

A Review of the 4th Forum on Regional Cooperation in the South China Sea – the Symposium on Cross-Strait Cooperation in the South China Sea

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Abstract: On 15 October 2016, the 4th Forum on Regional Cooperation in the South China Sea – the Symposium on Cross-Strait Cooperation in the South China Sea, was successfully co-hosted by South China Sea Institute of Xiamen University, Hainan International Culture Exchange Center, and Hainan Provincial Research Center for Policy and Law of the South China Sea in Lingshui, Hainan. More than 30 people from both sides of the Taiwan Strait attended the symposium, including well-known scholars from Taiwan University, “Academia Sinica”, Sun Yat-Sen University (Kaohsiung Taiwan), Taiwan Ocean University and Chengchi University, practitioners in Taiwan’s fishery industry, and experts and scholars from Chinese Academy of Social Sciences, Hainan University, Shandong University, Northwest University of Political Science and Law, Xiamen University and China Institutes of Contemporary International Relations. With the purport of cross-Strait cooperation in the South China Sea (SCS) in mind, the participants conducted in-depth discussions on the following aspects: historical records and data in respect of the SCS islands, legal status of the SCS waters and islands, fishery management in the SCS, marine environmental protection, the relationship between China, the U.S. and Japan in the SCS game and the role Taiwan plays in this game. Given the significance of this symposium, the author attempts to write a review for it.

Key Words: Cross-Strait cooperation; SCS maritime features; SCS fishery; Marine environmental protection; Relationship between China, the U.S. and Japan; Role of Taiwan

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In order to promote the peaceful development of the South China Sea (SCS) region and advance further cooperation across the Taiwan Strait on SCS issues, the South China Sea Institute of Xiamen University, Hainan International Culture Exchange Center, and Hainan Provincial Research Center for Policy and Law of the South China Sea co-hosted the 4th Forum on Regional Cooperation in the South China Sea – the Symposium on Cross-Strait Cooperation in the South China Sea in Lingshui, Hainan. With the great efforts of the participants, a consensus, also called “Lingshui Consensus”, was reached concerning cross-Strait cooperation on SCS issues. The Lingshui Consensus reads:

1. China’s claims to the sovereignty over the SCS islands are supported by sound historical facts and legal evidence. The historically inherited U-shaped line is the common heritage of the Chinese nation, whose legal effect shall not be denied. Both sides across the Taiwan Strait shall enhance exchange of historical records on the SCS, and boost cooperative studies on historical and legal issues in this regard.

2. The SCS islands of China are entitled to exclusive economic zone (EEZ) and continental shelf. China has historic rights in the SCS. The Award of the SCS Arbitration unilaterally initiated by the Philippines, has gross errors or mistakes in facts and application of laws. Scholars from both sides should cooperate on the study of the related issues in the Award, so as to identify the errors existing in this Award, and further to prove the legality of the rights and interests claimed by China in the SCS.

3. Chinese Mainland and Taiwan shall pursue cooperation on the development, conservation and management of SCS fishery resources and environment, and enhance exchange of and cooperation on relevant information, technology and policies.

4. Both sides shall urge the Democratic Progressive Party to denounce its “Taiwan independence policy”, acknowledge the “1992 Consensus”, develop cross-Strait relations, and safeguard China’s sovereignty and maritime rights and interests in the SCS.

Prof. Kuen-chen FU, director of South China Sea Institute, Xiamen University, gave the opening address of the symposium. He said, “the two sides of the Strait belonging to one China” is an essential principle of constitution. Being a fundamental law, constitution cannot be overruled by any law, policy or arrangement. “The two sides of the Strait belonging to one China” is not just a legal issue, but also follows human emotion and nature. Therefore, this basic standpoint cannot be arbitrarily changed by anyone. The SCS situation was volatile in recent years.

In fact, as early as 2002, China signed the Declaration on the Conduct of Parties in the South China Sea (DOC) with ASEAN countries, which provides for the means to settle all disputes concerning the SCS. All Parties to the DOC agree to settle SCS disputes through peaceful means upon friendly consultations and negotiations. Pending the peaceful settlement of disputes, the Parties undertake: a) to exercise self-restraint in the conduct of activities that would complicate or escalate disputes; b) to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them; c) and to conduct cooperative activities, including marine environmental protection, search and rescue operation and combating transnational crime.

Regrettably, ASEAN countries failed to attach much importance to the DOC for more than a decade. In many international conferences, some ASEAN and Western scholars even hold that the DOC goes beyond international law, therefore it has no binding force. Actually, the Vienna Convention on the Law of Treaties clearly provides for the three substantial requirements of treaties, which definitely do not include the title of a treaty. First, the party concluding an agreement should have the competence to conclude treaties. The DOC was concluded and signed by each State's foreign ministers or their representatives, who have full competence to sign the declaration. Second, specific rights and obligations shall be contained in a treaty. In light of the basic framework of SCS dispute settlement as mentioned above, the DOC articulates the rights and obligations of each contracting party. Lastly but most importantly, each contracting party should subjectively deem the treaty to be legally binding. It is observed that as the biggest country in China-ASEAN community, China, having the largest population and the longest coastline along the northern SCS, has always regarded the DOC as a binding treaty. However, under the request of a couple of other countries, China and ASEAN now determines to develop the Code of Conduct in the South China Sea (COC).

