

Exploration and analysis on regional cooperation scheme for protection of underwater cultural heritage in South China Sea

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Abstract: The significance of South China Sea (SCS) results from not only the long-standing international shipping transiting, natural resources, but also the extensive and various types of underwater cultural heritages (UCH) sunk beneath it. These shipwrecks, submerged ancient cities, ports preserve regional history and maritime civilization. This paper first highlights in part I the current legal protection for UCH in 6 states of the SCS. Part II analyses the necessity of regional cooperation protection for UCH in SCS. In Part III, author proposes to build up a cooperation mechanism for joint UCH development in the SCS region, which is for peaceful settlement of the potential UCH dispute and profitable improvement to the relationship among these states around the SCS. It is valuable and effective to establish a regional legal instrument for these states, by means of the UCH reporting and notification system and UCH coordination states scheme, etc.

Key words: South China Sea; underwater cultural heritage; cooperation scheme; national legislation; One Belt and One Road; cultural heritage database

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中国南海水域水下文化遗产的法律 保护与区域合作研究

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摘 要: 中国南海作为国际航道, 拥有丰富的油气资源和多样的水下文化遗产, 国家立法对这些沉船、淹没的古城、港口等水下文化遗产保存着的地域历史和海洋文明缺乏有效保护, 通过

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文献梳理和比较评述,对中国、越南、泰国、马来西亚、印度尼西亚、菲律宾等国家相关的立法现状与发展进行分析。研究认为,海外非法跨境贩运走私和拍卖使国家法律制度在保护水下文化遗产方面面临巨大挑战,水下文化遗产所有权的复杂性导致南海区域合作保护中产生主权问题,南海区域的政治分歧与经济竞争给国家层面保护水下文化遗产带来困难,中国南海沿线水下文化遗产区域合作机制的建立有深层的必要性;随着一带一路战略的全面开展,中国与南海沿线各国应在国家立法层面探索水下文化遗产保护的区域合作策略,沿线国家应建立合作机制,缔结关于水下文化遗产的协议或行为准则,应互相沟通和合作挖掘水下文化遗产,进行水下考古学管理和保护方法的学术培训,应建立南海区域水下文化遗产数据库,提供关于共同的水下文化遗产信息,每个国家有义务与区域中的其他国家分享信息,有将水下文化遗产的发现和活动通知报告给其他国家的义务,还应有协调国家计划,磋商与协调南海沿线国之间的合作方式与内容并作出决定。

关键词: 中国南海;水下文化遗产;合作机制;国家立法;一带一路;文化遗产数据库

1 The current legal protection for UCH in 6 states of the SCS region

The South China Sea (SCS) is part of the Pacific Ocean, encompassing an area from the Singapore and Malacca Straits to the Strait of Taiwan of around 3 500 000 km². States and territories with borders on the South China Sea include: China, Vietnam, Cambodia, Thailand, Malaysia, Singapore, Indonesia, Brunei and Philippines. Because of the important location on the ancient shipping route that connected the great civilizations of the east and west, each state in SCS region owns abundant UCH. However, the national legislations do not provide an effective protection for their underwater cultural heritages (UCH).

1.1 China

There was no way to salvage UCH or to claim ownership on the UCH in Chinese legislation in 1980. Therefore, the Chinese Government decided to develop the capacity of underwater archaeology and established the Underwater Archaeology Research Institute under the Chinese History Museum (now the Chinese National Museum) in the same year. In 1989, the State Council passed legislation entitled the *Regulations of the P. R. China on Protection and Administration of Underwater Cultural Relics* (1989 Chinese UCH regulation)^①.

In China, the State Administration of Cultural Heritage (SACH) is responsible for managing and protecting all kinds of national cultural relics, including

the UCH. In 2009, the National Conservation Center for Underwater Cultural Heritage (NCCUCH) got full confirmation from the SACH to perform its functions, especially in developing the national UCH excavations, conservation, research and cooperation with local governments and local underwater archaeology institutes. There are mainly five regional UCH protective administration offices: the Ningbo Office in the Zhejiang province; the Fujian Office in the Fujian province; the Wuhan office in the Hubei province; the Beihai office in the Shandong province, and Hainan office in Hainan province.

