MULTI-SYSTEM NATIONS AND INTERNATIONAL LAW: THE INTERNATIONAL STATUS OF GERMANY, KOREA AND CHINA (PROCEEDINGS OF A REGIONAL CONFERENCE OF AMERICAN SOCIETY OF INTERNATIONAL LAW)

Edited by Hungdah Chiu and Robert Downen, With A Foreword by Ray S. Cline and An Introduction by John Norton Moore
FOREWORD

This meeting is on a subject about which I confess to have strong feelings. Since World War II, the problem of divided nations has been causing the United States a lot of trouble in every part of the world. The United States not only participated in two wars in Korea and Vietnam, which were dual-system nations, but paid a high price in blood and money for its involvement.

The Vietnam solution was clearly not a very satisfactory one for the United States or for the Vietnamese people. The Korean solution was a truce, not a final settlement. We have yet to find a way to unify the two systems into one national entity by peaceful means.

Germany is a model by which to compare the other cases, particularly the China case, one of the most difficult and intransigent examples of conflict between two governments and two social systems. Germany appears at present to be a reasonably successful compromise, whereby the two German governments live side by side at peace and have substantial interchange of trade and visitors. A question with which we should deal is how permanently successful that compromise is likely to be and what promise the German model offers in some adaptable form for Korea or for China.

I have just returned from a trip to the Soviet Union. The Soviet specialists were talking about these very problems. The idea of peaceful exchanges of persons and goods between the two Koreas seemed to interest officials and scholars in Moscow. East Germany still concerns the Soviet Union very much, particularly as it relates to the situation in Poland, since the lines of communication to East Germany through Poland are a very important strategic asset for the Soviet Union. If peaceful relations between East and West Germany broke down, the situation in Poland would be more acute, and indeed tension would rise throughout Europe.

It can be seen that these issues are dynamic. They require much elucidation, and that is what we hope to achieve here in these discussions.

Ray S. Cline
December 1, 1981
PREFACE

The Georgetown Center for Strategic and International Studies and the University of Maryland School of Law were delighted to co-sponsor this Conference on Multi-System Nations and International Law, held at the International Club Building in Washington, D.C. on June 23, 1981. This distinguished gathering of worldwide specialists on international law and political science presented a vast amount of information and a wide range of perspectives on the topic at hand, within the period of a single day. Limitations of space made it possible for only a select group of government officials, academicians, business representatives and journalists to attend the conference, but the enthusiastic response of those present clearly indicated that the results would be of interest and use to a far greater audience. In order to ensure that the conference proceedings gain the widest exposure and greatest utility possible among scholars, legalists, foreign policy specialists and others, we have agreed through joint effort to produce this publication of conference papers and oral summaries for general distribution.

Despite primary attention devoted to the international legal aspects associated with multi-system societies, a consensus of opinion quickly emerged on the fact that legal systems do not exist in an abstract context. To the contrary, a recurrent theme throughout this conference was the inescapable interaction of law and political reality in dealing with multi-system nations. And, quite apart from functioning in a political vacuum, the divided nations themselves are confronted with the reality of involvement by, and strategic competition among, external global powers. Experience demonstrates that these factors, in many cases, act as a "stumbling block" to unification or as a preservative of status quo fragmentation.

Beyond these points, however, wide variation exists in the separate experiences of Germany, Korea and China in the international system of the twentieth century. The conferees made an admirable presentation of comparisons and contrasts between those experiences, and of their own unique perspectives on the potential evolution of these multi-system societies.

Our thanks go to all of those who participated in this conference, and to the American Society of International Law for its active interest in the event. Professor Chiu would like to thank David Simon, David Salem and Lyushum Shen for their assistance in the course of editing the manuscript for publication.

Hungdah Chiu
Professor of International Law
University of Maryland School of Law

Robert L. Downen
Director of Pacific Basin Studies, CSIS

Professor of International Law
University of Maryland School of Law

December 1, 1981
INTRODUCTION

John Morton Moore

In examining the subject of multi-system nations from the standpoint of international law, two central issues emerge. One is conflict management and the second is self-determination.

In the last 2,000 years, we have tended to create institutions which were rather effective at stopping the previous war. Because it was assumed that World War I was an accident — the result of a diplomatic system gone awry — the League of Nations system was designed to eliminate war by accident. The U.N. Charter deals with war by aggression across clear international boundaries, primarily in response to World War II. The East-West split, however, has curbed the effectiveness of that system.