In January 2013, the Philippines, breaching the DOC it signed, initiated the SCS Arbitration against China. First, the Arbitral Tribunal constituted for this case lacks jurisdiction in itself, because the United Nations Convention on the Law of the Sea (UNCLOS) strictly restricts compulsory jurisdiction based on the principle of sovereign equality. Second, numerous fallacies or errors can be found in the Award. Among them, one obvious error is that China's historic rights within the SCS U-shaped line, which are supported by abundant historical evidence accumulated for thousands of years, were totally repudiated by the Tribunal. For this error, the Tribunal only explained, "we cannot find any supporting evidence,

therefore China has no rights”. Why cannot the Tribunal find any evidence? That is because China did not participate in the arbitral procedure, and the Tribunal failed to collect relevant materials written in Chinese, let alone reading and understanding them. In that case, it is imperative for China to let the Tribunal and the world know its ample historical evidence concerning the SCS. Another apparent fallacy concerns the definition of the SCS islands. The Award rules that the Nansha Islands as a whole, including Taiping Island, Thitu Island, West York Island, Nanshan Island, Southwest Cay and Northeast Cay, are not islands, but rocks which cannot generate 200 nautical miles EEZ and continental shelf. However, the truth is quite the contrary, since the criterion to define an island under Article 121 of UNCLOS is the “capability” of an island to sustain human habitation or economic life of its own, rather than *de facto* existence of habitation by a settled group or community in history. Maritime features claimed by many States, if judged by the latter standard, can not qualify as islands under law, and the EEZ and continental shelf delineated based on these islands should also be illegal. Consequently, the SCS Arbitration, from the outset, is a ridiculous political farce staged under euro-centrism.

I. Collection of Historical Data on the SCS Islands by the Two Sides of the Strait

A. The Correlation Between Studies on the History of the SCS Islands and Sovereignty Protection

Shi-yeoung TANG, a research fellow at the Research Center for Humanities and Social Sciences of “Academia Sinica”, delivered a report entitled “The Correlation Between Studies on the History of the SCS Islands and Sovereignty Protection: Focusing on the History of Taiping Island in Nansha Islands”. Historical facts constitute an important base supporting the defence of state sovereignty. In 1909, Guangdong provincial government protected its sovereignty over the Dongsha Island by presenting solid historical evidence. This is a perfect example in this case. Following this logic, the report explores the correlation between studies on the history of the SCS islands and sovereignty protection, focusing on the establishment of the Taiping Island.

After producing a series of records and pictures written in English, French, Japanese or other foreign languages, the report points out, prior to the 20th century, Taiping Island and its adjacent features had already been included as the living

areas of SCS fishermen, where the fishermen processed their catches, took a rest and buried their dead relatives or friends. The fishing gear, housing and tombs of the fishermen found on the Taiping Island, can also be utilized as historical evidence proving this point. At the end, TANG concluded his presentation by saying, since he has collated and interpreted more than ten thousand of documents about SCS in recent years, he plans to draft a monograph on the history of Taiping Island, attempting to make the records about the activities that the Chinese people conducted on this island resurface, to exhibit the efforts and the specific achievements that humans made on the island to improve their living environment, and further to demonstrate that Taiping Island is really an island based on the economic activities carried out on the island.

B. Works on the SCS Issued by the Taiwan Authorities in the 1970s

LIM Chuan-tiong, an associate research fellow at the Institute of Modern History, “Academia Sinica”, delivered a report titled “Works on SCS Issued by the Taiwan Authorities in the 1970s: the Release of the *Memorandum on Xisha and Nansha Islands* and Its Significance Seen from the *Archives of the ‘Foreign Ministry’*”. By referring to the *Archives of the ‘Foreign Ministry’* stored in the archives of the Institute of Modern History, “Academia Sinica”, this report attempts to outline the background against which the Taiwan Authorities prepared the *Memorandum on Xisha and Nansha Islands* in the early 1970s, and examine the release process, historical significance and impacts of the memorandum.

The preparation of the *Memorandum on Xisha and Nansha Islands* consumed three years of time, which began in 1971 and ended in 1974. The proximate cause for the release of the memorandum is the challenges posed by the Philippines and Vietnam in the SCS, and the remote cause is the crisis due to the Philippines’ scramble for oil resources as well as the resulting East China Sea crisis. In order to cope with the SCS situation with an overall plan in mind, the “Executive Yuan” of Taiwan set up a cross-sectoral Special Task Force for the SCS Islands, which convened two meetings between May and July of 1971. After three years’ efforts, the *Memorandum on Xisha and Nansha Islands* prepared by the Department of East Asian and Pacific Affairs, “Ministry of Foreign Affairs” of Taiwan, came out on 12 February 1974. Containing ten pages in total, the memorandum is divided into three parts: the first part (historical basis) includes 16 items; the second part (legal basis) is subdivided into two sections, one is treaties and the other is jurisprudence;

the third part (proof from international publications and materials) contains 8 items. Apart from that, the memorandum is affixed with an additional appendix of 7 pages – “Relevant Terms and English Translated Materials”, which contains, among others, islands names, treaties and maps.

After the UNCLOS was adopted at the Third UN Conference on the Law of the Sea in 1982, the situation in the SCS becomes increasingly complex, and the mad scramble for marine resources becomes intensified. During this period, Taiwan authorities, on the one hand, continue its effective exercise of jurisdiction over Taiping Island and Dongsha Island, and on the other hand, continue to claim the sovereignty over the four groups of islands in the SCS. During this process, the *Memorandum on Xisha and Nansha Islands*, released by the Taiwan authorities in 1974, has played a vital role in the publicity work concerning SCS. And this memorandum also becomes the source of the *Memorandum on SCS Policies* released by the “Ministry of Foreign Affairs” of Taiwan on 21 March 2016.

