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## Maritime Resources in the South China Sea and China's Management in the International Legal Context

The South China Sea is one of the ocean areas being rich of maritime resources, which lays an important and objective foundation for China and some other countries around Southeast Asia regarding their economic development and national capacity building. These maritime resources can include sovereign soil and water, physical materials and soft resources for transportation among states. China can offer a lot of historical and legal evidence to support its claims to the resources in the South China Sea. But other countries also claim these resources which overlap with China. This has created conflicts with China and among themselves. Therefore, with the exception of sovereign resources, other physical and soft maritime resources could be identified with their fluent features and contribute to the cooperation among claimants. This paper will try to define the features of maritime resources in South China Sea and determine the character of China's maritime resources based on international legal analysis. The possibilities for the joint exploitation and cooperation between and among claimants will also be discussed. Of course, this research is a pure academic exercise, which goes far beyond the policy options.

### I. Maritime Resources and Their Management

To define the features of maritime resources in the South China Sea, we may first link them with the normal maritime resources, and search for possibilities to joint exploitation of these resources. That will elaborate theoretically the joint exploitation of the maritime resources in the South China Sea among the claimants.

#### *1. Definition of Maritime Resources*

Resources refer to the materials, treasures and manpower of a country or a certain region, which can be classified into two kinds: natural resources and social resources. But maritime resources, which will be the focus of this paper, are natural resources. Natural resources, generally speaking, include material resources and natural processes, and are defined as the physical form favorable to human life and production under certain technological and economic circumstances. Maritime

resources refer to all physical forms in the seas and oceans on the globe, which can supply for human life and production.<sup>1</sup>

Maritime resources have special notation, and are different from territorial resources in the general sense. Territorial resources are the exclusive resources within a country's territory, while in the international society, maritime resources have two sides: nationalization (exclusive to a certain country) and internationalization (shared by the international community). To be specific, maritime resources can be classified into the following three kinds.

Firstly, maritime resources with absolute ownership, which can be called sovereign resources, such as islands, territorial waters and seabed under the territorial waters of a country. This kind of resources is solely possessed by a certain country, cannot be shared, and is part of the country's territorial sovereignty.<sup>2</sup>

Secondly, maritime resources with exclusive ownership, which may be possessed by coastal countries in the exclusive economic zone of 200 sea miles according to the *United Nations Convention on the Law of the Sea* (UNCLOS). This kind of resources may be called solid resources, including mineral natural resources under the water and biological resources (fishery for example) in the water. They are exclusive resources, but can be shared by means of commercial operations between countries and peoples. Thirdly, maritime resources with shared ownership. According to UNCLOS, the sea route within exclusive economic zone is also a kind of marine resources, and all countries have the right of freedom of navigation at sea. This is the resource shared by the international community, and so are the marine resources in high seas. That is to say, according to the theory of "freedom of the open sea", the marine resources of high seas and on the bottom of international waters do not belong to any single country. Instead, they are the common resource of mankind, and public goods shared by the whole international community. Such shared maritime resources include fishing resources and seabed mineral resources, etc.

## *2. Political Management of Resources in International Community*

There are three types of management of marine resources in the international community.

The marine territorial sovereignty is maritime resources with absolute ownership. The means of obtaining territorial sovereignty fall into three kinds: the first, by monopoly, that is, the national territory, including islands in the sea, is obtained

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<sup>1</sup> TAN Bo-Ping, *A Study on China's Laws and Rules concerning Marine Resource Protection*, People's University of China, Ph. D. Dissertation, 2007.

<sup>2</sup> WANG Shi-Cheng, *Dragon will Rise from the Sea*, Ocean University of Qingdao Publishing House, 1997.

through natural and historical acquirement. This is an absolutely legitimate way; the second, by force, that is, a country invades and occupies another country's territory by armed force. This is absolutely illegal, and can never be supported by any international laws; and the third, by negotiation and arbitration, that is, in case of territorial disputes between countries, both parties negotiate and reach an agreement on the basis of mutual understanding and mutual accommodation. Or both parties, upon mutual agreement, can resort to international arbitration to define their respective territories and relevant sovereign rights. This is legal.