The character of the Chinese UCH legal system can be seen in 3 aspects as follows: Firstly, Local government has been refining related local UCH regulations and formulating feasible operational guidelines since 2008. The Fujian Province and the Guangdong Province contain most various and famous UCH items in China, such as Nanhai I shipwreck, Nan'ao I shipwreck, and Banyangjiao (reef) I shipwreck. In 2009, the Fujian Provincial People's Congress revised the *Fujian Province Protection and Administration of Cultural Relics Regulations* by adding a new chapter on the protection of the UCH, which was the first local regulation relative to the UCH in China. In the same year, the Guangdong

^① Regulations of the P. R. China on Protection and Administration of Underwater Cultural Relics promulgated by Decree No. 42 of the State Council of the People's Republic of China on Oct 20, 1989 and effective as of the date of promulgation.

province enacted the *Guangdong Provincial Measure for the Implementation of the P. R. China on Protection of Cultural Relic*, which set up new measure for protect UCH, that is “underwater cultural relics preserves” in Art. 26^①: “on the basis of the historic, artistic and scientific values of underwater cultural relics, the people’s governments of the provinces, determine the underwater cultural relic’s preserves at provincial level and publicly announce them.” this aim to efficiently protect scattered UCH objects along its continuous coastline.

Secondly, SACH and NCCUCH carried out a comprehensive and scientific *Chinese UCH “12. 5” National Project* since 2007. This National UCH project began with the national UCH survey, which extended from the internal waters to coastline, territorial sea and contiguous zone. This national UCH survey, as the part of the third national cultural relics investigation project, discovered 108 supposed UCH sites^[1] in the Bohai Sea, Yellow Sea, the East China Sea (including the Taiwan Strait), the South China Sea (including the Chinese jurisdiction area in the Paracel Islands and the Spratly Islands). Besides, SACH and NCCUCH have been establishing the South China Sea UCH office and the Paracel Islands archaeological workstation since 2012. Besides national UCH survey, the main tasks of the UCH protection in China focus on the efficiency of UCH protection and management. The Chinese authorities were gradually forming different but more appropriate protecting approaches for each underwater cultural relic in China. Moreover, the Chinese National Museum and the CCUCH have organized more than 10 training courses on diving skills, methodology of underwater archaeology, and the UCH conservation since the 1980s. Now, the CCUCH and the archaeological team in the coastal cities in China have been able to fill the gaps left open over decades.

Thirdly, China has two unique kinds of the UCH that are the “Chinese Maritime Silk Road Sites” and “Ming & Qing Dynasty Coast Defense Sites”, in addition to usual types of UCH, such as wrecks, sites, artefacts and human remains. The “Chinese Maritime Silk Road”

once provided unprecedented access of the ancient China? to the most distant destinations by maritime trade mainly from Tang dynasty to Qing dynasty (from 618 AD to 1800 AD)). As a promotion of friendly relations linking East and West, the “Maritime Silk Road” has significant historical, cultural value in China. As the object of UCH protection, the “Maritime Silk Road” embraces four aspects: the ancient ports, oceanic routes, cargos, and wrecks. Each of them has specific and abundant contents, but these four aspects interrelate systematically, in order to form the Chinese traces of marine exploitation. The “Ming & Qing Dynasties Coast Defense Sites”, the other unique type of UCH in China, are the defence constructions and facilities built by the Chinese authorities in order to prevent maritime foreign enemy invasions of the Chinese territorial sea and coastal areas in Ming & Qing Dynasties (from 1368 AD to 1800 AD). These “coast defense sites” are situated throughout 13 provinces, including Macao, Hong Kong and Taiwan, which is considered by the China government to apply for the World Cultural Heritage^[1].

1.2 Vietnam

In general, the risk of looting and destruction of that UCH is still rather high, because shipwrecks almost are random discovered by Vietnamese fishermen nowadays.

Vietnam has officially issued two important laws and legal documents concerning UCH. Frist is the Law on Cultural Heritage, which came into effect from 1 January 2002, having 6 Chapters and 74 articles. In the Articles 38-40, the investigation and excavation the archaeological sites in general are undertaken only with the licence from the Minister of Culture and Information. Artefacts and cultural objects can be brought abroad for exhibiting, studying and conservation only with decisions from the Prime Minister and the Minister of Culture and Information. Those who supervise the investigations and excavations

① Art. 26 of Guangdong Provincial Measure for the Implementation of the P. R. China on Protection of Cultural Relics: “On the basis of the historic, artistic and scientific values of underwater cultural relics, the people’s governments of the provinces, determine the underwater cultural relic’s reserves at provincial level and publicly announce them.”