C. Current Studies on the History of SCS

LI Guoqiang, a research fellow at the Institute of Chinese Borderland Studies, Chinese Academy of Social Sciences, made a report entitled “Some Thoughts on the Current Studies about the History of SCS”. His report argues that the studies on the SCS history made by the scholars of Chinese Mainland can be roughly divided into three stages: the first stage, spanning from 1949 when the People’s Republic of China was established to the 1960s, is a period when the SCS history is open to research; the second stage, which spans from the 1970s to the early 1980s, is most productive; the third stage, lasting from 1980s to now, is a period when the SCS history studies flourish. In the third stage, Mainland scholars, at the macroscopic level, further explore the historical basis supporting and the complete historical facts about China’s sovereignty over the SCS islands, and at the microscopic level, investigate place names and other aspects. At the meantime, Mainland scholars have embraced an interdisciplinary approach, where history, international law and many other disciplines are integrated together. They have also paid more attention on the digging-out and collection of historical records on SCS, which gradually enriches the evidence substantiating China’s sovereignty over the SCS islands.

After describing the progress of the studies on SCS history, the report summarizes the logic system of Mainland research on SCS history into four aspects as follows: first, elements deciding territory ownership are generalized into four

parts by the historians, namely first discovery, first naming, first development and management, and first and continuous exercise of administrative jurisdiction. These four elements run through the whole process of sovereignty formation and development. They appeared one by one in the Qin and Han Dynasties, became increasingly complete after the Tang and Song Dynasties, and were ultimately fixed in the period between the late Qing Dynasty and the modern age. Second, in the eyes of Mainland historians, China's sovereignty over the SCS islands has been formed and developed through a long term. That is to say, after two thousand years of historical evolution, the peaceful development and exploration carried out by the Chinese people, and the continuous military and administrative jurisdiction exercised by every Chinese administration in history, should qualify China as the sole owner of the sovereignty over the SCS islands. Third, Mainland historians argue that the jurisdiction exercised by every Chinese administration in history is manifested in many aspects, including official naming, opening of sea routes, fishing activities, and patrol of naval force. These jurisdictional activities highlight the exclusive control and utilization of the SCS islands by every Chinese administration, as well as the great attention paid by each Chinese administration to the continuous development and management of SCS resources. Fourth, Mainland historians have also objectively examined and reviewed the activities carried out by other States neighboring the SCS. They have not ruled out the possibility that ancestors of these neighboring States also engaged in production activities in the SCS region. However, compared with China, other neighboring States lack the complete historical process of developing, managing and governing the SCS, not to say satisfying the basic requirements to establish sovereignty over the SCS islands and the effectiveness and legality of such sovereignty.

The report also points out some problems existing in the studies on the SCS history of both sides across the Strait, and proposes three suggestions in this regard. Firstly, both sides of the Strait should work together to construct the discourse system in respect of the historical basis supporting China's sovereignty over the SCS islands. The power of discourse determines the power of initiative. A scientific, complete, persuasive, and emotionally appealing system of discourse, may help us lead the research direction with regard to the SCS, and may also be coupled with legal basis to effectively defend and consolidate China's rights to the SCS. Secondly, both sides should pool their efforts together to further their studies on SCS history, and learn from each other. Thirdly, both sides should cooperate to complete the chain of evidence concerning the SCS, by systematically collating the

existing literature, and consistently gathering new historical literature home and abroad.

At the end of his report, Mr. LI concluded, the challenge to China's sovereignty over the SCS islands is, to some extent, a battle for China to fight for the dignity of its SCS history. In this battle, historians of both sides of the Strait have responsibilities to fulfill.

II. Position of the Two Sides Across the Strait on the SCS and the Actions Need to Be Taken

A. Positions on the Legal Status of SCS Waters and SCS Islands by the Two Sides of the Strait

In his report "Positions on the Legal Status of SCS Waters and SCS Islands by the Two Sides of the Strait", Prof. ZOU Ligang from Hainan University, after comparing the oceans legislation of Chinese Mainland with that of Taiwan, asserts that both sides embrace identical positions on oceans law. Chinese Mainland and Taiwan, in accordance with the regimes of territorial sea, contiguous zone, EEZ and continental shelf under the UNCLOS, created their own regimes corresponding to the relevant sea areas. Though both sides claim sovereignty over the four groups of islands in the SCS, the laws of both sides are silent on the question whether the regimes of contiguous zone, EEZ and continental shelf can apply to each island or feature in the SCS islands.

When analyzing the legal status of the U-shaped line, Prof. ZOU holds that the line was delineated on two main bases: one is the mature regimes of territory and territorial sea, and the other is the newly established regimes of continental shelf and EEZ. Chinese Mainland and Taiwan both adopt the principle of "the land dominates the sea". In other words, after confirming that the four groups of islands belong to China, they claim relevant territorial sea, contiguous zone, EEZ and continental shelf according to the island regime under the UNCLOS. Hence, considering the U-shaped line as a islands ownership line, may felicitously illustrate the original intention of the delineation of the line, and also complies with the current rules of oceans law, international treaties related to the status of SCS islands, and the legislation of Chinese Mainland and Taiwan. Notably, this postulation of islands ownership line might have defects in itself, since under Article 121 of the UNCLOS, the rights that China may claim on the basis of rocks

are limited. However, China could, according to the modern oceans law, claim sovereignty over the internal waters located within the baselines of the four groups of SCS islands, and relevant rights to their adjacent waters, i.e., sovereignty over territorial sea, jurisdiction over contiguous zone, as well as sovereign rights and jurisdiction over EEZ and continental shelf. At the meantime, such rights would not be prejudicial to the historic rights that China enjoys over other areas enclosed by the U-shaped line. Such historic rights are analogous to the rights that a coastal State enjoys in its EEZ under the UNCLOS.