The exclusive national resources can be managed internationally through flexible methods in management. Although the exclusive national resources belong to a certain country and its people, they can be shared with another country or people by means of joint commercial development. This is usually done through joint development or cooperative investment, so as to achieve international cooperation, and share risks and profits.

The shared resources need joint management and usage of international community. No matter whether the shared resources are in the exclusive economic zones or in the high seas, they are international public goods, equally available to all countries. Or alternatively, if approved by the international community, a single country can explore and develop the resources alone. The international society should take the responsibility to protect the shared resources, such as freedom of navigation. Nevertheless, shared resources are public goods, and should not be over-used, otherwise, other sharers' interests might be harmed. The shared resources should never be exploited hostilely against other sharers, thus endangering other countries' security.

### *3. The Resource Management in the International Legal System*

The definition, possession and management of maritime resources should be guaranteed by current the international legal system. The international maritime legal system is divided into two parts. Firstly, customary laws, the origin of international laws, include consistent behavior and legal convictions of a country.<sup>3</sup> Secondly, international treaties and the *United Nations Convention on the Law of the Sea* (UNCLOS) laid a major corner stone for the maritime legal framework. The issue of UNCLOS provided one of most useful ways for solving maritime disputes. International customary laws and international treaties are both origins of

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<sup>3</sup> Brian D. Leppard, *Customary International Law: A New Theory with Practical Applications*, Cambridge University Press, December 2009 ; ZHENG Bing, LI Pei-Nan, "The Origin of International Laws: International Customs and Treaties", *Global Law Review*, Issue 1, 1986.

international laws. Therefore, the international marine legal system should also be made up of international customary laws and international treaties. It's obvious that UNCLOS alone is not enough to solve the complicated maritime security issues, and we should borrow some fundamental principles from customary laws to deal with such issues more effectively. Unfortunately, current academic circles focus too much on UNCLOS, as if all maritime security problems should be solved in the framework of UNCLOS. This is a misunderstanding. In fact, UNCLOS is not the cure-all "bible". It will be rootless without the foundation of international customary laws. What's worse, UNCLOS is self-contradictory in some respects, which is the reason why it is not fully applied in waters around China and East Asia.<sup>4</sup>

## II. Classification of Natural Resources in the South China Sea and Legal Guarantees

As a semi-enclosed sea in the west Pacific, the South China Sea is one of the most resourceful marginal seas in the world. As a result of this, current conflicts concerning the South China Sea are severe and obvious. Both, the surrounding claimant countries and big powers outside this region, covet the marine resources in the South China Sea.

According to the classification of marine resources, the resources in the South China Sea fall into the following three categories. Firstly, possessive resources of countries around the South China Sea, including coastal land, territorial waters, seabed and islands in the South China Sea. The complexity in the South China Sea lies in the fact that there are evident disputes over islands of territorial sovereignty in this area. The islands in the South China Sea are made up of four parts: Pratas islands, Paracels islands, Macelesfield islands, and Spratly islands. Among them, only Pratas islands are solely under the governing of China's Taiwan, so there are no sovereignty disputes concerning these islands. Huangyan Island, also called Scarborough Shoal, is the only island under disputes between China and the Philippines in the Macelesfield islands. The Paracels islands are under China's sovereign jurisdiction, but Vietnam has claimed territorial sovereignty over some islands in this area. Altogether five countries and six parties are involved in the territorial disputes over the Spratly islands. In light of the principle of land deciding sea in general international laws, controlling land on the islands became the most essential and most basic appeal in South China Sea disputes. Grabbing reefs and islands in the sea area will help to

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<sup>4</sup> QU Bo, "On the Application of UNCLOS in China", *Public Administration & Law*, Issue 1, 2009.

decide a country's claims over the surrounding area. The monopoly of territorial sovereignty resources determined that it is very difficult for the claimant countries to make a concession to each other.