LIU Li-na: Exploration and analysis on regional cooperation scheme for protection of underwater cultural heritage in South China Sea

must have the Decree of Bachelor on Archaeology or disciplines related. Second is the Management and Protection of Underwater Cultural Heritage (Decree No. 86/2005/ND-CP), which is issued on July 8 2005, having 7 chapters, 44 articles. It is specifically devoted to the management and protection of UCH in all aspects. Take the illicit excavation for example. All UCH sites have been put under the control of the Navy and Sea Border Police forces to protect them from looting and pillaging. The excavations of shipwrecks undertaken by Vietnam state sector including the Ministry of Culture and Information and Visal (the Vietnam Salvage Company, Ministry of Transportation) reduced much the destruction of UCH. In reality, the Government has allowed the Vietnam bodies to cooperate with some private sector or foreign organisations in investigating and excavating for financial problem. For example, 5 shipwrecks, which are Cu Lao Cham, Hon Cau, Kien Giang, Ca Mau and Binh Thuan discovered off the coast of Vietnam is excavated by cooperation with foreign organizations during 1990 to 2002. All the looted artefacts have been confiscated and have to hand over to the national museums. Besides, a part of cargo from the shipwrecks of Hon Cau, Ca Mau, Cu Lao Cham and Binh Thuan have been allowed to export to Holland, USA and Australia for auction, therefore, all revenue have been used for covering excavation expenses and for promoting UCH preservation^[2].

1.3 Thailand

In 1974, one site of old ship in a deep-sea channel near Ko Khram, near Sattahip, Chonburi province was discovered by fishermen, which contained a cargo of ceramics. This events started cooperation in underwater archaeology in Thailand. Then the first shipwreck salvage from the Fine Arts Department, the Royal Thai Navy, and Denmark (whose government provided 3 experts for the underwater archaeology operations in 1975) further investigated the Ko Khram site and discovered many other sites in the Gulf of Thailand and Andaman Sea, Indian Ocean. The evidence gathered from shipwrecks sunk in the Gulf of Thailand shows that the wreck came from Siam,

Indonesian, Malaysian, and Chinese styles etc. Some of them were warship operated during the WWII, but most are for sea travel and trade dating back to 14-18th century for both short and long distances.

The national legislation for protection UCH in Thailand could be mainly provided in Thai Civil and Commercial Code (CCC), the Navigation in Thai Waters Act (No. 12) 1979 and Act on Ancient Monuments, Antiques, Objects of Art and National Museums etc. Thai Civil and Commercial Code (CCC) states that finding of property thrown into the sea or waterway or washed ashore in Section 1326 is governed by the laws and regulations relating thereto. The Navigation in Thai Waters Act (No. 12) 1979 regulated the salvage of sunken ships in Thai Waters, which is all Thai territorial waters under the sovereign power of Thailand.

And *Act on Ancient Monuments, Antiques, Objects of Art and National Museums*, B. E. 2504 (1961) as amended by Act (No. 2), B. E. 2535 (1992), enforced by the Fine Arts Department, Ministry of Culture. The Section 24 states that: "Antiques or objects of art buried in, concealed or abandoned within the Kingdom or the Exclusive Economic Zone under such circumstances that no one could claim to be their owners shall, whether the place of burial, concealment, or abandonment be owned or possessed by any person, become the State property. The finder of such antiques or objects of art shall deliver the same to the competent official or the administrative or police official under the Criminal Procedure Code and is entitled to not more than a reward of one-third of the value of such property." It can thus be seen that permission for archaeological wrecks salvage should be granted under the supervision of professional archaeologists and the activity of salvage UCH should be arranged to fulfill scientific and archaeological purposes rather than commercial pursuit.

1.4 Malaysia

As a major shipping lane of the Straits of Melaka, Malaysian national water contain many kinds of shipwrecks that was sunk by poor weather, pirate attacks or war. In 1980s and the early 1990s western treasure hunters began to loot UCH rampantly in

Malaysian waters, so that Malaysian government started to rethink their legislation and policy on UCH.

