program" presented by Dr. Chu Xiaolin consists of three parts, namely: Fishery Advantage Complementation, Cooperation Modalities and Specific Tasks. Having started earlier in the fisheries industry than the Mainland, Taiwan has accumulated a rich practical experience. Mainland China, however, did not engage in pelagic fishing until after 1985 and through years of efforts, its industry has strengthened, beginning to gain scale. Now, while Taiwan plays a minor role in international fisheries management organizations and lacks pelagic fishermen, the Mainland lags behind in terms of fishing technologies and equipments, without adequate overseas cooperation in this regard. Therefore, in order to promote further development of pelagic fishing in China, it is imperative to strengthen cooperation across the Straits, which is also an inevitable choice in the context of global tightened fisheries management and highly enhanced conservation awareness.

According to the report, cooperation can be led by fishery associations across the

Straits (i. e., the Distant Water Fisheries Branch of the China Fisheries Association and the Overseas Fisheries Development Council of Taiwan respectively) by incorporating a distant water fishing company, with capital contributed by both sides. As to specific issues regarding such incorporation, the “Cross-Strait SCS Fisheries Resources Co-Development Corporation Program” can be consulted for reference.

The main tasks of the corporation may include the following: (1) cooperation in terms of fishing technologies and integration of fleet resources; (2) cooperation in terms of fishermen service export and improvement of the service export/import operation and protection system; (3) sharing of overseas bases and making concerted efforts to enhance partner countries’ economic growth, promote investment localization, and establish a close relationship with the countries where the overseas bases are to be located; (4) attainment of IUU fisheries co-management and cracking down on IUU; (5) exploration of domestic markets, focusing on expanding domestic tuna markets and reducing the excessive dependence on the Japanese market; and (6) close cooperation with international fisheries management organizations.

For his part, Mr. Chen Chu-lung gave a retrospective account of the cooperation process between Taiwan and the Mainland from the 1980s to the present day. At first, Mainland vessels were recruited for distant water operations. Today, Taiwanese businesses are investing in the fisheries industry in the Mainland and building freezing bases and processing factories, which demonstrate the close business cooperation existing between both sides. Still, concerning their relations with international organizations, both sides have to continue strengthening their mutual trust and cooperation in an endeavor to realize a greater share of the resources. Taiwan now ranks first in the world in terms of tuna output, while the cross-strait cooperation will be beneficial to both sides. Investigator Lin Guangji substantiated Mr. Chen’s point by stating that cross-strait non-governmental fisheries cooperative efforts are diverse, with many successful cases, but the lack of mutual political trust is a deep-seated problem. He suggested beginning with non-governmental cooperation so as to increase mutual exchange. To this, Dean Xu Liuxiong added that the Mainland and Taiwan should form a tacit understanding on fisheries issues and cooperate with each other in international organizations so as to avoid self-contradictions.

Mr. Lei Tsu-kang opined that there are two breakthroughs to forge future cross-strait cooperation: (1) saury fishing: since the neighboring countries have not fully realized the values of sauries and quota management has not been implemented yet, the cooperation across the Straits to occupy fishing grounds and acquire saury catch record will be crucial for entitlement to quota; and (2) fishermen: due to a variety of factors, fishermen from the Mainland have left Taiwan. In view of this, a better



cross-strait cooperation environment is expected for fishermen exchange.

Finally, Researcher Chen Qingchao, in his “Suggestions on the Establishment of SCS Offshore Fishing Companies” stated that it is necessary to start by developing the pelagical fisheries resources of the SCS, establishing an offshore fishing company involving the Mainland, Taiwan and Hong Kong, while promoting governmental and non-governmental cooperation, and then increase investment in capital and technology, and form a flow line including vessel building, fishing, processing, freezing and distribution. While engaging in such efforts, the parties should sum up their experiences, reflect on the problems and closely follow international fisheries developments in preparation for the next step.