Secondly, the exclusive marine resources in the South China Sea face the same complexity. The South China Sea basin stretches over 22 longitudes of about 900 sea miles from east to west, and 26 latitudes of more than 1600 sea miles from south to north, with a total area of more than 3.6 million sq km. The average depth of the South China Sea is 1212 meters, with the maximum depth of 5559 meters. The exclusive resources in the South China Sea include fishing resources in the sea and oil and gas resources on the sea floor. The South China Sea is rich in biological resources, such as fish, seabirds, shellfish, and plants on the islands. More importantly, the South China Sea is blessed with abundant oil and gas resources, and is commonly known as "the 2<sup>nd</sup> Persian Gulf". According to a research report on South China Sea, the oil and gas resources mainly lie in sea areas on the continental shelves. There are more than 10 known oil and gas basins in South China Sea, with a total area of 852,400 sq km, accounting for 48.8% of the whole area of continental shelves in South China Sea.<sup>5</sup>

Apart from China, some Southeast Asian countries, such as Vietnam, the Philippines, Malaysia, Brunei and Indonesia, are also coastal countries around the South China Sea. According to the principle of coast deciding sea, all these countries enjoy different levels of exclusive resources in the South China Sea. Because China was the first country which discovered, developed and administrated the South China Sea, China owns the "U-shape 9 dashes", which determines that China enjoys the biggest scope of exclusive resources in the South China Sea. Chinese scholars hold that China should have administrative rights of about two million sq km in South China Sea. However, other claimant countries have actually penetrated the sea areas traditionally controlled by China, and their claims even overlap in some areas with each other. As a result, a situation of crisscrossing and overlapping division of sea areas in the South China Sea has developed. It's worth mentioning that China clearly defined the nine dashes in 1947, and officially put forward its claims to the international community, which is 47 years earlier than the coming-into-effect of UNCLOS in 1994. Nevertheless, it remained a prominent problem of how to define the exclusive resource zones in the South China Sea. The fact that UNCLOS cannot absolutely determine exclusivity of an area provided favorable opportunity for business cooperation and development. Actually, countries around the South China

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<sup>5</sup> VALENCIA (Mark J.), "Oil and Gas Potential, Overlapping Claims, and Political Relations" in George Kent and mark J. Valencia (eds.), *Marine Policy in Southeast Asia*, University of California Press, Berkeley, 1985, p.159.

Sea have already invited oil companies from the US, the UK, Holland, and India to operate different degrees of joint exploration and exploitation. Although such cooperative management conforms to international business rules, there remained two serious problems. The first is illegality. Some of the international joint business explorations are conducted in the overlapping sea areas or sea floors by different countries. To carry out business exploration in an area under the actual control of a country, without permission from other parties involved in the disputed area, is an illegal action and is not supported by international laws. The second is discrimination. The on-going international cooperative business exploration should be transparent and equal in bidding to all competent and interested economies, but the fact is that China and some other countries, which have strong ocean resource development ability, were not invited to participate.

Third, the South China Sea is also rich in shared marine resources. The South China Sea is traditionally known as “the 3<sup>rd</sup> golden waterway in the world”. It connects the Pacific and the Indian Oceans, and comprises the two most important strategic sea routes in the world: one is starting eastward from the Strait of Malacca, then going north along the open seas in Indochina and arriving at Hong Kong, China; the other is starting northward from Lombok Strait, crossing the Makassar Strait, and going along the east coast of the Philippines to arrive in Japan. Obviously, free and safe navigation in the South China Sea is not only the important sea route of foreign trade for the coastal countries, but also a marine resource shared by all countries on the globe. The South China Sea is located between the Pacific and the Indian Oceans, and since the ancient times has been an important sea route connecting East Asia, Africa and Europe for commercial shipping, energy transportation, and naval fleets. After the Cold War, with the increase in maritime trade in the Asia-Pacific region, the South China Sea has been playing a more and more important role as an international trade channel, and now it has become the economic lifeline of both export-oriented and emerging industrial countries and economies, especially Japan, South Korea, Taiwan, and Hong Kong. Up until now, the South China Sea has become one of the busiest international sea routes in the world. By cargo tonnage, more than half of the world’s merchant fleets pass through the South China Sea every year, and the sea traffic there is three times that of the Suez Canal, and 15 times that of the Panama Canal. Statistics show that in the international trade shipping in the South China Sea, goods volume of raw material and food takes up more than 90% of the total freight volume, among which petroleum and petroleum products account for 55%, and iron ore 10%. Every year, more than 40,000 ships pass through the South China Sea area.<sup>6</sup> In the meantime, the South China Sea is of great military significance to the