The Merchant Shipping Ordinance of 1952 has a section on shipwreck, but unfortunately its main concern is more directed on wreck that blocks present day navigation rather than the archaeological significance of these shipwrecks. In order to dealing with the protection of UCH mainly in Peninsular Malaysia, Malaysian government revised *the Antiquities Act 1976* later. Then on 1 March 2006, the *National Heritage Act 2005* came into effect, which did provide for the control preservation and research antiquities found in Peninsular Malaysia. The PART IX of the *National Heritage Act 2005* is specific section for the conservation and preservation of UCH and for related matters. A National Heritage Register under National Heritage Department of the Ministry was created in this section, which is headed by the Heritage Commissioner. In Art. 65 of the *National Heritage Act 2005*, Salvage for the purpose of finding any UCH in any Malaysian waters could be allowed if salvage works are licensed by the Heritage Commissioner. Therefore, it can be seen that Malaysia as developing country need expertise and finance for protection the UCH within their jurisdiction. To solve this problem the Malaysia decided to commission experienced salvor to excavate their UCH, although the National Heritage Register is inspected by the members of the public^[2].

1.5 Indonesian

In 1992 Indonesian government passed Law concerning Protection of Cultural Heritage, *Law of the Republic of Indonesia Number 5 of 1992 Concerning Items of Cultural Property* (Law No. 5/1992. This is the only Law that substantially regulates any activities regarding ownership, discovery, exploration, research, conservation, preservation, salvage, and utilization of cultural heritage. In 1993, the Government also passed the Regulation No. 10 on Implementation of this Law, which did not clearly mention the underwater heritage. This legislation, however, need to be addressed in many aspects, such as delivering the authority in managing both natural and cultural marine resources to provincial and local governments, and conformity with

other legislations. To cope with those matters, this legislation is revised in 2010. In 2010 Indonesian authority enacted *Act No. 11 of 2010 on Cultural heritage*, which replaced the *Law No. 5/1992*. This new legislation addressed that the national authority entitle the right of exploration, excavation for UCH, and severe sanction for infringement of this law. Without approval by the Indonesian government, no units or individuals may conduct by any means unauthorized exploration or excavation of UCH in the waters under Indonesian jurisdiction. Sanctions for illegal smuggling cultural heritage will be charged 6 months to 10 years in prison, and or 2-15 billion Rupiahs (approx. US \$ 15 000-US \$ 100 000). Sanctions for illegal excavation will be charged 3 months to 10 years in prison, and 1. 5 million-10 billion Rupiahs.

1.6 Philippines

As the fifth longest coastline in the world, the Philippines is an archipelago composed of approximately 7,107 islands which gives an indication of the country's significant UCH. The earliest recorded shipwreck investigation occurred in 1967 at Santo Domingo, Albay in southeast Luzon (Lopez 1967), and then again in the 1970s (Conese 1989)^[3]. Purely salvage UCH for commercial value, a large number of diving tourism activities, even illegal fishing made the management and protection for Philippine UCH is far from perfect. But inadequate financial support from the government, lack of legislation and enforcement are cited as main of the reasons.

Republic Act (RA) 4 846 (known as *Cultural Properties Preservation and Protection Act*, 1966) and later amended by Presidential Decree (PD) 374 (known as *Cultural Properties Preservation and Protection Act*) both are recognized as the importance of the Philippines' cultural heritage law from illegal excavations and cultural property commercialization. Under Section 3 of both laws states that "ships or boats in part or in whole" are part of the definition of cultural properties. The National Museum was appointed as the lead government agency in implementing the provisions of these laws, including archaeological research and

management.

The latest legislation related to UCH is Republic Act 10066 (*known as the National Cultural Heritage Act 2009*). Article III Section 11 is a very important amendment to the previous laws since it states:

No cultural property shall be sold, resold, or taken out of the country without first securing a clearance from the cultural agency concerned. In case the property shall be taken out of the country, it shall solely be for the purpose of scientific scrutiny.

Article VI Section 23d further strengthens the previous section:

The grant of permit export shall be based on the following conditions: (i) the cultural property is exported on a temporary basis; and (ii) the export of cultural property is necessary for scientific scrutiny or exhibit.