At the symposium, WANG Zelin, an associate professor at the School of International Law, Northwest University of Political Science and Law, delivered a presentation titled “Cross-Strait Understanding on the Legal Nature of the SCS Waters and Their Common Ground”. After analyzing the Position of the “Ministry of the Interior (Taiwan)” on the Results of South China Sea Arbitration, and a series of declarations issued by the Ministry of Foreign Affairs of Chinese Mainland, Professor WANG argues that both sides of the Strait have a consistent position with respect to the legal status of SCS waters, both holding that China has historic rights in the SCS. In the eyes of Taiwan, it has historic rights over the SCS islands and their “adjacent waters”, without explaining the nature of “adjacent waters”. The presenter believes that historic rights can be divided into two kinds: one is the exclusive right of a sovereignty nature, such as the sovereignty over the territory acquired through occupation, and the other is non-exclusive rights without a sovereignty nature, such as the right to use sea areas. The rights China enjoys over the SCS islands and their adjacent waters are of a sovereignty nature, which also fall under the scope of historic rights. Such rights of China are obtained through means comparable with the acquisition of territory through occupation. With regard to the specific contents of the rights without a sovereignty nature, views vary in the academia; nevertheless, fishing rights and navigation rights are definitely included. Lastly, the existence of historic rights is an undeniable truth, and historic rights are not equivalent to rights to the high seas. In this context, Chinese Mainland and Taiwan shall safeguard their rights and interests in the SCS and preserve their ancestral property together.

B. The Actions That Both Sides of the Strait Should Take Toward the SCS Islands and Their Adjacent Waters

Shih-Ming KAO, an assistant professor at the Institute of Marine Affairs,

Sun Yat-sen University (Kaohsiung Taiwan), delivered a presentation named “The Actions That Both Sides of the Strait Should Take Toward the SCS Islands and Their Adjacent Waters: A Perspective from Japan’s Practice Concerning the Okinotori-shima”. Kao made a case study of Japan’s Okinotori-shima. Although the Northern Islet of the Okinotori-shima is above water at high tide, its total area is less than 10 square meters. Northern Islet therefore can only qualify as a “rock” under the UNCLOS. Nevertheless, Japan consolidated the rock through artificial means. Specifically, it planted corals on the rock and then sold them back in its mainland. Based on such “economic activities” on the rock, Japan claimed 200 nautical miles EEZ, and arrested the fishing boats which enter into the zone it claimed. On the other hand, Japan even claimed areas of continental shelf extending beyond 200 nautical miles based on the rock, and submitted its claims to the UN Commission on the Limits of the Continental Shelf (CLCS) for review. Finally, two of the three areas of continental shelf claimed by Japan on the basis of the Okinotori-shima were approved. In other words, Japan intends to, through the procedure of the CLCS, further establish the international basis supporting its claim that “Okinotori-shima is an island rather than a rock”.

Conversely, in the award of Sino-Philippine SCS Arbitration, all the maritime features of the Nansha Islands that are above water at high tide, including Taiping Island, are considered as “rocks” which have no EEZ or continental shelf by the arbitrators. This ruling is inconsistent with the definition of “island” under the UNCLOS. In fact, the UNCLOS only states that the islands themselves must be naturally formed, but does not expressly provide that the condition of “sustaining human habitation or economic life of their own” must also be “naturally formed”. Due to science and technology advances, a rock, which was previously considered unsustainable for human habitation or economic life of its own, may now have the chance to satisfy the requirements and standards of an island under the UNCLOS, not to mention the Taiping Island that has fresh water on itself.

Therefore, although the Arbitral Tribunal made a ruling unfavorable to Chinese Mainland and Taiwan, both sides of the Strait should continue to take actions to ensure that the SCS islands enclosed by the U-shaped line are “islands” under the UNCLOS. In practice, both sides may refer to Japan’s practice with respect to the Okinotori-shima. Specifically, they should continue to reinforce the fact that the SCS islands within the U-shaped line are able to sustain human habitation or economic life of their own, and then file submissions to the CLCS, with an aim to consolidate the status of these SCS islands as “islands” under the UNCLOS.

C. The Influence of SCS Arbitration on the Practice Relating to the Regime of Island

Associate Professor Tzong-Han TAI from Law School of Shandong University delivered a report – “Practice with Respect to the Regime of Island after the SCS Arbitration: Clarifying the Criteria or Creating Disputes”. The report alleges that the Philippines degraded Taiping Island to a rock, aiming to eliminate a sizable area of possible overlapping EEZ between the Philippines and China, and further to illegalize China’s actions in the SCS. The Arbitral Tribunal of the case, when deliberating the legal status of Taiping Island, arbitrarily interpreted the vague wording of “sustain human habitation or economic life of their own” under the UNCLOS. In the view of the Tribunal, the condition of “sustaining human habitation or economic life of their own” include five aspects: the presence of potable fresh water, vegetation and biology, soil and agricultural potential, presence of fishermen and commercial operations. That is to say, five arbitrators of the case offered an explicit legal interpretation to Article 121(3) of UNCLOS, which the negotiators of each State were afraid and reluctant to do during the preparation of the convention. However, a closer look into the legal interpretation given by the Arbitral Tribunal may reveal that: the five review standards decided by the arbitrators on their own are drawn mainly on the basis of the arbitrators’ free evaluation of evidence, which would meet great difficulties in practice. Such an expansive interpretation may give rise to the problem of “judge-made law”, and also create more legal disputes due to the possible absence of international practice in this regard.