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<sup>6</sup> “Treasures in South China Sea”, *China Economic Weekly*, Issue 12, 2012.

surrounding countries and other military superpowers, such as the US and Russia. It is the natural barrier in the south border of China, is the key channel for the US to connect its military bases in the Indian and Pacific Oceans, and also the most important sea route for Russia to maintain the strategic connections among its naval forces in Asia and Europe. We can see that the South China Sea is the important sea route for naval fleets of marine superpowers as well. However, some countries, under the disguise of safeguarding the “freedom of navigation” in the South China Sea, operate hostile close reconnaissance against the coastal countries, thus violating the rule of “innocent passage” by UNCLOS and harming the national security of the coastal countries.

It is obvious that the South China Sea, rich in marine resources, provides not only wealth and convenience to surrounding countries, but also sea routes to countries outside this region. However, due to the lack of laws and regulation, the exploration and exploitation of marine resources in South China Sea have been greatly reduced.

### III. Legal Basis of China’s Administration over Resources in South China Sea

The above-mentioned possessive, exclusive and shared resources in the South China Sea are of great value to China, and are closely related to China’s peace and development. China has a strong legal basis to support its claims over these resources.

China’s historical rights of the South China Sea over-all maritime resources have long existed even before modern international law took form. The international law system of modern times cannot fully explain or decide China’s rights and interests over the South China Sea, in the same sense as the territory of such ancient civilizations as China was not determined by international law of modern times. Nevertheless, modern international law system was based on historical facts, so we can argue China’s claim for the South China Sea by using the widely accepted territorial sovereignty principles of international law.

Firstly, according to international law, claim for territorial sovereignty is based on “the doctrine of discovery”. That’s to say, a country’s discovery of “terra nullius” automatically leads to the country’s sovereignty over it. Internationally speaking, the discovery of a “terra nullius” happens only once, and will never happen again. Any country which first discovers the land has the claim for it. The aforesaid historical facts have fully demonstrated that China was the first country that discovered the South China Sea islands, which serves as the basic proof for China’s sovereignty over these islands. The best evidence is that China was the first to name these South China Sea islands.



Secondly, the doctrine of “uti possidetis” in international law also supports the legitimacy of China’s claim for the South China Sea islands. Since ancient times, China has not only first discovered South China Sea islands, but also realized factual occupation of these islands through exploration and administration. The Chinese navy has been patrolling this area as a part of China’s national administrative domination and national security. When, as late as the first half of the 20th century, the then government of the Republic of China issued the names of South China Sea islands, and demarcated a “U-line” to claim for rights and interests in the South China Sea, the international community didn’t raise any objection. This demonstrates that China has already realized “uti possidetis” over South China Sea islands by means of effective administration.

Thirdly, effective administration of territory is an important basis for gaining recognition by international law. The following may serve as evidence: the ancient Chinese governments since the Song Dynasty has been including the South China Sea into national security patrol ring for the Chinese navy, the official maps published by the Ming and Qing governments marked the South China Sea and nearby island as Chinese territory. The Qing government protested German and French invasion, which can be taken as an administrative act in the sense of modern international law. In 1946, the government of the Republic of China sent warships to patrol the South China Sea, land on some islands and also erect stone tablets to claim sovereignty. And in 1947, the government further publicly and officially denominated the islands in the South China Sea, and demarcated a “U-line” to declare the scope of China’s rights. In one word, China has been administrating the South China Sea constantly and continuously since ancient times, and the administration is obviously a national act.

Fourthly, international law stresses that effective administration should be demonstrated by effective exploration and exploitation of the claimed area. As mentioned before, China has long been exploring the South China Sea by fishing, exploiting islands, extracting seabed resources, and using the sea routes, etc. Although many islands in the South China Sea are not suitable for human habitation, ancient Chinese people have left a lot of historical relics on the islands and nearby sea area, which further proved China’s effective exploration of the South China Sea.

