

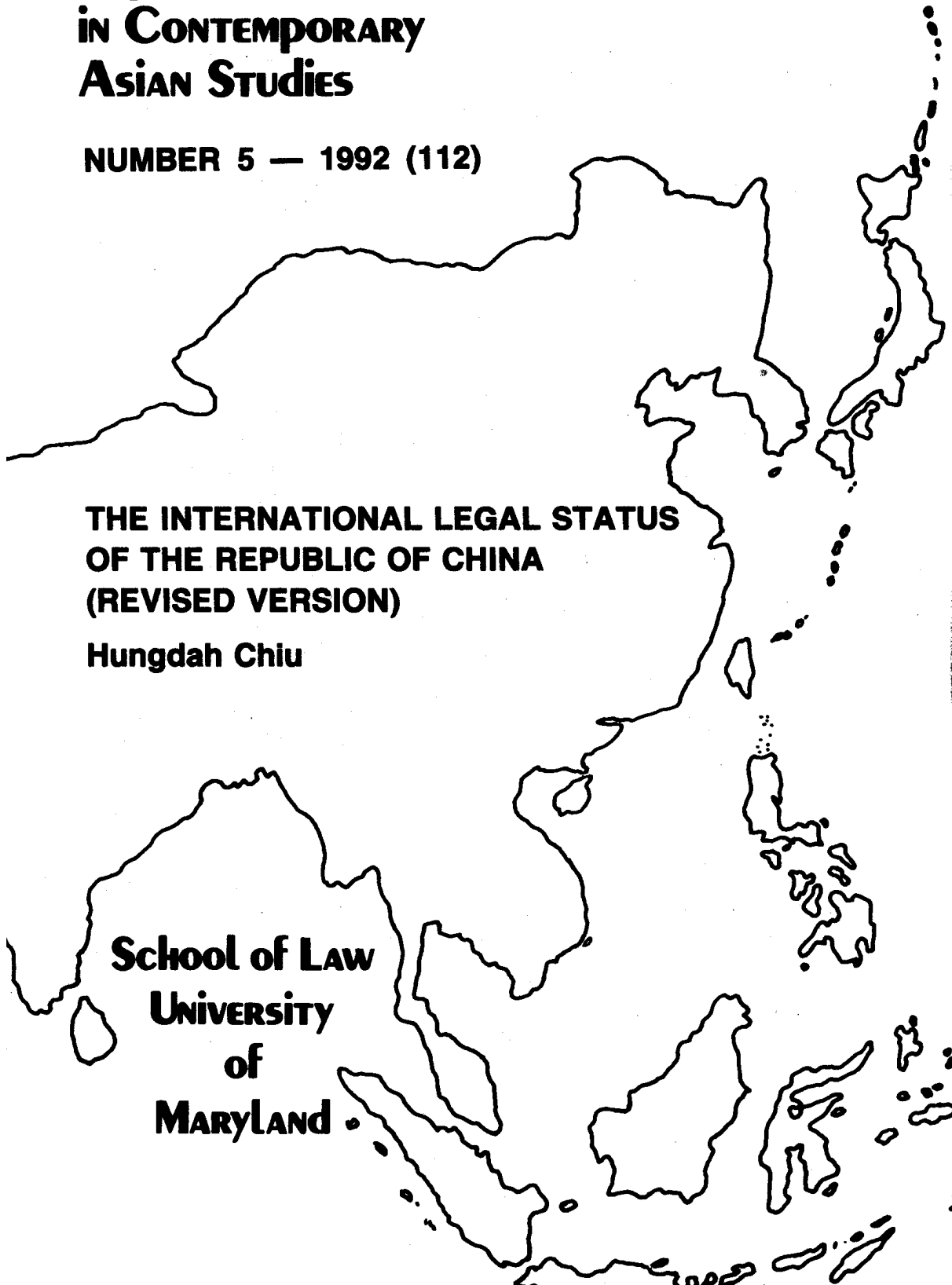
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**THE INTERNATIONAL LEGAL STATUS
OF THE REPUBLIC OF CHINA
(REVISED VERSION)**

Hungdah Chiu

**School of Law
UNIVERSITY
of
MARYLAND**



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Professor Hungdah Chiu, University of Maryland School of Law,
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**THE INTERNATIONAL LEGAL STATUS OF THE REPUBLIC
OF CHINA* (Revised version of No. 1-1990(96))**

Hungdah Chiu

TABLE OF CONTENTS

I. Introduction	2
II. The Political Nature of the International Law of Recognition	3
III. The International Status of the Republic of China as Viewed by Certain Scholars	7
IV. Dual Recognition, Official Relations and Semi-Official Relations	14
V. Conclusion of International Agreements and Participation in Inter-Governmental Organizations	22
VI. Conclusion	24
Appendices	
I. Republic of China's Diplomatic and Consular Missions Abroad	26
II. Republic of China's Official or Semi-Official Missions Abroad	28
III. Foreign Diplomatic/Consular Missions in the Republic of China	33
IV. Foreign Semi-Official or Unofficial Missions in the Republic of China	34

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I. INTRODUCTION

The Republic of China (ROC) on Taiwan is in effective control of an area of 35,981 square kilometers (14,000 square miles), which is approximately the combined size of Maryland, Delaware and Rhode Island of the United States. It has a population of approximately 20 million, with a per capita income of approximately U.S. \$10,000.00 in 1991. In terms of foreign trade, it is the thirteenth leading trading nation of the world and the sixth leading trading partner of the United States. The armed forces number about half a million, with reserves of more than 2 million troops.¹

Looking at these indicators alone, there is no doubt that the ROC should be recognized as a state in the international community and should be represented in all major international organizations. Unfortunately, the reality is just the reverse: the ROC is not recognized by most countries of the world and is not represented in the United Nations and its affiliated agencies.² Only a few international organizations accept the ROC as one of their members. Even then, the ROC's membership status is always in an unstable condition.³ Why is that?

1. For general information on the Republic of China, see *Republic of China Yearbook 1990-1991*, Taipei: Kwang-Hwa Publishing Co., 1990; *Background Notes Taiwan* (September 1991), U.S. Department of State, Bureau of Public Affairs; and, *National Conditions of the Republic of China, A Brief Graphic Review*, Summer 1992, Taipei: Bureau of Statistics, Executive Yuan.

2. On October 26, 1971, the United Nations General Assembly voted to give the Chinese seat to the People's Republic of China (PRC) and thus exclude the Republic of China (ROC) from participation in the United Nations. Other U.N. specialized agencies soon took similar measures to exclude the ROC. See *Yearbook of the United Nations*, Vol. 25 (1971), New York: The United Nations, 1973, pp. 126-137. In 1980, the International Monetary Fund, the World Bank, the International Development Association and the International Finance Corporation also excluded the ROC. See Hungdah Chiu, Rong-jye Chen and Tzu-Wen Lee, "Contemporary Practices and Judicial Decisions of the Republic of China Relating to International Law [1979-81]," *Chinese Yearbook of International Law and Affairs*, Vol. 1 (1981), pp. 142-143.

3. The ROC now maintains its membership status only in eight organizations: the International Union of Publication of Customs Union; the International Criminal Police Organization (Interpol); the International Office of Epizootics; the International Cotton Advisory Committee (ICAC); the Asian Productivity Organization; the Afro-Asian Rural Reconstruction Organization; the Asian and Pacific Council (APC) and the Asian Development Bank (ADB). Among them, voting rights of the ROC in Interpol have been given to the People's Republic of China, though the ROC still is considered a member under the name "China Taiwan"; the ICAC has changed the ROC's name to China Taiwan and the ADB has changed the ROC's name to "Taipei, China." See Hungdah Chiu and Su Yun Chang, "Contemporary Practice and Judicial Decisions of the Republic of China Relating to International Law, 1990-91," *Chinese Yearbook of International Law and Affairs*, Vol. 10 (1990-91), pp. 327-328. Moreover, the APC is a somewhat defunct organization. No

This is because the international law of recognition does not necessarily reflect the reality of international politics. This paper deals with the international legal status of the ROC in the context of the international law of recognition and the problem the ROC faces in maintaining its foreign relations through unorthodox channels in international law.

II. THE POLITICAL NATURE OF THE INTERNATIONAL LAW OF RECOGNITION

In the international legal system, writers and state practice generally agree on the essential qualifications of a state, namely: (1) a permanent population; (2) a defined territory; (3) a government; and, (4) a capacity to enter into relations with other states.⁴ However, because the international legal system is a decentralized one, there is no centralized authority to render an authoritative decision on whether an entity does possess these qualifications. As a result, the decision is left to the individual states of the international community through the system of recognition, i.e., "the acknowledgement of a situation with the intention of admitting the legal implications of such a state of affairs."⁵ Ideally, each state should treat the question of identifying whether an entity is a state as a legal one and base its decision on recognition on objective criteria prescribed by international law.⁶ But the practice of most states shows that this decision on recognizing an entity as a state is treated much more as a question of policy.⁷

ministerial meeting has been held since 1973. However, two organs established by the APC remain in operation—the Cultural Region and Social Center for the Asian and Pacific Region (CULSOCEN, located in Seoul) and the Food and Fertilizer Technology Center for the Asian and Pacific Region (FETC, located in Taipei). Michael Haas, ed., *Basic Documents of Asian Regional Organizations*, Vol. III, Dobbs Ferry, New York: Oceana, 1974, p. 991 and Vol. V (published in 1979), pp. 453-455.