At present there are two fundamental challenges to the U.N. Charter: nuclear weaponry (and the resultant need to maintain a strategic balance), and the mixed civil-international setting. The latter is the principle realized form of conflict in the international system (along with its associated terrorism).

The most dangerous and central of these mixed civil-international settings is the multi-system nation. Two examples of U.S. involvement in this area are the conflicts in Korea and Indochina. From these two conflicts, it can be seen that the United States must make it abundantly clear that Article 2, subparagraph 4 of the U.N. Charter (the prohibition of force as a modality of major change) must apply between the entities in a multi-system nation. This principle should apply in conflict management no matter what characterization any side wishes to give either entity. A Major question to be addressed at this Conference should be the following: What might U.S. policy do in areas where this principle is not clear in order to make it so?

The other central issue which arises in the examination of the multi-system nation phenomenon is self-determination. In examining this matter, does one look to aspirations for unification, or to aspirations for separate national identity? The basic question, at any rate, is how does self-determination apply in the multi-system nation setting? It is to be hoped that this Conference will make a major contribution in both areas.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Authors</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Assessing the International Status of Partitioned Nations: Theories and Findings</td>
<td>Ray E. Johnston</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Comments by Hungdah Chiu</td>
<td></td>
<td>36</td>
</tr>
<tr>
<td>II</td>
<td>The International Law of Recognition and Multi-system Nations — with Special Reference to Chinese (Mainland — Taiwan) Case</td>
<td>Hungdah Chiu</td>
<td>41</td>
</tr>
<tr>
<td>III</td>
<td>The Unification and Division of Multi-system Nations: A Comparative Analysis of Basic Concepts, Issues and Approaches</td>
<td>Yung Wei</td>
<td>59</td>
</tr>
<tr>
<td>IV</td>
<td>Multi-system Nations and International Law, with Special Reference to Dutch Practice</td>
<td>Ko Swan Sik</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>Comments by Hungdah Chiu</td>
<td></td>
<td>110</td>
</tr>
<tr>
<td>V</td>
<td>The Case of Germany</td>
<td>Gottfried-Karl Kindermann</td>
<td>113</td>
</tr>
<tr>
<td></td>
<td>Comments by Jürgen Domes</td>
<td></td>
<td>116</td>
</tr>
<tr>
<td>VI</td>
<td>Divided Nations and International Law, the Case of the Two Koreas</td>
<td>Nam-Yearl Chai</td>
<td>119</td>
</tr>
<tr>
<td></td>
<td>Comments by Seung Hwan Kim and Se Jin Kim</td>
<td></td>
<td>136</td>
</tr>
<tr>
<td>VII</td>
<td>Taiwan’s International Status</td>
<td>Ralph N. Clough</td>
<td>141</td>
</tr>
<tr>
<td>VIII</td>
<td>Divided Nations and International Law: The Case of Taiwan</td>
<td>Aleth Manin</td>
<td>160</td>
</tr>
</tbody>
</table>
Chapter IX
Recognition policy with respect to Multi-system States:
The Case of China
Morton A. Kaplan 167

Chapter X
Overall Evaluation
Robert Sutter, Yung Wei, Stephen Guest and Ko Swan Sik 177

Appendices
1. Divided Nations and International Law: Political Reality and Legal Practice
   Yung Wei 183
2. Basic Facts Concerning Two Chinas, Two Koreas, and Two Germanys
   ........................................................................................................... 188
3. Program of the Conference and List of Participants ..... 191
4. Biographical Notes on Contributors ............................................. 197

Index ................................................................. 199
Chapter 1

ASSESSING THE INTERNATIONAL STATUS OF PARTITIONED NATIONS: THEORIES AND FINDINGS

Ray E. Johnston

Introduction

It is an ironic fact that in this age of widespread political partition so little is known about the empirical processes by which nations are divided and partitioned. Few efforts have been made to isolate partition as an empirical phenomenon and explain its causes and effects. Even more ironic, political partition is one of man's most frequently used conflict-resolution devices. Partition is used to settle cases of both civil war and international war as well as less rancorous disputes among domestic interests and communal factions. Still more ironic is the fact that partition tends also to cause disputes and may well be the cause of the final dispute. Other ironies can also be found. In this age of internationalism and interdependence of nation-states, political partition and division are more extensive and intensive than at any other time in human history. While international integration is being touted as a solution to the historical conflicts of Europe, pan-Africanism in the post World War II years has failed to overcome the parochial claims and counterclaims of nationalism based on older colonial boundaries and partitions. Paradoxically, as political empires wane, economic empires of the multinational corporations find rampant nationalism a natural milieu within which to build new imperial powers based on control of complex technological capital and concomitant natural resources.