From the above analysis, countries around SCS either have specific regulations for UCH protection or have general law for investigation, excavation, preservation and management for the UCH as a kind of cultural property. But most of States recognized that management and protection of their national UCH is far from perfect. Inadequate financial support from the government, weak legislation, weak enforcement and lack of qualified personnel are accounted as the main reasons.

2 The necessity of regional cooperation protection for UCH in SCS

After carefully considering the complexity and particularity of UCH in SCS as follows, the author believe that regional cooperation scheme for protection of UCH should be an effective measure to tackle the problem happened in each State around SCS.

First, the tremendous challenge on the national legal system in SCS's States is the cross-border looting and auction abroad, so that it is lead to regional cooperation protection for UCH in SCS. From the 1980s, the transnational illicit trafficking has happened rampantly in the SCS. With the development of underwater technology and human understanding of the

Deep Ocean, some private marine exploration companies or individuals from all over the world came to the SCS for illegal salvaging and smuggling UCH along the Maritime Silk Road for commercial value. Compared with destruction from national fishermen to dive for their underwater relics, many western treasure hunters lead to fatal damage for UCH archaeology and historical value. And the sophisticated hi-tech equipment allows them to evade detection and capture by local marine police. On the other hand, these smuggle or salvage UCH items are often traded, sold, bought or bartered as commercial goods at eminent auctions. The most astonishing auction was “the Nanking cargo (Geldermalsen shipwrecks)” was held in the Netherlands in 1986^①[4]. Thousands of Chinese porcelain figurines, bottles and stoneware, as well as 126 lots of gold ingots, were sold as “*the Nanking Cargo*” at the Christie's, Amsterdam. There were also “*The Vung Tau Cargo*” auction at the Christie's Amsterdam in 1992, which contained thousands of Chinese export porcelain from the “*Vung Tau shipwreck*” sank about 1690 off the coast of Viet Nam; “*The Diana Cargo*” auction at the Christie's Amsterdam in 1995 which contained kinds of Chinese porcelain, figurines and artefacts from the “*Diana*” shipwreck sank in 1817 off the coast of Malaysia; the “*Tek Sing*” (the China's *Titanic*) auction in Stuttgart Germany in 2000, which listed 16 100 lots of ceramics salvaged from the “*Tek Sing*”-China's *Titanic*- that sank in the South China Sea in 1822; and the “*Made in Imperial China*” auction at the Sotheby's, Amsterdam in 2007, which included 1 208 lots, comprising 76 000 pieces of Chinese export porcelain from the Ca Mau shipwreck in about 1 725 off Viet Nam^[5].

Most of SCS's States are both the Member States of UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995 and Member States of UNESCO Convention on Means of Prohibiting and Preventing the

① The Geldermalsen shipwreck was looted in the SCS (perhaps near Riau Islands, Indonesia) by Michael Hatcher in 1985. The “Geldermalsen” sank about 1752 in the South China Sea, and salvaged by Michael Hatcher, that were sold for more than ? 10 million in Amsterdam.

Illicit Import, Export and Transfer of Ownership 1970, but it is hardly to solve cross-border looting UCH problem efficiently, because excavation of UCH at bottom of sea is too concealed to be found promptly, if the slavers dive in one site but show up, maybe, in its neighbour state waters. Sometimes the smuggling UCH first shocked its original state when they are in auction

Secondly, the complexity of ownership UCH lead to regional cooperation protection for UCH in SCS. The shipwrecks and their cargo from SCS are almost linked with more than 2 SCS's States. it is obvious that not all of these ships sunk in the Straits of Melaka had a direct link to Malaysia, some were just passing through. For example, a merchant ship of the British East India Company once carried Chinese famous blue and white porcelains, shipping out of the China territory sea bypassing the Straits of Melaka to Europe and even to Africa, but unfortunately sunk in Malaysia Territory Sea by poor weather. It is a common situation when we discuss the ownership of UCH in SCS, because the route of the Maritime Silk Road is through SCS which is significant cultural, commercial communication in the history. The ownership of UCH cannot simply classified by examining of ship structure and cargo types, but also need to consider the location where it is sunk. For example, in the Gulf of Thailand, the kind of wood used and shipbuilding technique reveal that the junks once sailed and sank in these waters were hybrids of Thai, Indonesian, Malaysian, and Chinese styles. These were called SCS junks in Thailand, and there were many of them. Consistent with the principle of sovereign immunity in international law, almost each State around SCS respects the sovereign immunity of other government vessels or aircraft sunk within its territory sea in its national legislation. These situations were often settled through bilateral agreements respecting the principle of sovereign immunity of State vessels. They are: *the V. O. C shipwreck Batavia*1972^[6]; *the CSS Alabama* 1989^[7]; *the La Belle wreck* 2003^[8].