4. E.g., see Article 1 of the Convention on Rights and Duties of States, Montevideo, December 26, 1933. League of Nations, Treaty Series, Vol. 165, p. 19. See also § 201 of the *Restatement of the Law [of] the Foreign Relations of the United States*, 3rd ed., Vol. 1, St. Paul, Minn.: American Law Institute Publisher, 1987, p. 72, (hereinafter referred to as *Restatement of the Foreign Relations Law*), which states:

Under international law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.

The *Restatement* represents the general consensus of American lawyers.

5. Georg Schwarzenberger and E.D. Brown, *A Manual of International Law*, 6th ed., Abingdon, Oxon., United Kingdom: Professional Books Ltd., 1976, p. 566.

6. H. Lauterpacht, *Recognition in International Law*, Cambridge, United Kingdom: Cambridge University Press, 1947, pp. 32-33.

7. J.G. Starke, *An Introduction to International Law*, 8th ed., London: Butterworths,

There is also a controversy in international law as to whether a government of a recognized state can represent that state in the international community. Some consider that the decisive criterion should be whether a government has effective control over its population and territory, while others would like to introduce additional elements, such as a government's popular support within the state or its willingness to honor international obligations, or others.⁸ Again, like the question of identifying an entity as a state, the determination that a government can represent a particular state is left to the decision of the individual states of the international community through the system of recognition. The state practice, however, also indicates that states base their decisions primarily on policy considerations rather than legal principles.⁹

In view of this, it is clear that the law of recognition is a highly politicized part of public international law. This may partially explain why the question of recognition of states and governments has neither in theory nor in practice been solved satisfactorily. In practice, because of the discretionary nature of recognition, a state acts legally in not granting recognition to an entity which in fact possesses all the necessary qualifications of statehood or to a government which is in fact in effective control of a state's population and territory. Needless to say, the lack of congruity between politics and law with respect to recognition of states and governments has created difficulty and inconvenience in international relations.

While an entity that meets the qualifications of statehood may be denied recognition by one or more states in the international community, it cannot, because of the lack of recognition, be denied its rights or escape its obligations under international law.¹⁰ As stated by a Third World lawyer:

It is generally admitted that an unrecognized state cannot be completely ignored. Its territory cannot be considered to be no-man's-land; there is no right to overfly without permis-

1977, p. 149. See also § 202(1) of the *Restatement of the Foreign Relations Law*, *supra* note 4, p. 74.

8. See the summary of various views in Louis Henkin, Richard Crawford Pugh, Oscar Schachter and Hans Smit, *International Law, Cases and Materials*, 2nd ed., St. Paul, Minn.: West Publishing Co., 1987, pp. 242-247.

9. See Starke, *International Law*, *supra* note 7, p. 159 and Malcolm N. Shaw, *International Law*, 2nd ed., Cambridge, United Kingdom: Grotius Publications Ltd., 1986, p. 214. The *Restatement* takes the position that a state is not required to accord formal recognition to the government of another state. See § 203 of the *Restatement of the Foreign Relations Law*, *supra* note 4, p. 84.

10. Henkin *et al.*, *International Law*, *supra* note 8, p. 232.

sion; ships flying its flag cannot be considered stateless, and so on.¹¹

With respect to the status of unrecognized governments, the American *Restatement of the Foreign Relations Law* takes the view that while a state "is not required to accord formal recognition to the government of another state," it is required to treat the government of another state as a regime that is in effective control of that state."¹² While no other international lawyers have discussed this issue, none of them seems ever to have suggested that an unrecognized government should be denied any status in the international community. In practice, informal relations have sometimes been maintained between a state and an unrecognized regime.¹³

In view of the above discussion, it is clear that an unrecognized state or government still enjoys certain rights and bears certain obligations in international law. Theoretically, a domestic court can deny the legal status of an recognized state or government, but in reality, under certain circumstances, domestic courts have held that it is impossible in law not to adjust the rigid rules on the legal consequences of non-recognition of a *de facto* state or government. Thus, in the case of *Wulfsohn v. Russian Socialist Federated Soviet Republic* (234 N.Y. 372, 138 N.E. 24 (Ct. App. 1923)), in which an action was brought against the unrecognized RSFSR, the court dismissed the case on the ground that "whether or not a government exists . . . is a fact, not a theory." In another case concerning a then-unrecognized East German corporation's right to sue in the United States, a New York court observed:

A foreign government, although not recognized by the political arm of the United States Government, may nevertheless have *de facto* existence which is juridically cognizable. . . . The lack of jural status for such government or its creature corporation is not determinative of whether transactions with it will be denied enforcement in American courts. . . . (*Upright v. Mercury Business Machines Co.*, 12 App. Div. 2d 36, 213 N.Y.S.2d 417 (1961)).

11. Peter James Nkamabo Mugerwa, "Subjects of International Law," in Max Sorensen, ed., *Manual of Public International Law*, New York: St. Martin's Press, 1968, p. 269. § 303(1) of the *Restatement of the Foreign Relations Law*, *supra* note 4, p. 77, takes a similar position.

12. § 203(1) of the *Restatement of the Foreign Relations Law*, *supra* note 4, p. 84.

13. See Green H. Hackworth, *Digest of International Law*, Vol. 1, Washington, D.C.: U.S. Government Printing Office, 1940, pp. 327-328.

In certain cases, a state has found it necessary in practice to deny the legal effect of non-recognition of a foreign state or government. For example, after the United States de-recognized the ROC on Taiwan on January 1, 1979, it enacted the Taiwan Relations Act (TRA) of 1979,¹⁴ the effect of which was to treat Taiwan as a state and the governing authorities there as a government, despite the lack of formal recognition for the ROC on Taiwan. With respect to the legal status of Taiwan, the TRA provides:

Sec. 4(b). . . .

(1) Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.

. . .

(3)(A) The absence of diplomatic relations and recognition with respect to Taiwan shall not abrogate, infringe, modify, deny or otherwise affect in any way rights or obligations (including but not limited to those involving contracts, debts, or property interests of any kind) under the laws of the United States heretofore or hereafter acquired by or with respect to Taiwan.

. . .

(7) The capacity of Taiwan to sue and be sued in courts in the United States, in accordance with the laws for the United States, shall not be abrogated, infringed, modified, denied, or otherwise affected in any way by the absence of diplomatic relations or recognition.

(8) No requirement, whether expressed or implied, under the laws of the United States with respect to maintenance of diplomatic relations or recognition shall be applicable with respect to Taiwan.

(c) For all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United

14. U.S. Public Law 96-8, April 10, 1979, *United States Statute at Large*, Vol. 93, p. 14 ff, reprinted in Hungdah Chiu, ed., *China and the Taiwan Issue*, New York: Praeger, 1979, pp. 266-275. See also Hungdah Chiu, *The Taiwan Relations Act and Sino-American Relations*, Baltimore: University of Maryland School of Law Occasional Papers/Reprints Series in Contemporary Asian Studies, No. 3-1990 (99); William B. Bader and Jeffrey T. Bergner, eds., *The Taiwan Relations Act, A Decade of Implementation*, Indianapolis, Indiana: Hudson Institute; Menlo Park, California: SRI International, 1989.

States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law.

(d) Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.

In international political relations, the need to disregard the legal consequences of non-recognition is sometimes more compelling. For instance, international agreements sometimes have been concluded between a state and an unrecognized state or government. As Dr. Marjorie Whiteman observed in 1959:

It is possible for bilateral treaties or agreements entered into not to constitute recognition. Thus, during the years 1919 and 1920 a number of bilateral treaties or agreements providing for the repatriation of prisoners of war and nations were entered into with the [unrecognized] Soviet government. . . .¹⁵

Official contacts between two countries or governments not recognizing each other sometimes have also become necessary in international relations. For example, between 1955 and 1971, the United States and the People's Republic of China (PRC) had engaged in more than one hundred ambassadorial talks between them despite the fact that they did not recognize each other until January 1, 1979.¹⁶ Similarly, between 1973 and 1978, the United States and the PRC maintained official liaison offices in each other's capital, despite the absence of mutual recognition.¹⁷

III. THE INTERNATIONAL STATUS OF THE REPUBLIC OF CHINA AS VIEWED BY CERTAIN SCHOLARS

The application of the international law of recognition to the Chinese case is a challenging question, because the Chinese case is unique

15. Marjorie Whiteman, *Digest of International Law*, Vol. 2, Washington, D.C.: U.S. Government Printing Office, 1963, p. 52.