Fifthly, state succession is a basic principle of international order guarded by international law. The change of state system or regime is a country’s internal affair, but the territory of a country, as a subject of action in international relations, should remain stable, and should not change as a result of regime change. In other words, a new regime enjoys legal rights to inherit all the territorial sovereignty of the old regime. Since the founding of the People’s Republic of China in 1949, the Chinese government has legally inherited all the national sovereignty of the Republic of

China, including its territorial sovereignty over South China Sea islands and maritime administrative rights based on historical facts and international law.

Sixthly, it is one of the foundations of international law that "illegal acts do not generate rights". As the stable international order is decided by the stability of national rights, rights owned by China in the South China Sea since ancient times are reasonable and legitimate both from the perspective of historical process and international legal terms. However, during the Cold War, when China suffered greatly from containment by western countries and was unable to safeguard its overall rights of the South China Sea, some neighboring countries around the area illegally occupied the islands and reefs that had long belonged to China. But this violation of China's territory and maritime rights is illegal and invalid, and cannot be used as legal basis for their unreasonable territorial claims.

Seventhly, recognition by the international community is the manifestation of a country's national sovereignty. China's rights in the South China Sea had received international recognition by many countries. As declared in the important international legal documents such as the Cairo Declaration, the Potsdam Proclamation and Japanese "capitulation" on Japan's surrender conditions during the Second World War, Japan must withdraw from all the Chinese territory including Xisha Islands and Nansha Islands. China's resumption of sovereignty to the South China Sea islands and reefs got widely recognized by the international community. For example, some official international meetings accepted the fact that China has taken over the islands and reefs in the South China Sea (see Table 1). It was also recorded by map publications and books in many countries.<sup>7</sup>

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<sup>7</sup> Maps published by some other countries marking South China Sea Islands as Chinese territories: World Atlas of the Earth (Shi Jie Da Di Tu Ji 世界大地图集), published by Germany, in 1954, 1961 and 1970; World Atlas (Shi Jie Di Tu Ji 世界地图集), published by the USSR, from 1954 to 1967; World Atlas (《世界地理图集》), published by Romania, in 1957; Oxford Atlas of Australia (Niu Jin Ao Da Li Ya Di Tu Ji 牛津澳大利亚地图集) and Philip Atlas (Fei Li Pu Di Tu Ji 菲利普地图集), published by the UK in 1957; The Atlas of Encyclopedia of Great Britain (Da Ying Bai Ke Quan Shu Di Tu Ji 大英百科全书地图集) in 1958; World Atlas (Shi Jie Di Tu Ji 世界地图), made by Headquarters of the General Staff of Vietnamese People's Army in 1960; Hack World Atlas Earth (Ha Ke Shi Jie Da Di Tu Ji 哈克世界大地图集), published by East Germany in 1968; World Atlas of Daily Telegraph (Mei Ri Dian Xun Shi Jie Di Tu Ji 每日电讯世界地图集), published by the UK in 1968; Larose Atlas (La Luo Si Di Tu Ji 拉罗斯地图集), published by France in 1968 and 1969; World Map (Shi Jie Pu Tong Di Tu Ji 世界普通地图), published by National Geography Institute of France in 1968; World Atlas (Shi Jie Di Tu Ji 世界地图集), surveyed and mapped by Vietnamese government and Bureau of Mapping in 1972; Atlas of China (Zhong Guo Di Tu Ji 中国地图集), published by Japanese Heibonsha in 1973.

*Table 1. Recognition of China's Position in the International Community*

Time	Conference	Facts
1951	San Francisco Treaty of Peace with Japan	Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands. USSR Head of Delegation Andrei Gromyko pointed at the conference: Xisha and Nansha Islands are indispensable parts of China.
1952	Japanese Foreign Minister Katsuo Okazaki recommended World Atlas with his own signature, and page 15 of the Atlas is Map of Southeast Asia.	The Atlas plotted Xisha, Nansha, Dongsha and Zhongsha Islands as China's territory.
Oct. 27, 1955	The first Aviation Conference of Pacific region of International Civil Aviation Organization (ICAO) was held in Manila, capital of the Philippines. Altogether 16 countries and regions attended the meeting, including Australia, Canada, Chili, Dominica, Japan, Laos, South Korea, the Philippines, Thailand, Great Britain, the US, New Zealand, France, and also delegates from the then South Vietnam, and Taiwan.	Delegates at the conference held that Dongsha, Xisha and Nansha Islands in South China Sea are the key passage in the Pacific Ocean, and weather reports of these areas are vital to the international civil aviation. Therefore, the conference passed No. 24 Resolution, requiring the Taiwan government reinforce meteorological observation (four times a day). When the Resolution was signed, no country, including the Philippines and South Vietnam, raised any objection or reserved opinions.