Adopting a negative approach, Chinese Mainland and Taiwan may cooperate to consistently express their position of neither accepting nor recognizing the so-called “arbitral award”. Adopting a positive approach, both sides could cooperate to consistently claim that the ruling on the status of SCS islands flies in the face of facts and international practice. The claim that “the ruling on the status of islands is wrong” may become a tacit consensus between the two sides.

III. Cross-Strait Cooperation on SCS Fisheries Management and Marine Environmental Protection

A. Legal Bases for Cross-Strait Cooperation on SCS Fisheries

Prof. CHANG Yen-chiang from Law School of Shandong University gave a speech titled “Legal Bases for Cross-Strait Cooperation on SCS Fisheries”. Prof. CHANG first analyzed the status quo of the exploitation of fishery resources in the SCS, and then described the legal and other basis for cross-Strait cooperation on fisheries in the SCS. Lastly, he primarily examined the impacts that the Regulations concerning Distant Water Fisheries Management of Taiwan might impose upon cross-Strait cooperation on SCS fisheries.

With regards to the division of SCS fishing areas between two sides of the Strait, Chinese Mainland has the jurisdiction over Northern SCS and Xisha, Zhongsha and Nansha Islands, while Taiwanese fishermen could fish around Dongsha Islands, Zhongzhou Reef and Taiping Island. In the view of Prof. Chang, currently, too many fishing vessels are operating in the SCS, with small fishing boats dominating the scene. In addition to that, the structure of fishing operation in the SCS is unreasonable. In this context, it is suggested to further reduce the total number of fishing vessels in the SCS, by mainly cutting the number of small boats and maintaining large ships in an appropriate scale; and to further adjust the structure of fishing operation, by discouraging trawling and gill-netting operation of small fishing boats, actively developing angling, and properly developing deepwater trawling and seine fishing.

The legal bases for cross-Strait cooperation on SCS fisheries primarily include the following six aspects: a) a cross-Strait consensus on the historic rights to the SCS area enclosed by the U-shaped line; b) Joint Agreement of the Koo-Wang Talks; c) the shared vision of cross-Strait peaceful development; d) three letters of intent, including the 2009 Letter of Intent Concerning Joint Formulation of a Plan for the Conservation and Preservation of the Fishery Resources in the Taiwan Strait, the 2009 Letter of Intent Concerning Cross-Strait Academic Exchanges and Cooperation on Marine and Fisheries Issues, the 2009 Memorandum on Pushing the Settlement of Fishery Disputes between the Two Sides of the Strait; e) the Cross-Strait Economic Cooperation Framework Agreement; and f) the Consensus on Strengthening Cross-Strait Industrial Cooperation reached between the Association for Relations Across the Taiwan Straits (ARATS) and the Straits Exchange Foundation (SEF). Other bases for cross-Strait cooperation include: a) the overall interests of the Chinese nation, which requires both sides of the Strait to shelve their political differences and unite against foreign intervention in the name of “the Chinese nation”; b) a cross-Strait consensus on marine policy, i.e., shelving disputes and joint development; c) the cooperation between ARATS and

SEF, and the nongovernmental academic forums on SCS issues jointly held by Taiwan Chengchi University and the National Institute of South China Sea Studies, which provide the nongovernmental basis for cross-Strait cooperation on fisheries; d) Taiwan's need for distant-water fishery resources to compensate for its depletion of inshore fishery resources, and Mainland's need for advanced distant-water fishery technology, as well as the need for the unity of the two sides to fight against other States' looting for resources. Therefore, cross-Strait cooperation on fishery resources is just around the corner.

WANG Jiwei, an associate professor at the Law School of Hainan University, made a presentation entitled "The Secret Behind Why *Geng Lu Bu (Manual of Sea Routes)* Can Be Preserved for Hundreds of Years". Serving as an important document for SCS studies, *Geng Lu Bu (Manual of Sea Routes)* also demonstrates the long-standing and well-established cooperation on fisheries between the two sides of the Strait. In addition, as nongovernmental evidence, the manual is original, objective and authentic. The manual and official evidence can mutually verify each other, which can contribute to the creation of an evidence chain to prove that the SCS is the ancestral sea of Hainan fishermen. The SCS is not only the place where these fishermen reside and engage in livelihood and production activities, but also their spiritual homeland.

B. A Feasible Plan for Cross-Strait Cooperation on SCS Fisheries

HE Shengchu, the former president and current adviser of the Overseas Fisheries Development Council of Taiwan, proposed in his report a feasible plan for cross-Strait cooperation on fisheries management in the SCS. Both sides of the Strait may take the following initiatives: a) to exchange information concerning the number of operating vessels, fishing methods, fish-catch amount, ocean caught fish species, categories of the by-catches, etc.; b) to cooperate on studies of conserved species, such as marine mammals, sea turtles, seabirds and shark rays; c) to pool efforts in the conservation and preservation of SCS marine ecology and biodiversity; d) to collaborate to combat IUU fishing and exchange relevant information; e) to cooperate on the assessment of major fish species and any associated studies; and f) to notify each other any crime at sea and illegal fishing activities upon detection.