16. See Kenneth T. Young, *Negotiating with the Chinese Communists: The United States Experience, 1953-1967*, New York: McGraw-Hill, 1968 and *Tang-tai Chung-kuo wai-chiao* (Diplomacy of Contemporary China), Peking: Chinese Social Sciences Press (for internal circulation), 1987, pp. 95-110.

17. See "Presidential Assistant Kissinger Visits Asia," *Department of State Bulletin*, Vol. 68, No. 1760 (March 19, 1973), pp. 313, 315-317.

in several respects. First, there has never been any doubt that China is a state under international law. The issue is which government of China—the ROC government or the PRC government—is the legal government of China. Until 1971, China was represented by the ROC government in the United Nations and in almost all international organizations and more countries recognized the ROC government than the PRC government. Since then, the situation has changed completely. Second, the PRC government has made it clear that force will be used against Taiwan if the ROC government declares Taiwan a separate state.¹⁸ Third, no country has so far been able to recognize and establish diplomatic relations with the PRC government without de-recognizing and severing diplomatic relations with the ROC government. Therefore, the status of the ROC is unprecedented in international law.

Most international lawyers have ignored the question of the status of the ROC under international law in their writings. Only a few are willing to discuss this difficult question. Therefore, views of those few who have addressed the Chinese issues are summarized below.

(1) United States

After severing diplomatic relations with the Republic of China, the U.S. Senate's Committee on Foreign Relations held Hearings on Taiwan in February 1979. At that hearing, Professor Victor Li, then of Stanford University Law School, expressed the following view on Taiwan's status:

A . . . possible description of the legal status of Taiwan after withdrawal of recognition is that it is a "*de facto* entity with international personality." That is, while no longer regarded by the United States as a *de jure* government or state, nevertheless Taiwan continues to control a population and territory and to carry out the usual functions of government.¹⁹

18. E.g., Chinese leader Teng Hsiao-p'ing said on October 11, 1984, that if Taiwan declared independence, the PRC would institute a blockade against Taiwan. "Deng [Teng] Warns of 'Eruption' in U.S.-China Ties Over Taiwan," *The New York Times*, October 12, 1984, p. A8. Recently, the PRC issued several stern warnings through its officially-controlled media against the Taiwan independent movement, e.g., see "Liaowang [The Outlook] Speculates on Use of Force," *Foreign Broadcast Information Service, China* (hereinafter *FBIS, China*), November 29, 1989, pp. 52-55. On October 29, 1992, a high-ranking Chinese Communist poliburo member Li Rui-huan said that "the PRC won't budge an inch on its one China policy and will take all possible means to prevent the independence of Taiwan." "Li Ruihuan Warns Against Independence," *FBIS, China*, October 30, 1992, p. 47.

19. *Taiwan*, Hearings before the Committee on Foreign Relations, 96th Congress, 1st

In my written statement submitted to the Hearings, I took the following position on the status of Taiwan:

According to international law, "the existence in fact of a new state or a new government is not dependent on its recognition by other states." (Hackworth, *Digest of International Law*, Vol. 1 (1940), p. 161. Hackworth was Chief Legal Adviser of the Department of State and later served as a judge of the International Court of Justice.) This principle also finds support in the 1933 Inter-American Convention on Rights and Duties of States which provide[s] in Article 3 that "the political existence of the state is independent of recognition by other states." While the United States may not want to formally recognize the ROC even as a state and government within the territory under its control, it may take a position somewhere in between recognition and non-recognition with respect to the international status of the ROC in Taiwan. For instance, the United States may issue a statement reiterating its position on recognition as stated by Hackworth and in the 1933 Convention and then say that "within that context the United States takes note that the ROC government is in effective control of Taiwan and is the only authority there." This formula has the benefit of not offending the PRC, for it does not formally recognize the ROC in Taiwan. On the other hand, it takes official cognizance of the objective existence of the ROC in Taiwan and states [that] the United States will deal with Taiwan on that basis.²⁰

Among the many textbooks of public international law published in the United States, only two refer to the status of the ROC on Taiwan. In a casebook jointly edited by four professors at Columbia University School of Law and published in 1980, Taiwan was categorized as an entity *sui generis* as a subject of international law. This category also includes the State of the Vatican City and the Holy See. The reason for this classification is that these "entities have an international legal status though they do not easily fit into any of the established categories."²¹ The book describes Taiwan's status as follows:

Session, on Bill 5. 245, February 5, 6, 7, 8, 21 and 22, 1979, Washington, D.C.: U.S. Government Printing Office, 1979, p. 148.

20. *Ibid.*, p. 820. Both Li and Chiu's testimony are excerpted in *International Law Perspective*, Vol. 5, No. 2 (February 1979), pp. 2-3 (Li) and 4 (Chiu).

21. Henkin *et al.*, *International Law*, *supra* note 8, 1st ed., 1980, p. 207.

The island of Taiwan, generally considered as part of China, has had an independent regime exercising full control over the island since the establishment of the People's Republic of China in 1949 and claiming and long recognized by many states as the Government of China. On one view, the legal status of Taiwan remained undetermined even after the renunciation of Japanese claims in the Peace Treaty with Japan. On another view, Taiwan was legally part of China. Irrespective of these views, it was acknowledged that Taiwan was under the *de facto* authority of a government that engaged in foreign relations and entered into international agreements with other governments.²²

Professor Gerhard von Glahn explains the ROC's status as follows:

From a factual point of view, the Republic of China continues, of course, to exist as an independent entity, even though it was recognized by only twenty-two members of the family of nations.²³

(2) The United Kingdom

Professor Ian Brownlie includes Taiwan and the State of the Vatican City in the category of entities *sui generis* as subjects of international law. He wrote:

[T]he case of territory the title to which is undetermined, and which is inhabited and has an independent administration, creates problems. On the analogy of belligerent communities and special regimes not dependent on the existence of the sovereignty of a particular state (for example, internationalized territories and trust territories), communities existing on territory with such a status may be treated as having a modified personality, approximating to that of a state. On one view of the facts this is the situation of Taiwan (Formosa). Until March 1972, the United Kingdom, which regarded the island as territory the title to which was undetermined, had certain legal relations involving acceptance of passports with the authorities there and maintained a consu-

22. *Ibid.*, p. 208. The second edition maintains the same view. See Henkin *et al.*, *International Law*, 2nd ed., *supra* note 8, p. 278.

23. Gerhard von Glahn, *The Law Among Nations, An Introduction to Public International Law*, 4th ed., New York: MacMillan Publishing Co., 1981, pp. 68-69. In the 5th edition, published in 1986, Professor von Glahn maintains the same view; see p. 63 of that edition.

late.²⁴ Clearly it is undesirable that the population of such areas should be regarded as “stateless” in law.²⁵

Dr. J. Crawford made an extensive study of Taiwan’s status and concluded:

The conclusion must be that Taiwan is not a State, because it does not claim to be,²⁶ and is not recognized as such: its status is that of a consolidated local *de facto* government in a civil war situation. The Republic of China may even be precluded, by its actions since 1949, from attempting to assert separate sovereignty over the island, although the finally effective secession of part of a State may never be excluded in practice. But this is not to say that Formosa has no status whatever in international law. It is a party to various conventions binding its own territory. Courts faced with specific issues concerning its status may treat it on a *de facto* basis as a “well defined geographical, social, and political entity [with] . . . a Government which has undisputed control of the island.” Conflicts between its limited status in international law and the policies of particular statutes or contracts may be reconciled or avoided, especially in a municipal forum, by interpretation. Internationally the Government of Formosa is a well established *de facto* government, capable of committing the State to at least certain classes of transaction. It has also been argued that the principle of self-determination applies, so that Taiwan may not be transferred to the control of the People’s Republic without the consent of the people. In any case, attempts to solve the problem of Taiwan otherwise than by peaceful means must now constitute a situation “likely to endanger the maintenance of inter-

24. On June 17, 1954, the United Kingdom established *Charge d'affairs* relations with the PRC and on March 13, 1973, both countries agreed to raise their relations to the ambassadorial level. The United Kingdom then closed its consulate in Tamsui, Taiwan in 1973. Jerome Alan Cohen and Hungdah Chiu, *People's China and International Law: A Documentary Study*, Vol. 1, Princeton, New Jersey: Princeton University Press, 1974, p. 245.

25. Ian Brownlie, *Principles of Public International Law*, 2nd ed., London: Oxford University Press, 1973, pp. 68-69. Professor Brownlie maintains the same view in the third edition, 1979, pp. 68-69. But in the fourth edition of this book, 1990, the sentence “clearly it is undesirable that the population of such areas should be regarded as ‘stateless’ in law,” is omitted and replaced by the following: “The question will arise whether Taiwan is a ‘country’ within particular context.” Brownlie, 1990, p. 67.