Eighthly, traditional international law has a "Principle of Estoppel", which is considered an important foundation for protecting the rights of a country. Government leaders represent their country; their behavior on formal occasions is state acts; the international commitment they make as their country's representative, cannot be changed arbitrarily. It is important to note that the Vietnamese government explicitly admitted that China owns sovereignty over Xisha and Nansha Islands. Now, the current Vietnamese government is in breach of its promise, and has laid claim to part of our territory of Xisha and Nansha Islands. Vietnam is clearly making an allegation or a denial that contradicts its previous statement. As in this example, if the commitments by states are free to be changed, there would be no prestige at all between countries. In turn, the basis of the international order would be hard to maintain, and the international community would be a mass of confusion and hard to manage. Therefore, based on the "Principle of Estoppel", the commitment made by Vietnam must be abided by, and its illegal claim should be renounced seriously. (See Table 2)

Table 2. Vietnam's Official Commitment

Time	Official	View
June 15, 1956	Vietnamese Vice Foreign Minister Yong Wen-qian met Li Zhi-ming, the charge d'affaires of Chinese Embassy to Vietnam	According to records in Vietnam, historically speaking, Xisha and Nansha Islands are China's territory.
June 15, 1956	Li Lu, Deputy Director of Asia Division of Vietnamese Foreign Ministry	Historically speaking, Xisha and Nansha Islands have been China's territory since Song Dynasty.
Sep. 4, 1958		On Sep. 6, People's Daily (Vietnam) reiterated this declaration.
Sep. 14, 1958	Vietnamese Prime Minister Pham Van Dong	When talking with Premier Zhou En-lai, he recognized and supported this declaration.
1974	The Vietnamese Geography Textbook, published by the Vietnamese Education Press	In the Chapter of The People's Republic of China, it says: Nansha, Xisha Islands to Hainan, Taiwan Islands... constitute the Great Wall guarding the security of Chinese mainland.

It should be stressed that the acts of China that led to its sovereign rights over the islands were mostly completed before the birth of modern international law, so the latter should not decide whether these rights are legal or not. That being said, China's sovereignty can be explained by the principles of international law that came into being later. This definitely strengthens the legitimacy and rationality of such rights. Based upon this cognition, "the United Nations Convention on the Law of the Sea" (UNCLOS) has been accepted by the Chinese government and become the important legal basis for its policies toward the South China Sea.

China's above claims conform to principles and norms in international customary laws. As international customary laws are the legal basis for UNCLOS, China's rights concerning marine resources in South China Sea were obtained according to international customary laws, and should be further specified and defined by relevant principles in UNCLOS. However, the claimant countries around the South China Sea do not recognize China's reasonable and legal claims, and even some western superpowers, like the US, in order to protect their own interests, choose to ignore

China's claims as well. All these factors make it hard to ease the tensions concerning marine resources in the South China Sea among China and other claimant countries. Actually, taking all of the three kinds of marine resources into consideration, China and other claimant countries may very well find a way out of the dilemma of grabbing marine resources.

To be specific, we can adopt three different means to deal with the three different marine resources in South China Sea. For the exclusive territorial resources, China has put forward a clever and tactful principle of "shelving disputes and seeking common development", which will be a long-term principle adhered to by the Chinese government.<sup>8</sup> Of course, China will eventually find a solution through laws and political means of peaceful negotiation.