However, not all shipwrecks are state vessels, most of them have cultural link with country A and origin from country B. therefore, the ownership of UCH in 1982 *United Nations Convention on the Law of*

the Sea ("1982 UNCLOS") and 2001 *UNESCO Convention on the Protection of the Underwater Cultural Heritage* (2001 UNESCO Convention) were expressed too vaguely to be efficiently applied to. But when this complexity situation of UCH occurred, one of dispute settlement between the relative States is also to cooperate protection the concerning shipwreck, such as the famous RMS Titanic. In 2004, the United States, the United Kingdom, France and Canada concluded an international agreement on RMS Titanic, which preferred its preservation *in situ* and the protection of scientific, cultural value of the Titanic^①.

Thirdly, the intense disputes among states around SCS make the difficulty for protection UCH at national level; therefore it is crucial to seek common ground in protection UCH while putting aside political differences. It shall admit that the disputes among the China, Vietnam, the Philippines, Malaysia, Indonesia and Brunei, involved in the SCS dispute, rest on the competition of sovereignty over the features in the SCS and the overlapping maritime claims over the jurisdiction in the region, such as EEZ and continental shelf. Fundamental differences among disputant states remain. Based on the assumption that final settlement of the SCS dispute won't be an easy agenda for a short period, it is still a wide consensus that joint cooperation helps maintain regional peace and stability in the SCS region. Which area should be start? Maybe marine scientific research, marine environmental protection are all options, but considering the tremendous challenge on the national legal system and the complexity of ownership of UCH in SCS, even large financial expenditure for single state to the underwater salvage and science excavation, UCH cooperating protection as a start to of SCS disputes resolution has its necessity.

① The R. M. S. Titanic, the most famous "unsinkable ship" in modern istory, was owned by the "White Star Line" in Great Britain, which was a part of the International Mercantile Marine conglomerate owned by an American, J. P. Morgan. The ship was sunk to the bottom of the Atlantic Ocean in 1912 with the loss of more than 1,500lives. In 1985 the location of the wreck of the R. M. S. Titanic was discovered on the Canadian. More details on Agreement Concerning The shipwrecked vessel RMS Titanic, U. S. -U. K. -Can. -Fr. , NOAA website, <http://www.gc.noaa.gov/documents/titanic-agreement.pdf>

3 Cooperation mechanism for joint UCH development in the SCS

It is a right time to build cooperation mechanism for UCH in the SCS. In Nov. 2002, China and the 10 member of Association of Southeast Asian Nations (ASEAN), which are Indonesian, Malaysia, Philippine, Singapore, Thailand, Vietnam, Brunei, Laos, Myanmar and Cambodia, adopted a *Declaration on the Conduct of Parties in the South China Sea* (DOC), laying a political foundation for future possible commercial cooperation between China and ASEAN countries as well as the long-term peace and stability in the region. After the creation of the China-ASEAN free trade zone (CAFTA) in 2010, trade between China and ASEAN has witnessed rapid development. In the 2011 East Asia Summit, China's idea of setting up a China-ASEAN fund, worth 3 billion yuan (\$ 474 million) for further promotion of comprehensive China-ASEAN cooperation in the SCS. On Sept. , 2013, Chinese President Xi delivered a speech at Nazarbayev University in Kazakhstan, suggesting that China and Central Asia join hands to build a Silk Road economic belt to boost cooperation. On Oct. 3, 2013, Chinese President Xi said in a speech at the Indonesian Parliament that China and the ASEAN will promote maritime cooperation and build a 21st-century maritime Silk Road. Now the “*One Belt and One Road*” (the “Silk Road Economic Belt” and “21st Century Maritime Silk Road,”) is significant international cooperation initiative of China and shows the innovation of China's global strategy. It could promote regional economic cooperation and enhance cultural exchanges. It could further promote mutual trust and deepen the relationships of cooperation to bring peace and stability in the region.