26. Dr. Crawford does not seem to understand that the PRC has made it clear that force will be used against Taiwan if the latter declares independence. See *supra* note 18.

national peace and security" under Article 33 of the Charter: this view is held, as we have seen, by both the British and United States governments. To this extent, while there is no strict "juridical boundary" between the parties, there does appear to be a frontier for the purposes of the use of force.²⁷

Another British scholar, Malcolm N. Shaw, considers Taiwan a non-state territorial entity. He explains Taiwan's status as follows:

This territory was ceded by China to Japan in 1895 and remained in the latter's hands until 1945. Japan undertook on surrender not to retain sovereignty over Taiwan and this was reaffirmed under the Peace Treaty between the Allied Powers (but not the USSR and China) and Japan, under which all rights to the island were renounced without specifying any recipient. After the Chinese Civil War, the Communist forces took over the mainland while the Nationalist regime installed itself on Taiwan (Formosa) and the Pescadores. The key point affecting status has been that both governments have claimed to represent the whole of China. No claim of separate statehood for Taiwan has been made and in such a case it is difficult to maintain that such an unsought status exists. Total lack of recognition merely reinforces this point.²⁸ Accordingly, Taiwan would appear to be a non-state territorial entity which is *de jure* part of China but under separate administration.²⁹

(3) France

Professor Aleth Manin appears to be the only scholar who has actively considered the status of Taiwan. However, although she discussed Taiwan's status extensively, she did not propose any new ideas or suggestions.³⁰

(4) Federal Republic of Germany

27. J. Crawford, *The Creation of States in International Law*, London: Oxford University Press, 1979, pp. 151-152.

28. Mr. Shaw is wrong on this point: the ROC on Taiwan was still recognized by 23 (now 30) countries in the world at the time Mr. Shaw expressed his opinion.

29. Malcolm N. Shaw, *International Law*, 2nd ed., Cambridge, United Kingdom: Grotius Publications, Ltd., 1986, pp. 148-149. He maintains the same position in the third edition, 1991, pp. 162-163.

30. Aleth Manin, "Taiwan: Nouveaux Aspects Juridiques," in *Annuaire Francais de Droit International*, Vol. 26, Paris: Centre National de la Recherche Scientifique, 1980, pp. 140-174 and Aleth Manin, "Divided Nations and International Law: The Case of Taiwan," in Hungdah Chiu and Robert Downen, eds. *Multi-System Nations and International Law: The International Status of Germany, Korea and China*, Baltimore: University of

Dr. Meinhard Hilf expresses the following view on the status of the ROC on Taiwan:

The People's Republic of China is now a universally recognized State. The status of the Republic of China (Taiwan) is less clear; it considers itself as a part of the "old" China thus excluding the concept of being a separate and divided State. The Republic of China (Taiwan) has lost its wide international recognition as a State, especially since 1972; it is often considered as a part of China under separate administration, i.e., a consolidated local *de facto* government (Crawford). In 1981, 23 . . . States still maintained diplomatic relations with the Republic of China (Taiwan).³¹

None of the scholars' views, as summarized above, seems to provide a satisfactory answer to the status of the ROC on Taiwan. This is because the question of the ROC's status is in reality essentially a political one, as explained by a Dutch international lawyer of Chinese origin, Ko Swan Sik, as follows:

According to a categorization drawn up by John H. Herz in 1974, three categories may be distinguished in terms of recognition between the contending power centers [in a state]: (1) mutual non-recognition, (2) unilateral recognition, and (3) mutual recognition. The Chinese case is clearly an example of the first category. Suggestions have been made that the law should be applied in such a way as to rhyme with the facts of the multi-system situation, but none of these suggestions seem to have offered adequate solutions as yet. Dealing with "how the norms of bipolarity *should have developed*", Morton Kaplan [University of Chicago], has proposed "a new and appropriate standard of international law", viz., "the existence of a single state that could be coterminous with more than a single legitimate government." We are thus directed to think about a legal construction according to which each of two centers of governmental power are recognized as alternative legal governments of one formally, but not factually, existing state, each government exercising authority according to its *de facto* territorial jurisdiction. Other constructions, similar and dissimilar, could

Maryland School of Law, Occasional Papers/ Reprints Series in Contemporary Asian Studies, No. 8-1981 (45), pp. 160-166.

31. Meinhard Hilf, "Divided States," in Rudolf Bernhardt, ed. *Encyclopedia of Public International Law*, Vol. 10, Amsterdam: Elsevier Science Publishers B.V., 1987, p. 127.

be set up and theoretically elaborated, but their feasibility remains hinged upon political inclination. Legal alternatives are, consequently, only to be seen as the legal formalizations of political alternatives.³²

However, all scholars acknowledged that the ROC on Taiwan exercises independent foreign relations powers, as will be analyzed in the next section.

IV. DUAL RECOGNITION, OFFICIAL RELATIONS AND SEMI-OFFICIAL RELATIONS

In international law, the conduct of foreign relations between a state and other states is through embassies or consulates or both. However, in many countries, this mechanism is not available to the ROC on Taiwan because it does not have diplomatic or consular relations with most countries of the world. A question may be raised as to whether it is possible for a state to recognize both the PRC and the ROC and thus maintain diplomatic relations with both. This is sometimes referred to as "dual recognition."³³ In light of the theory of international law, this is the most satisfactory solution to the Chinese case, because both the PRC and the ROC do possess the necessary qualifications to become states under international law. However, as explained in the early part of this paper, the law of recognition is a highly politicized part of international law and countries do not act purely on legal considerations in recognizing an entity as a state.³⁴ The PRC has insisted that a state must sever its diplomatic relations with the ROC when recognizing the PRC. The following cases illustrate that it is not possible for the ROC to continue its diplomatic relations with a state when the latter recognizes the PRC:

(1) France

In October 1963, General de Gaulle sent former premier Edgar Faure to the PRC to discuss the question of establishing diplomatic relations. Both countries agreed to establish diplomatic relations first, thus leading to the severance of diplomatic relations between France and the ROC.³⁵

32. Ko Swan Sik, "The Dutch-Taiwanese Submarine Deal: Legal Aspects," *Netherlands Yearbook of International Law*, Vol. 13 (1982), pp. 140-141.

33. E.g., Dr. Lin-cheng Chang of National Taiwan University expressed her view at a meeting of the Foreign Affairs Committee of the Legislative Yuan, April 13, 1988. See *Li-fa Yuan Kung-pao* (Gazette of the Legislative Yuan), Vol. 77, No. 90 (November 9, 1988), pp. 177.

34. See *supra* note 7 and accompanying text.

35. *Diplomacy of Contemporary China*, *supra* note 16, pp. 189, 182-183.

On January 27, 1964, the PRC and France announced the establishment of diplomatic relations, with ambassadors to be exchanged within the following three months. The ROC embassy filed a strong protest against this "unfriendly" act of France, but did not sever diplomatic relations. However, under strong pressure from the PRC, it is reported that France urged the ROC to withdraw its embassy voluntarily, or ultimately face expulsion from France. On February 10, 1964, the ROC terminated its diplomatic relations with France.³⁶

(2) Congo (Brazzaville)

On August 15, 1960, the French Congo became an independent state and soon established diplomatic relations with the ROC. In August 1963, the country was renamed the People's Republic of Congo and soon negotiated with the PRC for establishing diplomatic relations. According to a PRC source, the Congo and the PRC orally agreed that, on the date of the establishment of diplomatic relations, "the representative of Taiwan authorities in Congo will lose its status as diplomatic representative."³⁷ On February 22, 1964, the PRC and the People's Republic of Congo announced their decision to establish diplomatic relations. The ROC's embassy remained until April 17, 1964, when it was forced to close.

(3) Benin (formerly Dahomey)

When Dahomey declared its independence on August 1, 1960, the ROC extended its recognition and sent a special envoy to attend the independence celebration. But the PRC also extended recognition to Dahomey. On January 19, 1964, Dahomey and the ROC decided to establish diplomatic relations, and an embassy of the ROC was set up in Cotonou. On November 12, 1964, however, Dahomey and the PRC decided to establish diplomatic relations. Shortly thereafter, the PRC sent a *chargé d'affaires ad interim* to head its mission in Cotonou, and it appointed an ambassador in February 1965. Two months later, the ROC severed diplomatic relations with Dahomey and closed its embassy. The PRC's ambassador presented his credentials to President Sourou Migau of Dahomey on June 19, 1965. On January 3, 1966, Dahomey announced that it was severing diplomatic relations with the PRC. On April 21, 1966, the ROC resumed diplomatic relations with Dahomey.³⁸ Finally, on January 10, 1973, Dahomey announced the resumption of diplomatic relations with the PRC and the

36. See Cohen and Chiu, *People's China and International Law*, *supra* note 24, Vol. 1, pp. 237-239.

37. See *Diplomacy of Contemporary China*, *supra* note 16, pp. 136-137.

38. Cohen and Chiu, *People's China and International Law*, *supra* note 24, pp. 257-258.

ROC declared the suspension of their diplomatic relations on January 17, 1973.