As to the second kind—exclusive maritime resources, China may well find a solution in the form of business operations through negotiation with other surrounding countries on the basis of mutual benefit and reciprocity. China has signed the "*Declaration on the Conduct of Parties in the South China Sea*" (DOC) and *Guidelines for the Implementation of the DOC* with ASEAN countries,<sup>9</sup> and is preparing to finalize the *Code of Conduct in the South China Sea* (COC). In this way, when conditions are mature, China will pursue the possibilities of cooperatively exploring the resources in South China Sea with other claimant countries. For example, China can operate joint exploration and development in disputed overlapping areas with claimant countries respectively, such as Vietnam and the Philippines. The involved countries should conduct reasonable development with the principle of profits proportionate to investment so as to achieve the win-win result. China can learn from theories of joint management of fishing and responsible fishing, establish a cooperative mechanism of fishing resources in the South China Sea, and fulfill joint development and protection of fishing resources in South China Sea.<sup>10</sup> By means of such business operations, we can transform exclusive resources into benefits shared by all surrounding countries in South China Sea.

About the shared resource of the "freedom of navigation", China is truly willing to work with other countries to protect and manage it, for it is completely in the interest of China and also the goal of China's development. For this purpose, China can first of all negotiate with other surrounding countries, and include this concept as a joint

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<sup>8</sup> At the recent Asian Security Meeting (Shangri-La Dialogue), QI Jian-Guo, deputy chief of general staff of PLA stated explicitly that we will leave the complex territorial disputes to the next generation. 2013-06-03, <http://www.chinanews.com/mil/2013/06-03/4883514.shtml> .

<sup>9</sup> Guidelines for the Implementation of the DOC, <http://www.asean.org/documents/20185-DOC.pdf>.

<sup>10</sup> CHEN Ming-Bao, "A Study on Cooperative Development Mechanism of Fishing Resources in South China Sea", *Asia-Pacific Economy*, Issue 3, 2012.

principle into joint official document; furthermore, China can work with other superpowers, including the US and powers in the West Pacific, to guarantee the freedom of navigation in the South China Sea by means of benefit sharing and responsibility sharing. These countries can also issue a joint declaration of safeguarding the freedom of navigation in the West Pacific Ocean, so as to protect the concerns and benefits of relevant parties.

#### IV. Conclusion

I could define the international maritime order with different times. There was a 1.0 time of maritime order when the West dominated the world oceans by its colonial expansion in the modern history, a 2.0 time of maritime order when the superpowers commanded all the seas in the world during the Cold War period, and a 3.0 time when the global seas were divided after the enforcement of UNCLOS. But UNCLOS has not been implemented in full scale, not only because there are some internal contradictory articles within this convention, but also because it has been exaggerated too much and the other international customary laws have been disregarded. That is to say, the 3.0 time determined by the UNCLOS could not to be realized in the East Asian seas. It should be considered by East Asian countries that an effort could be taken beyond the limitation of UNCLOS, and a combination of this legal document and other international customary laws might be entering into force comprehensively. A format of management over the maritime resources in the South China Sea should be taken into consideration in a flexible and diverse way. Given the national rights on the maritime resources of absolute ownership could not be accepted and adopted in the common sense, we should put this dispute aside. The major tasks for us are to manage the second kind of maritime resources of exclusive ownership and try to get rid of the rigid methods to divide absolutely maritime resources among nations. The claimants around the South China Sea may sit together as a core group to map out a new mechanism of joint management, exploitation and development, and in the meanwhile the outside powers could be invited. Therefore, the format of commercial management based on the common operation and share of profits could take form. Regarding the freedom of navigation as a kind of maritime resources of sharing ownership, we should reach an agreement to establish an international institution safeguarding this public good for all of us.

All in all, although marine resources have national property, they are of different levels of connotations. On the background of globalization of international relations and regional integration of regional cooperation, the involved countries may very well achieve resource sharing and complementary advantages for the purpose of peaceful

development on the basis of mutual understanding, mutual accommodation, and respecting international laws. The resourceful South China Sea should be a place of various cooperative models of multi-levels and multi-angles, so as to drown the rocks of disputes in a sea of cooperation.<sup>11</sup> Let us make the maritime resources serve for the peace and development among countries around the South China Sea, and even in the whole of the Asia-Pacific region.

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<sup>11</sup> Su Hao, “Drowning the Rocks of Disputes in the Sea of Cooperation: the Role of the South China Sea in the Process of East Asian Cooperation”, in Tran Truong Thuy, ed., *The South China Sea: Toward A Region of Peace, Security and Cooperation*, The Cloi Publishers (Viet Nam), 2011.