Therefore, author proposes to build up a cooperation mechanism in the SCS when all the states around SCS realize that the difficulty for national legislation protection of UCH and the necessity of regional cooperation protection for UCH in SCS. It is a feasible plan for joint UCH development, ? which need all of states adopt *a code of conduct in SCS region for*

protection UCH (*UCH code of conduct in SCS*) or conclude an *Agreement concerning UCH in SCS* (*UCH Agreement of in SCS*).

To design the cooperation mechanism for joint UCH development in the SCS, author should refer *UNESCO Convention on the Protection of the Underwater Cultural Heritage* (*UNESCO 2001 Convention*)^①, which is the only one specific international convention for protection UCH. *The UNESCO 2001 Convention* acknowledges the UCH to be of public interest that has unique value for humanity, hence UCH should not be treated as an economic or natural resource in the seabed unlike gas or oil. Commercial exploitation of the UCH for trade is fundamentally incompatible with the proposals of the *UNESCO 2001 Convention*^②. For this or other reasons, none of the states in SCS enter into *UNESCO 2001 Convention*; nevertheless, it has been gradually approved by an increasing number of influential States. After carefully analysis of this Convention, author has to admit it actually interprets a specific, practical international cooperation scheme for State Parties. This part layout 4 aspects step by step to enhance confidence building and regional cooperation for UCH protection in SCS with respect of *UNESCO 2001 Convention*.

3.1 Archaeological research and UCH management training cooperation

Underwater archaeology and UCH management are still recent sciences, especially regarding the training of underwater archaeologists. To establish regional cooperation for marine archaeological research and training would be the first important step towards cooperation mechanism for joint UCH development in the SCS.

States should communicate with each other's for UCH excavation, management and protection methods, even for academic training on underwater archaeology. Thailand and Indonesia developed very well in their underwater archaeology, and China is good at UCH

① The General Conference of the UNESCO adopted this UNESCO Convention on the Protection of the Underwater Cultural Heritage (UNESCO 2001 Convention) at its 31st session in Paris in Nov. 2001 and entry into force in 2009. It has 55 States Parties until Feb, 2017. See UNESCO, <http://www.unesco.org/eri/la/convention.asp?KO=13520&language=E&order=alpha>

② Art. 2(7) of the UNESCO 2001 Convention: “that underwater cultural heritage shall not be commercially exploited.”

management. Take Chinese Baiheliang UCH site for example, which is now the symbol of submerged museums in the world. Baiheliang UCH site is the world's oldest? hydrological inscription in the Yangtse River. After considering the Baiheliang UCH conditions, the Chinese authorities decided to build a submerged museum for the preservation of its UCH *in situ*. It also can establish a scientific and technical advisory body for that, or union of national universities or institution who are good at the underwater archaeology or UCH management. Take the Unitwin network^① as a good example.

3.2 The SCS regional UCH Datab-ase

Second is to set up a SCS regional UCH database, just like MACHU, NAVIS I, NAVIS II, which are famous worldwide or regional databases^②. The *UCH Declaration of SCS or UCH Agreement of SCS* suggests that each State has the obligation to share UCH information with other States in SCS, which means states submit their national UCH information that includes discovery of heritage, its location, UCH excavation or UCH recovery contrary to this Convention to establish a SCS regional UCH database. Each state should take advantage of the information-sharing database to collect information with other States about any its shipwrecks discovered outside its territory.

3.3 The UCH report & notification system in SCS

Third is build a UCH report & notification system in SCS. States around SCS have different reporting and notifying obligations in different maritime areas. In the territorial sea or the archipelagic waters, the coastal States have only a soft obligation (“should”) to inform the flag State or other States with an effective link to the UCH, with a view to protecting State vessels and aircrafts. In the Exclusive Economic Zone (EEZ), on the Continental Shelf (CS) or in the dispute area within SCS, each State has a definite obligation to report the UCH discoveries and activities to the other State with an effective link to the UCH, or to all other States in SCS with respect of UCH as a particularly important element in the history of peoples, nations, and their relations with each other concerning their common heritage. According to international law^③, the

effective link can be generally recognised as a cultural, historical or archaeological link, with respect to the discovery of such identifiable State vessels and aircraft.