The above cases clearly indicate that it is not politically possible to have a "dual recognition" approach to the Chinese case. Since the Dahomey case, no country, except Vanuatu, that has decided to recognize the PRC has succeeded in taking a "dual recognition" approach to the Chinese case.

Since 1988, the question of dual recognition in other situations has arisen—whether a country having diplomatic relations with the PRC could maintain such relations if it decided to establish or resume diplomatic relations with the ROC. The following cases appear to indicate that it is not possible to do so.

(1) Grenada

On October 1, 1985, the PRC established diplomatic relations with Grenada.³⁹ On July 20, 1989, the ROC also established diplomatic relations with Grenada.⁴⁰ On August 8, 1989, the PRC suspended its diplomatic relations with Grenada.⁴¹

(2) Liberia

In August 1957, the ROC established diplomatic relations with Liberia. On February 17, 1977, Liberia established diplomatic relations with the PRC⁴² and a week later, on February 23, 1977, the ROC suspended its diplomatic relations with Liberia. In 1988, the ROC established a Trade Mission of the ROC in Liberia. On October 9, 1989, the ROC and Liberia decided to "resume" diplomatic relations.⁴³ On October 10, 1989, the PRC suspended its diplomatic relations with Liberia.⁴⁴

39. Editorial Office of Diplomatic History of the Ministry of Foreign Affairs of the People's Republic of China, ed., *Chung-kuo wai-chiao kai-lan, 1987* (Survey of Chinese Diplomacy, 1987), Beijing: World Knowledge Press, 1987, p. 368.

40. "Diplomatic Ties Established with Grenada," *FBIS, China*, July 21, 1989, pp. 50-51.

41. *Jen-min jih-pao* (People's Daily), August 8, 1989, p. 1.

42. *Survey of Chinese Diplomacy, 1987*, *supra* note 39, p. 208.

43. See "Liberia and Our Country Resume Diplomatic Relations," *Lien-ho pao* (United Daily News), Overseas edition, Taipei, October 3, 1989, p. 1; "Diplomatic Ties with Liberia Formerly Resumed," *FBIS, China*, October 3, 1989, p. 60 and *Chung-yang jih-pao* (Central Daily News), Int'l. ed., Taipei, October 10, 1989, p. 1.

44. "Diplomatic Relations with Liberia Suspended," *FBIS, China*, October 10, 1989, p. 17.

(3) Belize

On February 6, 1987, the PRC established diplomatic relations with Belize.⁴⁵ On October 11, 1989, the ROC established diplomatic relations with Belize.⁴⁶ On October 23, 1989, the PRC suspended its diplomatic relations with Belize.⁴⁷

(4) Lesotho

In 1955, the ROC established diplomatic relations with Lesotho. On April 30, 1983, Lesotho established diplomatic relations with the PRC and the ROC suspended its diplomatic relations with Lesotho in May. On April 5, 1990, Lesotho resumed its diplomatic relations with the ROC. On April 7, 1990, the PRC suspended its diplomatic relations with Lesotho.⁴⁸

(5) Guinea-Bissau

On September 30, 1973, Guinea-Bissau declared its recognition of the PRC and diplomatic relations were established between them on March 15, 1974.⁴⁹ On May 26, 1990, Guinea-Bissau and the ROC established diplomatic relations.⁵⁰ On May 31, 1991, the PRC suspended its diplomatic relations with Guinea-Bissau.⁵¹

(6) Central African Republic

On April 13, 1962, the Central African Republic established diplomatic relations with the ROC, but on September 29, 1964, it also established diplomatic relations with the PRC, which resulted in the suspension of relations with the ROC on November 5, 1964.⁵² However, on January 6, 1966, it severed diplomatic relations with the PRC and resumed its diplomatic relations with the ROC on May 6, 1968.⁵³ On August 20, 1976, it resumed its diplomatic relations with

45. *Survey of Chinese Diplomacy, 1987*, *supra* note 39, Beijing, 1988, p. 342.

46. *Shih-jie jih-pao* (World Journal), New York, October 13, 1989, p. 1.

47. *Ibid.*, October 24, 1989, p. 1.

48. *Survey of Chinese Diplomacy, 1987*, *supra* note 39, p. 220 and *Central Daily News*, Int'l. ed., Taipei, April 9, 1990, p. 1.

49. *Survey of Chinese Diplomacy, 1987*, *supra* note 39, p. 202.

50. *Chung-hua Min-kuo Wai-chiao Nien-chien 1991* (1991 Yearbook of Diplomacy of the Republic of China), Taipei: Distributed by Cheng-chung Book Co., 1991, p. 144.

51. *Survey of Chinese Diplomacy, 1991*, *supra* note 39, Beijing: 1991, p. 211.

52. Department of Treaty and Law of the Ministry of Foreign Affairs, ed., *Wo-kuo yu shih-chieh ke-kuo kuan-hsi i-lan piao* (Table on our country's relations with the countries of the world), Taipei: June 1989, pp. 3, 4.

53. *Ibid.*

PRC and the ROC suspended its relations with the Central African Republic.⁵⁴ On July 8, 1991, it again resumed its diplomatic relations with the ROC⁵⁵ and on July 18, 1991, the PRC suspended its diplomatic relations with the Central African Republic.⁵⁶

(7) Nicaragua

Nicaragua maintained diplomatic relations with the ROC until December 7, 1985, when it decided to establish diplomatic relations with the PRC. The ROC suspended its relations with Nicaragua. On November 6, 1990, Nicaragua decided to resume its diplomatic relations with the ROC.⁵⁷ On November 9, 1990, the PRC suspended its relations with Nicaragua.⁵⁸

(8) Niger

Soon after its gaining independence on August 3, 1960, the ROC established diplomatic relations with Niger on July 22, 1963.⁵⁹ On July 20, 1974, Niger declared its recognition of the PRC and established diplomatic relations with the PRC.⁶⁰ On July 29, 1974, the ROC suspended its relations with Niger.⁶¹ On June 19, 1992, the ROC and Niger decided to resume their diplomatic relations.⁶² On July 30, 1992, the PRC suspended its diplomatic relations with Niger.⁶³

Moreover, the PRC also cannot tolerate other countries maintaining formal consular relations with the ROC. On September 11, 1991, the PRC and Latvia decided to establish diplomatic relations.⁶⁴ However, before the PRC's embassy was to be established at Riga,

54. *Survey of Chinese Diplomacy, 1987*, *supra* note 39, p. 167.

55. *1991 Yearbook of Diplomacy of the Republic of China*, *supra* note 50, p. 802.

56. *Jen-min jih-pao* (People's Daily), July 20, 1991, p. 1. It should be noted that between December 4, 1976 and September 21, 1979, the Central African Republic was named the Central African Empire.

57. *1991 Yearbook of Diplomacy of the Republic of China*, *supra* note 50, p. 611.

58. *Ibid.*, p. 348.

59. *Lien-ho Pao* (United Daily News), Int'l. ed., June 20, 1992, p. 1.

60. *Survey of Chinese Diplomacy, 1987*, *supra* note 39, pp. 182-183.

61. *Table on Our Country's Relations with the Countries of the World*, *supra* note 52, pp. 13, 14.

62. Susan Yu, "Niger rejoins ROC diplomatic fold," *Free China Weekly*, Vol. IX, No. 44 (June 23, 1992), p. 1.

63. "Diplomatic Relations with Niger Suspended," *Beijing Review*, Vol. 35, No. 32 (August 10-16, 1992), p. 12.

64. "China Establishes Ties with Baltic Countries," *Beijing Review*, Vol. 34, No. 38 (September 23-29, 1991), p. 10.

Latvia, the latter concluded an agreement with the ROC on January 29, 1992 to establish relations at the consulate-general level;⁶⁵ the PRC then, on February 25, 1992, decided to withdraw its embassy at Riga.⁶⁶

Recently, the ROC and the Republic of Vanuatu concluded a joint communique to recognize each other on September 24, 1992,⁶⁷ but not to establish diplomatic relations. As the PRC and Vanuatu established diplomatic relations on March 26, 1982, it is not clear how the PRC would respond to this action. At the time of this writing in November 1992, it has not yet suspended its relations with Vanuatu.⁶⁸

While a "dual recognition" approach to maintaining foreign relations with the ROC and the PRC is not possible, the ROC has resorted to several ingenious approaches to maintain its foreign relations. The first approach has been to maintain an official presence, *i.e.*, establishing a mission or delegation under the name "Republic of China" in certain countries that have recognized the PRC. This in fact makes relations between the ROC and those countries similar to diplomatic relations, without calling them such. Ironically, it is the PRC which first developed this practice by establishing an official liaison office in the United States in 1973 while the latter still maintained diplomatic relations with the ROC.⁶⁹ At present, the ROC has maintained such official presences in Angola, Bahrain, Bolivia, Ecuador, Fiji, Jamaica, Jordan, Kuwait, Libya, Madagascar, Mauritius, Nigeria, Papua New Guinea, Tunisia, United Arab Emirates and Zaire.