There is no magic in "unification" and "reunification" — in that direction also lies conflicts and human disaster. A single world government, in this year of cold war escalation and runaway defense budgets, appears more and more utopian. In assessing the international status of multi-system nations — partitioned nations, perhaps the best one can do is an attempt to develop strategies to aid the parts to peacefully co-exist, recognizing the legitimacy of each while
developing a new international integration of the divided units. Almost twenty years ago Sulzberger made a similar call:

Partition is this century's awkward form of compromise and we have seen Ireland, Korea, Viet Nam and Germany divided with each segment claiming the national name. Is the day coming when Russia will call East Germany Prussia, when Jordan calls itself Palestine, when South and North Vietnam resume their former titles, respectively Annam and Tonkin? Could that facilitate de facto acknowledgment of these unhappy separations? Such changes need not end the dream of unification. Would they imply a new political epoch has begun or facilitate new approaches to old problems that old approaches could not solve?

A Caveat: In our search to understand and evaluate or determine the international status of divided, partitioned, or multi-system nations, we should not restrict ourselves to the more dramatic and politically volatile cases of nations such as Germany and Korea. What is needed by the social scientist and the statesman alike is a theory of the causes and effects of political partition and political integration of systems at various levels of political organization. Our theory should, at a minimum, explain the divisions of such entities as Cyprus and The Samoan Islands on the one hand and the creation of Singapore or the division of Pakistan on the other hand. I have argued below and in other writings that a general theory of partition would explain the divisions of metropolitan areas and nation-states alike. While bold, the call is not unreasonable.

From this caveat, I can turn to a general summary of the purposes of this paper. While I had several research goals in mind, the central purpose was to present some general conceptual tools and frameworks to be used in assessing the international legal status of "multi-system nations" or, as defined herein, partitioned nations. The significance of the problem is indicated by a presentation of the extensiveness of partition and division in the world today. Following this survey of the divisions of the contemporary world I have presented a logical, or, if you will, an epistemological analysis of the concepts of "dual-system" and "multi-system nations". This analysis aids in focusing attention upon the unit of analysis to be treated as a

partitioned nation and whose status is to be assessed. In addition to the exploration of several approaches to the problem, I present a historically derived typology of partition and offer some new concepts, however incomplete, on sovereignty disputes, durability of partitions and boundary disputes. The paper concludes with an application of an integration framework to assess the international and sovereignty status of Taiwan.

THE EXTENSIVENESS OF PARTITION

Eight years ago (1973) when I wrote that the phenomenon of political partition enjoys a broad contemporary scope and lengthy historical lineage, the United Nations listed some 135 nation-states and a dozen or so trade blocs and treaty organizations. Since that time, the globe, including the seas and oceans, has been further partitioned and bounded. The recorded increase in the number of nation-states is at a rate of about 2.4 percent per year. Over the 8 years, this represents a 19.4 percent increase in the number of nation-states; which are now counted at 161. These increases may be slightly misleading. They do not represent an increase in the absolute number of partitions in the world. This holds since most of the new nation-states moved from other forms of territorial status to the sovereign state status. What this movement may well suggest is that nationalism and the potential for partition are not waning; if anything, both potentials appear to be increasing.

The extensiveness of partition is also illustrated by sovereign claims over both polar caps and the seas and oceans of the world. The North Pole is still disputed, with Russia, Norway and Iceland debating different techniques and theories of claiming sovereign status over the pole. The status of Antarctica is disputed with the United States refusing to recognize any claims of sovereignty. No less than seven states claim Antarctica. Australia, Belgium, Chile France, Japan, New Zealand, Norway, the Republic of South Africa and the Soviet Union have all made various claims to Antarctica, and

all have signed a treaty in 1959 which neutralized the polar continent.4

However claims of sovereignty persist through increasing claims being made over the ocean. In 1950 five per cent of the world's sixty-two coastal states claimed territorial seas 12 nautical miles wide. In 1977, the figure had risen to 45 percent with about 7.6 percent of the total area of the oceans so claimed. According to the Informal Composite Negotiating Text (ICNT) every state has the right to establish a territorial sea not in excess of 12 miles; in 1977 twelve different widths were claimed by 123 countries.5 The status of the oceans and seas continues to be disputed. The United Nations is attempting to provide the legal basis for a variety of statuses, but "there are still deep divisions separating the positions of important states and major groups of states on fundamental issues."

