

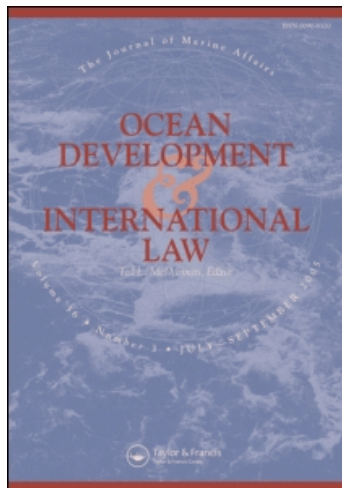
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Introduction to the Special Issue

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Introduction to the Special Issue

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The year 2005 marked the tenth anniversary of the adoption of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the U.N. Fish Stocks Agreement).

One of the innovations introduced in the Fish Stocks Agreement was the term and concept of “fishing entities.” Article 1, paragraph 3 of the Fish Stocks Agreement provides that: “This Agreement applies *mutatis mutandis* to other **fishing entities** whose vessels fish on the high seas” (emphasis added). Although the term “fishing entities” was not precisely defined, there is little debate that what was in the minds of the negotiators was Taiwan. Given the ambiguity both in the definition of “fishing entities” and in how the term is to be implemented, its legal meaning and substance will be shaped and crystallized through international practices. The Republic of China (referred to as Taiwan by much of the world) is the only state in the international community making use of this term as its legal capacity—or, to put it another way, Taiwan is the only international fishing actor that this term has applied to in various regional fisheries management organizations or arrangements.

The ten-year anniversary of the Fish Stocks Agreement and the evolving practice regarding Taiwan and “fishing entities” prompted the Center for Marine Policy Studies of the National Sun Yat-sen University in Kaohsiung, Taiwan to organize the International Conference on a Decade’s Practice of the Concept of Fishing Entities in International Law held from 28 June to 1 July 2005 in Taipei, Taiwan. Foreign and local scholars and experts who either had personal experience respecting the evolution and practice of the term “fishing entities” or had expertise in the field of international law or law of the sea participated. Some of the papers prepared for the Conference were selected for publication in this Special Issue.

Professor Ambassador Hasjim Djalal, a senior career diplomat of Indonesia, was involved in both the negotiations of the U.N. Fish Stocks Conference and the Multilateral High-Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (the MHLCS). Prof. Djalal’s article in this issue deals with the nature of fishing entities and argues that a fishing entity has gradually become

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a subject of international law having rights, obligations, and legal capacity similar to other subjects in modern international law.

Professor Martin Tsamenyi, an expert on marine policy from Australia and a practitioner of international fisheries law, having served as the Legal Adviser to the South Pacific Forum Fisheries Agency (FFA), prepared a paper on the legal substance of fishing entities. Professor Tsamenyi concludes that there is a new subject of international law in the form of a fishing entity which has all the rights and obligations of states with regard to the conservation and sustainable use of fishery resources.

Peter Ho, a participant in and frequent delegate representing Taiwan at the meetings and conferences of various regional fisheries management organizations, presented the history and experiences of Taiwan's involvement in these organizations before and after the adoption of the 1995 Fish Stocks Agreement.

Dr. Nien-Tsu Alfred Hu, professor of marine policy and law of the sea and the organizer of the Conference, who served as a legal advisor to and one of the principal negotiators for the Taiwan Delegations in numerous negotiations, presented the emergence of the term "fishing entities" in some existing literatures and international legal instruments, revealed the internal deliberation of Taiwan for the possible application of the term "fishing entities" in its pursuit of formal access to and full participation in regional fisheries management organizations, and wrote about his experiences regarding the application of the term and concept of "fishing entities" in the diplomatic negotiations that led Taiwan into several (sub)regional fisheries management organizations.

Although Taiwan's pursuit of formal participation in or accession to various regional fisheries management organizations, arrangements, or mechanisms started in the first meeting of the Interim Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (or ISC) in 1996, the first real test for the practice of the term "fishing entities" was the MHLC (June 1997 to September 2000) in which Taiwan pursued equal and full participation status in the Western and Central Pacific Fisheries Commission in the capacity of a fishing entity. Michael Lodge, who served as the Secretary to the MHLC, has written a paper on the history of the MHLCs with a special focus on the evolution of the status and substance of fishing entities in the negotiations.

Dr. Kuan-Hsiung Dustin Wang, an associate professor of international law at the National Taiwan Ocean University in Keelung participated in all the Working Group meetings of Inter-American Tropical Tuna Commission (IATTC) on the amendment of its aged constituent instrument. His article looks at the history of this amendment process and the involvement of Taiwan.

Dr. Michael Sheng-Ti Gau, an associate professor of international law at Soochow University in Taipei, prepared a paper concerning the various arrangements on dispute settlement found in international legal instruments and how fishing entities fit these instruments.

William Edeson, a long-time lawyer with the U.N. FAO and now a legal advisor to the Indian Ocean Tuna Commission (IOTC), presented a paper on the practices of selective regional fisheries management organizations with respect to the issue of fishing entities. He also provided his legal assessment on the possibility of the incorporation of Taiwan, as a fishing entity, into the IOTC.

Due to page limitations, a paper presented by Dr. Yann-Huei Song, professor of law of the sea and ocean policy at Academia Sinica in Taipei, on the possibility of judicial settlement of disputes involving fishing entities at the International Tribunal for the Law of the Sea with the CCSBT as an example was not included but may be published at a later date.

On behalf of the Center for Marine Policy Studies of the National Sun Yat-sen University, I would like to thank all the participants of this International Conference for their lively involvement; all the authors for their contributions to the Conference and this Special Issue; and the Publisher and Editor-in-Chief of *Ocean Development and International Law* for making this Special Issue possible.

Prof. Nien-Tsu Alfred Hu, Ph.D.
Special Guest Editor