The PRC routinely protested the establishment of such ROC offices in those countries, but did not suspend its diplomatic relations with them. As these countries have never explicitly expressed their intention to recognize the ROC through the establishment of a ROC official delegation, under international law, no such intention to recognize the ROC can be implied.⁷⁰ Moreover, in 1973, when the United States and the PRC established an official liaison office in each other's

65. *Chinese Yearbook of International Law and Affairs*, Vol. 10 (1990-1991), p. 338.

66. *People's Daily*, February 26, 1992, p. 1.

67. "Vanuata initials 'equal entity' pact with ROC," *Free China Journal*, Vol. IX, No. 71 (September 30, 1992), p. 1.

68. There is no full-time Chinese ambassador accredited to Vanuatu; the Chinese ambassador to Fiji is concurrently the ambassador to Vanuatu. See *Survey of Chinese Diplomacy, 1991*, *supra* note 39, p. 468.

69. See *supra* note 17 and accompanying text.

70. While recognition can be either expressed or implied, the latter must leave "no doubt as to the intention to grant it" and "care must be taken not to imply recognition from actions which, although amounting to a limited measure of intercourse, do not necessarily reveal an intention to recognize." *Oppenheim's International Law*, Vol. I, *Peace*, Introduc-

capital, neither of them considered that such an act would imply mutual recognition. This may be the reason that the PRC, while filing a protest, did not take action to suspend its relations with those countries which allowed the ROC to establish an official mission there.

The ROC's second approach has been to maintain semi-official relations with some countries that have recognized the PRC. This practice was initiated by Japan in 1972 when it recognized the PRC and severed diplomatic relations with the ROC. Japan has extensive economic, trade and cultural relations with the ROC on Taiwan; therefore, it is essential to maintain all substantive relations between them. To do so, a nominally private organ, the Interchange Association, was established in Tokyo with an office in Taipei. Though funded by the Japanese government and staffed with government officials, it operates as a private entity, although it is in fact an embassy except in name. The Association's office in Kaohsiung is in fact a consulate-general.

The ROC established the nominally private Association of East Asian Relations with an office in Tokyo to replace its former embassy. It has offices in Yokohama, Osaka and Fukuoka, which are consulate-generals except in name. The Association of East Asian Relations and all its offices are funded by the ROC Government and all staff members are government officials. Both the Interchange Association and the Association of East Asian Relations and their staffs enjoy a certain degree of diplomatic privileges and immunities. This Japanese arrangement for maintaining substantive relations with the ROC on Taiwan, after Japan's derecognition of, and severance of diplomatic relations with, the ROC, was later referred to as the "Japanese formula."⁷¹ In 1975, when the Philippines established diplomatic relations with the PRC, it adopted the Japanese formula to maintain its relations with the ROC. It established an Asian Exchange Center (now Manila Economic and Cultural Office) to replace its Taipei embassy, while the ROC established a Pacific Economic and Cultural

tion and Part I, 9th ed. by Robert Jennings and Arthur Watts, London: Longmans, 1992, pp. 169-170.

71. For details, see David Nelson Rowe, *Informal "Diplomatic Relations," The Case of Japan and the Republic of China, 1972-1974*, Hamden, Connecticut: The Shoe String Press, 1975; and, James William Morley, "The Japanese Formula for Normalization and Its Relevance for U.S.-China Policy," in Hungdah Chiu, ed., *Normalizing Relations with the People's Republic of China: Problems, Analysis and Documents*, Baltimore: University of Maryland School of Law Occasional Papers/Reprints Series in Contemporary Asian Studies, No. 2-1978 (14), pp. 121-136. In April 1992, the Association of East Asian Relations was renamed as "Taipei Economic and Cultural Representative Office in Japan." *Shih-jie Jih-pao* (World Journal), New York, April 28, 1992, p. 8.

Center in Manila (now Taipei Economic and Cultural Office in the Philippines).

After the United States recognized the PRC on January 1, 1979, it continued its relations with the ROC on Taiwan in a way similar to that of Japan. However, U.S. relations with the ROC are much closer than those with Japan. Besides economic, trade and cultural relations, the United States has political and security interests on Taiwan. The United States enacted the Taiwan Relations Act,⁷² effective on April 10, 1979, which set up the American Institute in Taiwan (AIT) with offices in Taipei and Kaohsiung as a substitute for its former embassy and Kaohsiung consulate-general in Taiwan. The Institute is funded by Congressional appropriation and staffed with government officials nominally on leave from different government agencies. The ROC replaced its embassy and consulate-generals in the United States with the Coordination Council for North American Affairs (CCNAA), which has offices in Washington, D.C. and different U.S. cities, and is funded by the ROC government and staffed with officials from different government agencies. These organs function like embassies or consulates, except in name. Their offices and staffs enjoy privileges and immunities similar to those of international public organizations such as the United Nations.⁷³

The status of organs set up by the ROC in other countries without diplomatic relations and their counterparts in the ROC varies. But all of them, in fact, enjoy some diplomatic privileges and immunities. Most of them are now using the title "Taipei Economic and Cultural Office."

Many countries without diplomatic relations with the ROC set up offices in Taipei, which, while nominally unofficial, are in fact staffed with government officials authorized to perform certain consular functions, including the issuance of visas. There are at least 37 countries having such offices in the ROC:⁷⁴ Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Greece, Indonesia, Ireland, Italy, Jamaica, Japan, Jordan, Malaysia, Mauritius, Mexico, the Netherlands, New Zealand, Nigeria, Norway, Papua New Guinea, the Philippines, Oman, Saudi

72. See *supra* note 14.

73. See "Agreement on Privileges, Exemptions and Immunities between the American Institute in Taiwan and the Coordination Council for North American Affairs, October 2, 1980," in Hungdah Chiu, ed., *Chinese Yearbook of International Law and Affairs*, Vol. 1 (1981), pp. 235-240.

74. See *Chinese Yearbook of International Law and Affairs*, Vol. 10 (1990-1991), pp. 732-734.

Arabia, Singapore, Spain, Sweden, Switzerland, Thailand, the United Kingdom and the United States.

V. CONCLUSION OF INTERNATIONAL AGREEMENTS AND PARTICIPATION IN INTER- GOVERNMENTAL ORGANIZATIONS

Two other problems in the foreign relations of the ROC with countries that do not recognize it are the conclusion of international agreements and participation in international public organizations. Some countries, such as Japan and the United States, have concluded nominally "unofficial" agreements with the ROC. In the United States, pursuant to Section 12(a) of the Taiwan Relations Act, agreements concluded between the AIT and the CCNAA are required to be transmitted to the Congress, just as other international agreements concluded by the United States and countries with which it has diplomatic relations. Moreover, pursuant to sections 6 and 10(a) of this Act, such agreements have full force and effect under the law of the United States.⁷⁵ Some countries have begun to follow this practice⁷⁶ in view of increased economic and trade relations with the ROC.

The most difficult part of the ROC's foreign relations is its inability to participate in multilateral international conventions concluded under the auspices of the United Nations and its affiliated agencies. For instance, the ROC is the fourteenth leading trading country of the world, but it is unable to become a contracting party to the United Nations Convention on Contracts for the International Sale of Goods,⁷⁷ done on April 11, 1980, at Vienna and entered into force on January 1, 1988. In a few cases, the ROC has concluded agreements with countries having diplomatic relations with the PRC or unofficial agreements with countries with which it has no diplomatic relations to

75. See *Federal Register*, Vol. 52, No. 9 (January 14, 1986), p. 1558.

76. E.g., see Sino-German (Federal Republic) Protocol for Science and Technology Cooperation Procedure between Deutsche Forschungsgemeinschaft (DFG) and National Science Council (NSC), October 28, 1987, in *Chinese Yearbook of International Law and Affairs*, Vol. 7 (1987-1988), p. 420. In 1991, there were sixteen countries which did not have diplomatic relations with the ROC and which concluded agreements with the ROC: Australia, Brunei Darussalam, Australia, Czechoslovakia, Hungary, Indonesia, Japan, Norway, Palau, the Philippines, Russia (former Soviet Union), Singapore, Sweden, Thailand, and United Kingdom. For text, see *Chinese Yearbook of International Law and Affairs*, Vol. 10 (1990-1991), pp. 465-585. The United States alone concluded 26 agreements with the ROC through its AIT and ROC's CCNAA. For text, see *Chinese Yearbook of International Law and Affairs*, Vol. 10, pp. 586-712.

77. U.N. Doc. A/CONF. 97/18; United Kingdom Command Papers, Miscellaneous Series, Cmnd, No. 8074; *International Legal Materials*, Vol. 19 (1980), p. 671-695.

adopt an international convention in their bilateral relations.⁷⁸ This, of course, is not a satisfactory solution and this formula can be used only in a limited scope.