3.4 The UCH coordination State scheme in SCS

Fourth is a UCH coordination State scheme in SCS. It suggests that when a new UCH is discovered by notification system in the database, all the States shall appoint a “coordinating State” for this UCH. In the EEZ or on the CS, the coordinating State is the State that locates the UCH, unless it expressly declares that it does not wish to do so. In that other case, the coordinating State is the one that is based on a cultural, historical or archaeological link to the concerned UCH. The right of a “Coordinating State” is to implement measures of the UCH protection, to coordinate cooperation and consultation among States Parties and to conduct their decisions, while acting on behalf of all interested States Parties.

On the basis of this cooperation mechanism for joint UCH development in the SCS, all the states in SCS shall first establish a UCH professional Commission and elect director or secretariat. To set up a Commission like this is not a quite burden for SCS'S States or China-ASEAN model, but is not the emphasis in this article, author only focus on providing effective regional cooperation mechanism for all States in SCS for the protection of the UCH.

① That is a new University Twinning Programme (Unitwin) for Underwater Archaeology. It shall bring together universities teaching underwater archaeology and increase their cooperation. More detail on <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/research-and-training/unitwin-programme/#c492115>

② MACHU (Managing Cultural Heritage Underwater), originated by the European Union's Culture 2000 program, aims to make information about our common underwater cultural heritage accessible to researchers, policymakers and the general public, more details at <http://www.machuproject.eu/>; NAVIS I project and NAVIS II project is an open database of ancient ships supported by the European Commission Directorate General X, more details at <http://www2.rgzm.de/navis/home/frames.htm>; <http://www2.rgzm.de/navis2/home/frames.htm>. Shipwreck Asia Database is? a regional? shipwreck database, classified by the geographical regions but including a few of Asia UCH, supported by the Toyota Foundation. More details at? www.shipwreckasia.org.

③ Art. 303 (3) of UNCLOS states: “Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.” Art. 12 (6) of the 2001 UNESCO Convention states: “Particular regard shall be paid to the preferential rights of States of cultural, historical or archaeological origin in respect of the underwater cultural heritage concerned.”

4 Conclusion

Against the background of the South China Sea issue, we can go easy at first explore the joint cooperation of UCH to help alleviate disputes in a more gentle way. The regional cooperation scheme for protection UCH can be regarded as a breakthrough to promote more joint cooperation between neighbouring countries in SCS. Besides, marine economy plays an important role in regional countries’ development. And developing economy cannot neglect the importance of UCH as an integral part of the cultural heritage of humanity. But, today the information and evidence of UCH are still not much in SCS and threatened by unauthorized activities directed at it.

However, we believe that joint cooperation of UCH will help complete our knowledge about maritime trading in SCS, even Southeast Asia. And reasonable developing and protecting the cultural resources in the SCS facilitates the sustainable development of surrounding countries and regions.

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References:

[1] Chinese UCH “12.5” National Project(Draft) [R],2010

Annual Report of NCCUCH,2010.
[2] WU Yong,WANG Xiu-wei. Legislative research on UCH in South China Sea states[J]. Western Law Review,2013(4): 54-62.
[3] Orillaneda B C,Ronquillo W P. Protecting and preserving the underwater cultural heritage in the Philippines: abackground paper [EB/OL]. (2013-01-10) [2016-11-03]. <http://www.themua.org/collections/files/original/6262feb1d8c9889f3c7cd53e6b106763.pdf>.
[4] Jörg C J A. The geldermalsen history and porcelain [M]. The Netherlands ;Kemper Publisher,1986.
[5] Important shipwreck auction catalogs [EB/OL]. (2015-11-20) [2016-11-03]. <http://www.sunkentreasurebooks.com/catalogs.htm>.
[6] Historic shipwrecks act 1976 ; Agreement between the Netherlands and Australia concerning old Dutch shipwrecks [EB/OL]. (1972-11-06) [2016-11-03]. http://www.austlii.edu.au/au/legis/cth/consol_act/hsa1976235/sch1.html.
[7] Roach J A, France Concedes United States has Title to CSS Alabama [J]. The American Journal of International Law, 1991(2):381-383.
[8] Agreement Regarding the Wreck of La Belle,U. S. -Fr. , Mar. 31,2003 [J]. The American Journal of International Law,2003(3):688-689.