XUE Xiongzhi, the Executive Dean of Coastal and Ocean Management Institute, Xiamen University, delivered a report titled "Cross-Strait Cooperation on

Conservation and Management of Fishery Resources in the SCS". After analyzing the necessity and feasibility of cooperation on SCS fisheries between the two sides of the Strait, the report suggests to establish a cooperation framework mechanism on resource conservation. To this end, a basic cooperation model has been conceived, which could be first implemented around the Taiwan shoal.

The two sides of the Strait need to cooperate on SCS fisheries on account of the following factors. First, Chinese Mainland and Taiwan have joint fishing areas in the Yellow Sea and East and South China Seas. And the development status of fishery resources is closely bound up with both sides. Second, joint conservation of SCS fishery resources could serve as the starting point for both sides to reduce tensions and implement the COC at the regional level, and also as a breakthrough in this regard. Thirdly, regional fishery conservation requires corresponding surveillance and management capacity; cross-Strait cooperation could help the two sides complement each other's advantages and enhance their conservation and co-management capabilities, ultimately leading to the improvement of people's well-being.

Considering the current and future foreseeable complicated factors, cross-Strait cooperation on SCS fisheries shall be gradually promoted step by step and stage by stage.

First, in the initial stage, cross-Strait cooperation could be carried out in traditional joint fishing areas by applying uniform environmental standards and consistent management rules. In the fishery cooperation pilot site located within their joint fishing areas, Chinese Mainland and Taiwan may cooperate to: a) conserve and preserve offshore fishery. Particularly, in their shared coastal waters or the coastal waters of the two sides adjacent to each other, along with the Taiwan Strait, both sides shall join hands to protect offshore marine habitats, and monitor and forecast marine pollution and red tide disasters, in order to mitigate the serious impacts of marine pollution on inshore fisheries, and further to effectively conserve inshore fisheries and achieve ecological restoration; b) implement the fishing moratorium system. Provisions on prohibited fishing seasons, areas and species are different in the fishery laws and regulations of both sides, which is unfavorable to the orderly development and effective protection of SCS fisheries for both sides. Consequently, both sides shall adopt a unified fishing moratorium system. In doing so, fishermen from both Chinese Mainland and Taiwan could follow the same rules, which would eventually reduce fishery disputes and promote rational exploitation of fishery resources of both sides; c) enforce the relevant laws. The two sides may

jointly conduct law enforcement activities on a regular basis in their joint fishing areas, collaborate to investigate illegal fishing activities, and establish a reporting system for fishery law enforcement. The two sides shall inform each other of its law-enforcement vessels performing tasks in their joint sea areas, and strengthen interactive cooperation at sea, if necessary, so that emergent fishery incidents and disputes could be handled in a timely manner, and their fishery management efficiency could be raised. Moreover, they shall establish a joint rescue mechanism with respect to fishery accidents in the SCS, so as to safeguard SCS fishery security together.

Second, in the long run, the area of the SCS where Chinese Mainland and Taiwan may conduct fisheries cooperation is not limited to the agreed zone within the fishery cooperation pilot site; instead, utilizing their respective advantages, they may carry out deeper cooperation in a larger marine area as follows:

a) cooperation on pelagic fishery. The advantages of both sides are highly complementary. Therefore, they can work together to drive the co-management of IUU fishing, crack down on illegal fishing vessels, and protect the legitimate fishing interests of both sides;

b) cooperation on developing eco-fisheries around SCS islands or features. Taiwan's recreational fishery has developed rapidly. Both Chinese Mainland and Taiwan have a long history of fisheries culture in the SCS, and the fisheries culture of both sides is closely linked and can be traced back to the same origin. In that case, they can establish protected areas on the islands or features under their jurisdiction or in their marine areas, aiming to preserve and conserve fishery resources. Using these protected areas as ecological fishery bases, the two sides can integrate their fisheries culture and tourism resources together. Particularly, they can jointly develop high-quality tourism products concerning SCS fishery, through designing routes for fishery sightseeing and leisure upon consultations. By doing so, ecological health and sustainable development of fish stocks in the SCS could be also maintained;

c) cooperation on fishery protection. Predatory and illegal fishing in the SCS by the bordering States is one of the main reasons leading to the depletion of SCS fishery resources. Fishermen from Chinese Mainland and Taiwan, when conducting normal fishing activities, are often forcibly expelled or even arrested by other States surrounding the SCS. In this context, both sides need to carry out fishery protection activities together in their traditional joint fishing area. To be specific, Mainland's fishery law enforcement agencies and Taiwan's "Coast Guard

Administration”, which is responsible for law enforcement at sea in Taiwan, may cooperate and coordinate further to conduct such joint law enforcement activities against illegal foreign fishing in the SCS. On the one hand, such activities would show the determination of both sides to safeguard China’s rights and interests in the SCS, and on the other hand, would protect the safety and legal rights and interests of Chinese fishermen, as well as stabilize the order of fishery in the SCS.

C. Conservation of the Marine Resources of the Dongsha Atoll and Fisheries Protection

CHOU Chen-yu, an associate professor at the Institute of the Law of the Sea, Taiwan Ocean University, delivered a report titled “Conservation of the Marine Resources of the Dongsha Atoll and Fisheries Protection”. After giving the basic information about the management station of the Dongsha Atoll National Park and the establishment process of the station, the report looks into the significance of cross-Strait cooperation on fisheries through analyzing some fisheries protection events.