Similarly, because of the PRC's boycott, the ROC is unable to participate in many international public organizations. In 1983, Teng Hsiao-p'ing appeared to be willing to reconsider this policy of isolating Taiwan from international public organizations when he told Professor Winston L.Y. Yang of Seton Hall University that after the admission of the PRC to the Asian Development Bank (ADB), Taiwan could retain its seat under "Taipei, China."⁷⁹ In March 1986, the PRC was admitted to the ADB without ousting the ROC, though the latter was required to change its name to "Taipei, China."⁸⁰ The ROC, then under the late President Chiang Ching-kuo, protested this change of its name, but did not withdraw from the ADB. In May 1989, when the ADB held its annual meeting in Beijing, the ROC's new President, Lee Teng-hui, approved the participation of the ROC delegation⁸¹ to the meeting, though still protesting the change of ROC's name. However, the ADB case appears to be an isolated one as the PRC issued a statement on December 19, 1988 indicating its intent to exclude the ROC from participation in all international public organizations affiliated with the United Nations.⁸²

78. E.g., see Exchange of Notes between the Republic of China and the Kingdom of Tonga Concerning Mutual Implementation of the International Convention on Tonnage Measurement of Ships, 1969, July 12, 1982 and Exchange of Letters between the Coordination Council for North American Affairs and the American Institute in Taiwan Concerning Mutual Implementation of the International Convention on Tonnage Measurement of Ships, 1969, May 26, 1983. Text in Ministry of Foreign Affairs, ed., *Treaties between the Republic of China and Foreign States*, Vol. 7 (1982-1985), Taipei: The Commercial Press, Ltd., 1986, pp. 260-261 (Tonga), 294-297 (United States).

79. Li-yu (Winston L.Y. Yang), "Teng Hsiao-ping's New Idea on Peaceful Unification—A Two Hour Talk with Teng Hsiao-p'ing," *Chiu-shih nien-tai* (The Seventies), 1983, No. 8, pp. 17-19.

80. *Renmin Ribao* (People's Daily), May 2-3, 1986, reprinted in *Hsin-hua yueh-pao* (New China Monthly), 1986, No. 5, pp. 193-194.

81. "ROC Officials Going to Mainland Meeting of ADB," *Free China Journal*, Vol. VI, No. 25 (April 10, 1989), p. 1.

82. *Renmin Ribao* (People's Daily), Overseas edition, December 20, 1988, p. 1. The statement claims, *inter alia*, that:

Back in 1971, the United Nations General Assembly adopted a resolution which restored the legitimate seat of the People's Republic of China in this world body. Accordingly, the United Nations has expelled Taiwan from all its organizations, and the offices of organizations of the UN system must not have any dealings with Taiwan. This principle also applies to other inter-governmental, international organizations. As for individual intergovernmental, international organizations, for instance, the Asian Development Bank, the Taiwan authorities are allowed to join it in the name of "Taipei, China", subject to agreement

Recently, the PRC again appears to have changed its policy, apparently due to international pressure. Both the PRC and the ROC wanted to join the Asian-Pacific Economic Cooperation (APEC) forum and the General Agreement on Tariffs and Trade (GATT). The United States and other countries supported both countries' joining. Both are now members of the APEC, though the ROC used the name "Chinese Taipei."⁸³

With respect to membership to the GATT, the applications of both the PRC and the ROC are now under the consideration of the GATT. The ROC's application used the name "Customs Territory of Taiwan, Penghu, Kinmen and Matsu." The PRC does not oppose the ROC's membership in the GATT, though it insisted that the ROC should use the name "Chinese Taipei." At present, both are observers at the GATT, and it is likely that both will become members of the GATT in the near future.⁸⁴

VI. CONCLUSION

Judging from the principles of international law of recognition, the ROC should be recognized as a state by all countries. However, in reality, this has not been the case. Since, under international law, to grant recognition is primarily a political act, it is unlikely that the United States would re-recognize the ROC. This is because they have international political interests in maintaining friendly relations with the PRC. The PRC is a permanent member of the United Nations Security Council. To formally recognize the ROC would put their relations with the PRC in jeopardy. On the other hand, the United States has been able to maintain friendly relations with both the PRC and the ROC through the Taiwan Relations Act of 1979. If the United States can do so, why not other countries?

reached through consultations between the Chinese Government and the international organization concerned. This is only a kind of special arrangement and cannot be regarded as a model universally applicable to other intergovernmental, international organizations.

Translation from Press Release issued by the PRC Embassy in Washington, D.C., U.S.A., No. 24 (December 20, 1988), p. 2.

83. Susan Yu, "International APEC ministers court ROC's delegation," *Free China Weekly*, Vol. VIII, No. 87 (November 15, 1991), pp. 1, 2. Earlier the ROC joined the Fund for Economic and Social Development of Central America, which is administered by the Central American Bank for Economic Integration. Yu Yen-chun, "Central American Fund Participation Approved," *Free China Journal*, Vol. VIII, No. 68 (September 3, 1991), p. 1.

84. Allen Pun, "ROC on Taiwan granted observer status in GATT," *Free China Weekly*, Vol. IX, No. 72 (October 2, 1992), p. 1. See also "GATT Statement," *ibid.*

For Third World countries, most have no strategic or political interests in their relations with the PRC. Nevertheless, there is no reason for them to risk offending the PRC by recognizing the ROC. Be that as it may, if a Third World country which has recognized the PRC considers that closer relations with the ROC would be more beneficial to its development, there is always a possibility that that country can recognize the ROC and disregard any potentially adverse reaction from the PRC. So far, eight countries have decided to do so—Grenada, Liberia, Belize, Lesotho, Guinea-Bissau, Central African Republic, Nicaragua and Niger.

As stated earlier, there are sixteen Third World countries that have diplomatic relations with the PRC but maintain official relations with the ROC. This appears to be an appropriate formula for Third World countries to improve their relations with the ROC, a country whose developmental experience and capability to provide economic and technical assistance would certainly benefit some of those Third World countries.

With respect to participation in international multilateral conventions and international public organizations, as long as the PRC insists on its policy to exclude the ROC, it will not be possible for the ROC to participate in them.

APPENDIX I**REPUBLIC OF CHINA'S DIPLOMATIC AND
CONSULAR MISSIONS ABROAD**

Bahamas	Embassy of the Republic of China
Belize	Embassy of the Republic of China
Bolivia	Oficina Comercial-Consular de la Republica de China
Centrafricaine	Ambassade de la Republique de Chine
Costa Rica	Embassy of the Republic of China
Dominica	Embassy of the Republic of China
Dominican Republic	Embassy of the Republic of China
El Salvador	Embassy of the Republic of China
Grenada	Embassy of the Republic of China
Guatemala	Embassy of the Republic of China
Guinea-Bissau	Embassy of the Republic of China
Haiti	Embassy of the Republic of China
Holy See	Embassy of the Republic of China
Honduras	Embassy of the Republic of China
Latvia	Consulate-General of the Republic of China
Lesotho	Embassy of the Republic of China
Liberia	Embassy of the Republic of China
Malawi	Embassy of the Republic of China
Nauru	Embassy of the Republic of China
Nicaragua	Embassy of the Republic of China
Niger	Embassy of the Republic of China
Panama	Embassy of the Republic of China Consulate-General of the Republic of China, Colón
Paraguay	Embassy of the Republic of China Consulate-General of the Republic of China, Eastern City
Saint Christopher and Nevis	Embassy of the Republic of China
Saint Lucia	Embassy of the Republic of China
St. Vincent and Grenadines	Embassy of the Republic of China
Solomon Islands	Embassy of the Republic of China

South Africa	Embassy of the Republic of China Consulate-General of the Republic of China, Cape Town Consulate-General of the Republic of China, Johannesburg
Swaziland	Embassy of the Republic of China
Tonga	Embassy of the Republic of China
Tuvalu	Embassy of the Republic of China

Note: On September 24, 1992, the ROC and the Republic of Vanuatu recognized each other, but they have not yet exchanged diplomatic missions in each other's capital.