#### **IV. Legal Protection System for Fishermen Detained Overseas**

In his report, “Legal Protection System for Foreign-related Fisheries Cases Occurring in the SCS”, Mr. Zheng Zhihua pointed out that for more than twenty years, Chinese fishermen, when fishing in China’s traditional fishing area around the Nansha Islands, have been repeatedly driven, seized, detained, robbed or shot by some neighboring countries, causing serious damage to their persons and property. In recent years, the neighboring countries have been fighting more and more fiercely for their maritime rights and interests, and China’s territorial waters within the Nansha boundary line have been repeatedly invaded, thereby infringing China’s sovereign rights over the fisheries resources in the SCS and causing traditional fishing grounds to degrade and offshore fisheries resources to wane, which might also become evidence that other concerned countries could make use of to exercise sovereign jurisdiction and effective control.

In such a context, during the Conference Mr. Zheng proposed to establish a dynamic three-dimensional efficient overseas fishermen security mechanism, as follows:

Such a mechanism includes first a passive reaction mechanism which can be instituted by the following measures: first, establish a foreign-related fisheries emergency handling mechanism, which includes a unified SCS fishermen rescue center—Fishery Command Center, working in concert with nearby law enforcement units. A joint maritime fishing protection regulatory base should also be built, which integrates and enhances maritime law enforcement forces, implements normalized sea patrols and provides escort fishing protection for fishing vessels from the Mainland, Hong Kong, Macao and Taiwan in the open waters of the SCS; in addition to the establishment of a bilateral or multilateral SCS fishery dispute joint mediation mechanism through con-

sultation. A bilateral communication mechanism for fishery law enforcement should be instituted and a detention incident handling guideline and law enforcement manual be prepared so that on-the-spot rescue by law-enforcement vessels and diplomatic *démarche* can both be employed. A fishermen's foreign assault coping manual should be provided, with a complete set of procedures: Any incident occurring inside the U-shaped line should mainly be appealed to diplomatic protection and legal rescue, resorting to the SCS fisheries dispute joint mediation mechanism; when detained in the high seas, the case should be appealed to diplomatic protection and protest and mediated through the SCS fisheries dispute joint mediation mechanism. The second thing to consider is that a non-governmental rescue mechanism should also be established and improved that includes an overseas legal aid centre for Chinese fishermen and a report-estimation-rescue mechanism, relying on fishing vessel owners mutual insurance associations and fisheries associations to establish a 24h communication channel between fishermen and associations and governmental agencies. As needed, professionals should be appointed to check the cases and accompany the families of detained fishermen during visits, and legal experts and lawyers (together with local lawyers) for consultancy and accelerated handling as circumstances demand. Detained or shipwrecked fishing vessels and their deckhands should also be granted access to subsidies or loans for their overseas negotiations, litigation and repatriation. Contact stations of the fishermen associations should be set up in neighboring countries, visits and negotiations can be conducted through local overseas Chinese or Chinese chambers of commerce and other organizations, and if necessary, bail should be paid to redeem the detained fishermen or vessels. Finally, a bilateral or multi-lateral SCS fisheries dispute mediation mechanism should be established through consultation, which will also play a role in mediation and arbitration beyond the functional scope of a bail.

Mr. Zheng's report also introduces suggestions on active prevention and attack mechanism normalization management. Relevant systems (such as fishing moratorium and restricted fishing zones) should be launched for all areas inside the U-shaped line, and the laws and regulations binding on IUU fishing by neighboring countries should be comprehensively enforced. Immediate and rapid actions including seizure should be taken against any IUU case through satellite monitoring, pre-announcement and integrating law enforcement forces. Another recommendation is to develop a comprehensive functional zone planning inside the U-shaped line, by, for example, establishing marine and coastal eco-system nature reserves, marine biological species nature reserves, marine natural remains and non-biological resource reserves and special marine protected areas, among others, so as to form diverse bases for law en-

forcement.