The Dongsha Atoll is a typical circular atoll located in the northern part of SCS. It is 240 nautical miles (444 km) away from Kaohsiung City. With unique marine ecological environment, the atoll provides rich bio-diversities of marine life. It is a critical habitat and an important provenance center linking SCS with Taiwan marine ecological environment. In recent years, fishing vessels of Chinese Mainland often conducted illegal fishing activities in waters near the Dongsha Atoll, which is administered under Qijin District, Kaohsiung City. Such activities attracted the attention of Taiwan inspection and maritime patrol authorities. They started to strictly suppress such activities, and conducted investigation and inspection on the Dongsha Island. However, falling short of competence, the Taiwan authorities failed to seize all illegal vessels upon investigation. Limited achievements in this regard show the predicament that Taiwan faces in its atoll and fisheries protection work. Notably, one of the most serious incidents happened on 23 March 2016. Taiwan patrol personnel discovered and then seized the Mainland registered ship *Qiongqiong Haiyu No. 05055*, which had illegally caught coral and shellfish up to 15 tonnes within the Dongsha Atoll National Park. They also found two live green turtles, and 31.3 kilos of green turtle meat on board. In the incident, 41 fishermen from Mainland were arrested and brought to justice. This incident reveals that it is still challenging and difficult for Taiwan’s maritime patrol authorities to conduct

law enforcement activities in this marine area, since it is remote from Taiwan Island. In this connection, Taiwan should enhance communication with the fisheries authorities of Hainan Province of Chinese Mainland, and create a communication platform for the law enforcement authorities across the Strait, aiming at preserving the valuable marine ecological environment of Dongsha Atoll, and maintaining the sustainable development of the marine ecological resources.

IV. The Relationship between China, the U.S. and Japan in the SCS Game and the Role Taiwan Plays in This Game

A. The Role of the U.S. in the SCS Game

Chien-Chon CHEN, the president of the Mainland College Student Association of Taiwan, delivered a report named “The Strategies the U.S. and Japan Adopted in the SCS Game and the Role Taiwan Plays”. The report focuses on the analysis of American and Japanese strategies for the SCS, and then offers a deduction about the possible role and strategies of Taiwan in this aspect. American strategies towards China has undergone many changes. Facing the rise of China’s military power, American Defence Secretary Carter stated, in April 2015, that U.S. Asia-Pacific rebalance strategy would enter into a new phase, which would cover three measures: to develop high-end weapons and deploy more troops to the Asia-Pacific region; to strengthen relationships with Japan and other U.S. alliances in the region; and to broaden American trading partners in the Asia-Pacific region. After 2016, the strategy entered into a phase of comprehensively deploying forces. When the award of the SCS Arbitration was delivered, the U.S. nominally supported the award. However, under the strong opposition from China, the U.S. did not enter into the area of SCS with sovereignty disputes by using its military force, and therefore did not exacerbate the disputes for the moment. It can be expected that in the future, the U.S. would deploy more advanced military forces to the western Pacific region, so as to put pressure on Chinese Mainland with respect to the SCS issue. Regarding the tense situation in the SCS, the aftermath of the SCS Arbitration would be a new beginning of sharp confrontations.

B. The Role of Japan in the SCS Game

Chien-Chon CHEN also explored the underlying reason which drove Japan to forcefully intervene in the SCS issue. First, by creating long-term tensions in the region, Japan attempts to strategically provoke long-standing conflicts and confrontations between China, the U.S. and the relevant ASEAN countries, further to contain China and consume its strategic resources, and alleviate China's opposition to Japan's actions on the Diaoyu Islands. Second, Japan tries to establish closer relations with the ASEAN countries, and enhance its influence on political security in the region, by highlighting the sovereignty disputes in the SCS. Third, in doing so, Japan can also develop a public voice for the amendment of its constitution and the building of a strong army, so that the newly passed security bill can give the Japanese government more power to utilize military forces overseas. Japan is developing a sea-based missile defense system, with the purpose of joining the U.S. in creating its global missile defense system. Japan is also beefing up its forces on its southwestern islands, seeking to raise its offensive capability, and further to control the Miyako Strait and cut off the channel where the Chinese navy enter the Pacific. By doing so, Japan also intends to improve its ability to conquer or land on the island, and cope with the Diaoyu Islands disputes. Obviously, the U.S. and Japan want to effectively consolidate their military alliance network through frequent military exercises, so that the two States may jointly deploy their forces within this network to contain China. In fact, the U.S. attempts to turn the Philippines into a platform severing the purpose of stationing U.S. military forces in the Asia-Pacific region. And Japan may gradually join in the U.S.-Philippine joint military drills, linking East China Sea with South China Sea. When Japan intervenes in the SCS disputes, Japan and China would encounter highly explosive conflicts.

YUAN Chong, an associate research fellow at the Institute of Japanese Studies, China Institutes of Contemporary International Relations, made a report entitled "The Background and Direction of Japan's Policy Toward SCS Issues". The report states that Japan has, for a long time, showed great interest in any changes to the SCS situation. Prior to the escalation of the SCS disputes, Japan observed the SCS issues mainly from the perspective of sea route security. However, limited by the capability of Japan Self-Defense Forces and Japanese domestic law, Japan Maritime Self-Defense Force can merely carry out antisubmarine and surveillance activities as far as the northern SCS, and the SCS has not been included in the action plan of Japan Self-Defense Forces. After the escalation of the SCS disputes, in order to support U.S. return to the Asia-Pacific strategy and push the implementation

of Japan's newly adopted security bill, Japan showed unusual interest in the SCS issue. Japan is reluctant to be marginalized in the SCS issue, albeit not a party to the SCS disputes. It frequently sowed discord and created disturbances in the region, pursuing to achieve multiple purposes, including: ensuring its influences on the SCS issue, smearing China's image, developing a loose network of alliances to curb China, consolidating its security cooperation with the U.S., building the momentum for the transition of its security policies, and mitigating the pressure from China concerning the East China Sea. In the future, Japan will continue its intervention efforts regarding the SCS issue, through offering supports to the building of military and maritime law enforcement capabilities of the States concerned, creating diplomatic hotspots, and other means. Nevertheless, Japan would adopt a cautious and prudent attitude towards the so-called "patrol of the SCS", or try to test the bottom line of China's policy by playing "edge ball".