APPENDIX II
**REPUBLIC OF CHINA'S OFFICIAL OR SEMI-
 OFFICIAL MISSIONS ABROAD**

Angola*	Special Delegation of the Republic of China
Argentina	Oficina Comercial de Taiwan, Capital Federal Centro Cultural de Taiwan, Republica de China, Buernos Aires
Australia	Taipei Economic and Cultural Office, Australia Australian Capital Territory (ACT) Taipei Economic and Cultural Office, Melbourne Taipei Economic and Cultural Office, Sydney
Austria	Institute of Chinese Culture, Vienna
Bahrain*	Trade Mission of the Republic of China, Manama
Belgium	Taipei Economic and Cultural Office, Bruxelles
Brazil	Escritório Econômico e Cultural de Taipei, Brasil Escritório Econômico e Cultural de Taipei, Sao Paulo Escritório Econômico e Cultural de Taipei, Rio de Janeiro
Brunei	Far East Trade and Cultural Center
Canada	Taipei Economic and Cultural Office, Ottawa Taipei Economic and Cultural Office, Vancouver Taipei Economic and Cultural Office, Toronto
Chile	Oficina Económica y Cultural de Taipei, Santiago Coresponsal del Sinorama, Santiago
Colombia	Oficina Comercial de Taipei, Bogota
Czechoslovakia	Taipei Economic and Cultural Office, Prague

Denmark	Taipei Economic and Cultural Office, Copenhagen
Ecuador*	Far East Trade Office, Copenhagen Oficina Comercial de la Republica de China, Quito Sucursal de la Oficina Comercial de la Republica de China, Guayaquil
Fiji*	Trade Mission of the Republic of China, Suva
Finland	Taipei Trade and Cultural Office, Helsinki
France	Association pour la Promotion des Echanges Commerciaux et Touristiques avec Taiwan, Paris
Germany	Taipei Economic and Cultural Office, Leipzig Taipei Wirtschafts-und Kulturburo, München Taipei Wirtschafts-und Kulturburo, Bonn Taipei Wirtschafts-und Kulturburo, Hamburg Taipei Wirtschafts-und Kulturburo, Berlin
Greece	Taipei Economic and Cultural Office, Athens
Hong Kong	Chung Hwa Travel Service
Hungary	Taipei Trade Office, Budapest
Indonesia	Taipei Economic and Trade Office, Jakarta
Ireland	Taipei Economic and Cultural Office, Dublin
Italy	Istituto Culturale ed Economico di Taipei, Roma
Jamaica*	Trade Mission of the Republic of China
Japan	Taipei Economic and Cultural Representative Office in Japan, Tokyo Yokohama Branch, Taipei Economic and Cultural Representative Office in Japan Taipei Economic and Cultural Office in Osaka Fukuoka Branch, Taipei Economic and Cultural Office in Osaka
Jordan*	Commercial Office of the Republic of China (Taiwan), Amman

Kuwait*	Commercial Office of the Republic of China, Hawalli
Libya*	Commercial Office of the Republic of China, Tripoli
Luxembourg	Taipei Economic and Cultural Office, Luxembourgville
Macao	Taipei Trade and Tourism Office, Macao
Madagascar*	Delegation Speciale de la Republique de Chine, Antananarivo
Malaysia	Taipei Economic and Cultural Center in Malaysia, Kuala Lumpur
Mauritius*	Trade Mission of the Republic of China, Port Louis
The Netherlands	Taipei Economic and Cultural Office, The Hague
New Zealand	Taipei Economic & Cultural Office, Wellington
	Taipei Economic & Cultural Office, Auckland
Nigeria*	The Trade Mission of the Republic of China, Lagos
Norway	Taipei Trade Center, Oslo
Oman	Taipei Economic and Cultural Office, Muscat
Papua New Guinea*	Trade Mission of the Republic of China on Taiwan, Port Moresby
Peru	Oficina Economica y Cultural de Taipei, Lima
The Philippines	Taipei Economic and Cultural Office in the Philippines, Manila
Poland	Taipei Economic and Cultural Offices, Warsaw
Portugal	Taipei Economic and Cultural Center, Lisbon
Russia	Office will be established in the near future
Saudi Arabia	Taipei Economic and Cultural Representative Office in the Kingdom of Saudi Arabia, Riyadh
	Taipei Economic and Cultural Representative Office in the Kingdom of Saudi Arabia, Jeddah Office
Singapore	Taipei Representative Office in Singapore

Spain	Centro Cultural y Economico Taipei, Madrid
Sweden	Taipei Trade Tourism & Information Office, Stockholm
Switzerland	Delegation Culturelle et Economique de Taipei, Lausanne
Thailand	Far East Trade Service, Inc., Zurich Taipei Economic and Trade Center, Bangkok
Turkey	Taipei Economic and Cultural Office in Ankara
United Arab Emirates*	Commercial Office of the Republic of China to Dubai
United Kingdom	Taipei Representative Office in the U.K., London
United States	Coordination Council for North American Affairs Office in the United States of America Coordination Council for North American Affairs Office in Atlanta Coordination Council for North American Affairs Office in Chicago Coordination Council for North American Affairs Office in Honolulu Coordination Council for North American Affairs Office in Houston Coordination Council for North American Affairs Office in Los Angeles Coordination Council for North American Affairs Office in Miami Coordination Council for North American Affairs Office in New York Coordination Council for North American Affairs Office in San Francisco Coordination Council for North American Affairs Office in Seattle Coordination Council for North American Affairs Office in Boston Coordination Council for North American Affairs Office in Guam Coordination Council for North American Affairs Office in Kansas City, Missouri

Uruguay	Oficina Economica de Taipei
Venezuela	Oficina Económica y Cultural de Taipei, Caracas
Vietnam	Taipei Economic and Cultural Office, Hanoi
	Taipei Economic and Cultural Office, Ho Chi Minh City
Zaire*	Delegation de la Republique de Chine, Kinshasa

*Official missions entitled with the Republic of China.

APPENDIX III
FOREIGN DIPLOMATIC/CONSULAR MISSIONS
IN THE REPUBLIC OF CHINA

Embassies

Apostolic Nunciature (Holy See)
Belize
Central African Republic
Republic of Costa Rica*
Dominican Republic*
Republic of El Salvador*
Republic of Guatemala*
Republic of Guinea-Bissau
Republic of Haiti
Republic of Honduras
Republic of Nicaragua
Republic of Panama*
Republic of Paraguay
Republic of South Africa

Consulate

Republic of Nauru

Honorary Consulate-General

Kingdom of Swaziland
Kingdom of Tonga
Commonwealth of Dominica
Republic of Honduras

Honorary Consulates

Commonwealth of the Bahamas
Belize
Republic of Costa Rica
Grenada
Republic of Guinea-Bissau
Republic of Malawi
Republic of Nicaragua
Republic of Panama
Republic of Côte d'Ivoire
Republic of Saint Lucia

*With consular section.

APPENDIX IV
FOREIGN SEMI-OFFICIAL OR UNOFFICIAL
MISSIONS IN THE REPUBLIC OF CHINA

Area	Name of Organization	Whether Receiving Visa Application
(1) Asia	Indonesian Chamber of Commerce to Taipei	Yes
	(Chinese/Japanese) Interchange Association, Taipei Office	Yes, transfer application to Japanese Consulate in Hong Kong for processing
	(Chinese/Japanese) Interchange Association, Kaohsiung Office	Same
	The Jordanian Commercial Office	Yes, also handling visa application for other countries in Middle East except Saudi Arabia
	Malaysian Friendship and Trade Center	Yes
	Manila (the Philippines) Economic and Cultural Office	Yes
	Oman Commercial Office, Taipei	Yes
	Saudi Arabian Trade Office	Yes
	Singapore Trade Office in Taipei	Yes
	Thailand Economic & Cultural Office Thai Airways International, Ltd. Trade Office	Yes

(2) Europe	Anglo-Taiwan Trade Committee	Yes
	Austrian Trade Delegation, Taipei Office	Yes
	Belgian Trade Association, Taipei	Yes
	Danish Trade Organization, Taipei Office	Yes
	Office of Finnish Industry & Transport	Yes
	France Asia Trade Promotion Association	Accept commercial visa application
	Institut Francais à Taipei	Accept student visa application
	The Mission of the Republic of Latvia	Yes
	German Trade Office, Taipei	Yes, accept commercial/tourist visa application
	German Cultural Center	Yes, accept student visa application
	Office of Representative A.H. Hellenic Organization for the Promotion of Exports (Greece)	No
	The Institute for Trade and Investment of Ireland	No
	Italian Trade Promotion Office	No
	Netherlands Trade and Investment Office	Yes
	The Norway Trade Office	No

	Moscow-Taipei Economic and Cultural Coordination Council (office to be established)	unclear
	Spanish Chamber of Commerce	Yes, accept tourist/ commercial visa application
	Trade Office of Swiss Industries	Yes, accept commercial visa application
	Exporttradet Taipei, Swedish Trade Council	Yes, accept commercial visa application
(3) North America	American Institute in Taiwan, Taipei Office	Yes, transfer application to American Consulate in Hong Kong for processing
	American Institute in Taiwan, Kaohsiung Office	Same
	Canadian Trade Office in Taipei	Yes, transfer application to Canadian office in Hong Kong for processing
(4) Central and South America	Argentina Trade Office	Yes
	Bolivian Commercial and Financial Representation	Yes
	Brazil Business Center	Yes
	Chilean Trade Office, Taipei	Yes
	Jamaica Commercial and Trade Office	Yes
	Mexican Trade Office, Taipei	Yes

(5) Africa	The Mauritius Export Development & Investment Authority, Taipei Office	No
	Nigeria Trade Office in Taiwan	Yes
(6) Oceania	The Australian Commerce and Industry Office	Yes
	The New Zealand Commerce and Industry Office	Yes
	Office of Honorary Representative of Papua New Guinea	Yes

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