In short, according to Mr. Zheng's proposal, the legal protection mechanism against foreign-related fisheries incidents in the SCS should be a joint one that covers not only the families of fishermen, but fishing vessel owners mutual insurance associations, public interest lawyers, fishery administration/monitoring and foreign affairs departments, the sea police, the navy and other governmental forces. At the same time, the mechanism should make use of non-government third-party mediation platforms under certain circumstances to combine an active attack and passive reaction in order to ensure the security of both fishermen and vessels, settle foreign-related fisheries disputes, control and eliminate invasion and safeguard China's sovereignty as well as its maritime rights and interests.

However, to Investigator Lin Guangji, research supporting the aforesaid system is far from being based on reality, and to address fishing vessels detention incidents, the Chinese government has already developed a complete set of solution mechanisms including diplomatic and political approaches. According to Mr. Lin, the mechanism proposed in Mr. Zheng's report is relatively more practical for Taiwan, a region with few "diplomatic relations". As far as the Mainland is concerned, Chinese fishermen will not be allowed to enter any country that has not established diplomatic relations with China. In the event of any dispute arising from the seizure or detention of a fishing vessel, the fishing vessel should report its bearings to the company it belongs to and whether the detention results from the vessel's own fault. In turn, the company is obliged to report to the government having jurisdiction over the vessel's port of registry, which will then report to the relevant provincial government and decide on whether it is necessary to relay the case to the Ministry of Foreign Affairs according to the actual circumstances. This mechanism has been well devised. Mr. Lin pointed out that in the past, disputes arose frequently between Kinmen Taiwan and the Mainland. However, an effective solution has been developed on the basis on mutual political trust and joint enforcement. Further, Mr. Lin stated that the situation inside the U-shaped line is highly complicated, and as such public participation has to be guided by the government. According to one of the measures devised to this end, the fishing vessel owner mutual insurance policy, all fishing vessels should become a member of the Fishing Vessel Owners Mutual Insurance Association under the Ministry of Agriculture and while doing so cover their risk with a commercial insurance policy, for which the government grants policy-based subsidies. Fishermen are thus covered with life insurance, and the local civil affairs departments will also grant subsidies to relieve their families.

Deputy Director Mr. Guo Jinfu suggested that for the purpose of increasing the

feasibility of the measures proposed by the scholars, visits may be paid to the departments in charge of SCS-related affairs in order to enrich their research materials when necessary. Under the government's guidance, diplomatic approaches have in many cases been successful in rescuing Chinese fishermen. The SCS is a sensitive area, where fishery development is related not only to production, but also to politics, diplomacy, and sovereignty maintenance.

According to Director Zeng Xiaoguang, the SCS presents sovereignty implications for the country and thus demands different treatment from other regions. To this end, he stated, China mainly adopts the diplomatic approach, international practice and international law being complementary materials for research. However, he admitted that another approach might be to subject the liable party to legal liabilities by taking advantage of the power of civil societies in the region.

Finally, Mr. Wang Tsai-fu, referring to Taiwan's experience, noted that the island has frequently appealed to third countries for fisheries cooperation, considering its diplomatic relations are not as extensive as those of the Mainland, whereas many local fishing companies prefer to reach a private settlement, i. e., to employ a local lawyer and pay the bail with the help of a local agent, in order to release detained fishermen and/or vessels. According to Mr. Lei Tsu-kang's opinions, in the current stage, it is required to study carefully the relevant laws and regulations and dispute settlement procedures that can be used during negotiation proceedings. On the other hand, he stated, development of the SCS has to be continuous so that China's fishing activities can be maintained. Additionally, scientific experiments can also be used as both a declaration of sovereignty presence and a premise for negotiation.

## V. Conclusion

In brief, this Conference brought together experts with diverse viewpoints from the academic, political and business fields across the Straits for deepgoing and open discussions on the status quo, conservation and development of fisheries resources in the SCS. One of the most remarkable achievements of the Conference was that all parties put forward constructive and inspiring perspectives on the same issue drawing from their unique experiences. And in such free expression of differing opinions, the Conference came to a successful conclusion, which is bound to open up a new chapter in the exchanges and cooperation among Mainland China, Taiwan and Hong Kong for the conservation and development of fisheries resources.

(Translator: TAN Shuangpeng)