C. The Role of Taiwan in the SCS Game and Its Policy Direction

Facing the situation described above, Chien-Chon CHEN mentioned in his report that, the Democratic Progressive Party (DPP) administration, especially Taiwan's current leader Tsai Ing-wen, must be clearly aware of the severe situation in the Taiwan Strait, and the considerable gap of military power between the two sides across the Strait, thus should not lose their mind to deploy Terminal High Altitude Area Defense (THAAD) missile in Taiwan. In addition, the DPP administration should neither lean towards the U.S. or Japan, nor lose its own stance by waiving its claim to the sovereignty over the territorial sea within the U-shaped line; otherwise, Taiwan would send negative messages once more to Mainland, further deteriorating the cross-Strait relations. In practice, the DPP administration may take the following moves to appease the conflicting interests of both sides, foster goodwill and mutual trust between their top government officials and reestablish the consultation mechanism between ARATS and SEF: first, to disclose the pertinent historical documents to each other, including the correspondence between China, relevant international organizations and other major countries in the Republican period of China, so as to prove that the Chinese government has the sovereignty over the SCS islands; second, to maintain the claims to the sovereignty of the territorial sea within the U-shaped line in the SCS, and to adamantly protect fisheries and the interests and rights of Chinese fishermen; third, to encourage cross-Strait research on joint exploitation of the SCS areas,

to promote exchange between the associated academic institutions of both sides, to create SCS hydrological databases together with the Chinese Mainland, and to reach cooperation agreement with the Mainland concerning marine meteorology, emergency relief and other matters.

Professor LIU Fu-kuo from the Institute of International Relations, Chengchi University, delivered a report titled “Policy Options for Taiwan in the SCS Game Between China and the U.S.”. The report argues, after the DPP administration returned to power in May 2016, Taiwan has the following favorable policy options in the SCS game between China and the U.S.:

First, neither to go beyond the bottom line of its conventional SCS policy, nor to deviate from the interests of both sides across the Strait, but to encourage nongovernmental cooperation on many fronts;

Second, to actively manage the SCS on the existing basis, and to initiatively seek the understanding of other States bordering the SCS based on its strength and power;

Third, to continue the traditional partnership with the U.S., so as to adapt to the needs of the U.S. Asia-Pacific rebalance strategy; however, Taiwan should maintain policy autonomy, to some degree, when it comes to the SCS;

Fourth, to narrow the internal political division of Taiwan, boost interactions across the Strait, and clearly define the direction of its SCS strategy.

D. Challenges and Opportunities of China

WONG Chi-shuen, a Ph.D. candidate of the Department of Diplomacy, Chengchi University, delivered a report titled “Regional Challenges and Opportunities of China: Taking the South China Sea as an Example”. The speaker said, in 2016, when the situation in the SCS region was rough and volatile, the international challenges China faced were not any less, although China publicly declared its wish to “shelve disputes and jointly develop” the SCS, and gradually changed its initiative of “peaceful rise” into “peaceful development”.

The overall international strategy of the U.S. follows the concept of “balance of power” developed by the European powers, which pushes the EU to compete with Russia in the continent of Europe, and China with Japan in the Far East. The U.S., resembling the U.K. in the 19th century, assists one party in a competition as an offshore balancer, which would help that party become the winner or have an edge on its competitors. Viewed from this concept, the U.S. developed its Asia-

Pacific rebalance strategy primarily with two aims: one is to end China's "period of strategic opportunity", to inhibit China's continued development, and at the same time to stoke tension between China and its neighbors in the hope of diffusing China's power; the second is to benefit from the competition or fight between China and Japan.

The U.S. has strategic interests behind the dramatic SCS Arbitration. It intends to fuel regional disputes by stoking the conflicts between China and Southeast Asian countries. China refuses to acknowledge the result of the arbitration, calling the award "a piece of scrap paper". Additionally, it continues land reclamation and defence works in the SCS region. China insists that the said works are mostly for civil ends, and the necessary military installations established in the region are limited in number and purely for defence, which are compatible with the security situation of the islands concerned. There is no issue of "militarization" here. With the respect to the Philippines, after Rodrigo Duterte took office as the Philippines' 16th president, he changed the pro-America and anti-China policy adopted by his predecessor Benigno Aquino III, and strives to foster cordial relations with China. Sino-Philippine relations were strained when the ruling on the SCS Arbitration was delivered in July 2016, however the relations suddenly became improving and promising in the following September. During the G20 Summit and October of the same year, Duterte repeatedly criticized the U.S., bringing up the crimes that had been committed by U.S. troops during the U.S. colonization of the Philippines, and announcing that an upcoming military joint exercise with the U.S. would be the last military exercise between the two States. The SCS disputes in the 21st century reflect that international environment changes more violently than the internal situation of China. As good fortune and misfortune accompany each other, many emergencies would change the overall global situation. If China holds to its established national strategy and will not easily give up its strategy when challenged by other States, China would ultimately win an edge over its competitors.

Translators: XIE Hongyue and ZHAO Jufen