Some years ago, Jean Gottman, provided an appropriate view of the extensiveness and endurance of the proclivity to partition the world.

"Our political world is a limited one: it extends only over the space accessible to men. Accessibility is the determining factor: areas to which men have no access do not have any political standing or problems. The sovereignty of the moon has no importance today [1952 - how quickly history moves.], because men cannot reach it nor obtain anything from it. The antarctic had no political standing before navigators began going there, but since it was made accessible by its discoverers, the icy continent has been divided into portions like an apple pie — and all these portions are distinct political compartments in which a number of international incidents have occurred. When the first explorers land on the moon (The American flag is now unfurled thereon) the earth's satellite will pass from the field of astronomy to geography textbook and lunar political problems will appear and grow steadily. As, with improved techniques, men got within their reach the riches of the ocean's depth beyond territorial waters, the sovereignty and legislation of these abyssal spaces became a matter of concern for political authorities. . . ."6

There is no better conclusion to a section dealing with the extensive-ness of political partitions.

A HIERARCHY OF DIVISION

By 1981 there were an estimated 4,362 million people worldwide living in tens of thousands of local administrative and communal units, which are in turn part of 161 sovereign states and 57 "related territories." These states and territories are in turn represented by, are members of, or are constrained by regional and international economic, political and defensive organizations. Most of these organizations from the sub-state level to the international level are geographically based. Some have no territorial base and are functionally differentiated as to tasks they perform. Such an example is the International Bank for Reconstruction and Development (World Bank). At the top of the hierarchy is the United Nations which is the only multi-purpose and almost universally represented world organization. With the exception of the highest level, there has been an increasing number of divisions at all the lower levels. This hierarchy is shown in the table below:

Table 1: A Hierarchy of Local and World Organizations Partitioning the Globe by Type and Name of Organizations: Number of divisions increase as the levels of universality are lowered.

<table>
<thead>
<tr>
<th>LEVEL IV: The United Nations</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEVEL III: Economic Partitions</td>
</tr>
<tr>
<td>EEC, BENELUX, ECSC, IMF, COMECON, EFTA, CARIFTA, ASEAN OPEC, ECOVAS, BRITISH COMMONWEALTH OECD, IBRD.</td>
</tr>
</tbody>
</table>

LEVEL II: 161 Sovereign Nation-States and 57 related Territories LEVEL I: Subnational and Territorial divisions, administrative units, communal units, chartered, and unincorporated areas and peoples. These units number in the tens of thousands, most of which divide people by functional and geographical criteria. This table is not exhaustive but does include most major divisions.
In the progression from the higher to lower levels of partitions there is a diminution in (a) geographical territory subsumed, (b) population size, and (c) range of responsibilities and powers. However, with the progression from the higher to lower levels there is an increase in the level of value consensus, communal integration, leadership integration, individual participation and access to functions. The functions and powers at the lower levels tend to be much more specific and concrete in terms of everyday life. Almost any state or territory at level II provides an example of the subnational divisions. I have selected the French Government Areas of 1968 for this paper simply because of the availability of data:

Table 2: The Hierarchy of French Government Areas in 1968

<table>
<thead>
<tr>
<th>Name of Unit type</th>
<th>Number of Units</th>
<th>Average Area (square Km)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department</td>
<td>95</td>
<td>5804.7</td>
</tr>
<tr>
<td>Arrondissement</td>
<td>322</td>
<td>1712.5</td>
</tr>
<tr>
<td>Canton</td>
<td>3209</td>
<td>171.9</td>
</tr>
<tr>
<td>Commune</td>
<td>37,708</td>
<td>14.5</td>
</tr>
</tbody>
</table>


Subnational partitions frequently occur for many of the same reasons which nations and surpanational regions and functions are divided and partitioned. One primary reason is the search for the "consensual community." Both leaders and followers in partition movements hold the notion that separation of a group from the larger society will produce an almost utopian community of similar people who share similar ideas and actions. Another reason for subnational partition is conflict resolution and conflict management. For example, even administrative units such as Michigan's Department of Natural Resources (DNR) are divided into several geographical regions. The policies and decisions made for each region affect very different kinds of people. The northern Michigander is a rural oriented person, a conservationist who is less likely to advocate metropolitan beaches and parks than the southern, urbanized Michigander. The department's regional boundaries reflect these potential conflicts of interest in the state's population. Still another reason for sub-national partition is the search for economic and political advantage. Thus many new sub-divisions, incorporated townships, and water and sewage districts are founded for almost
entrepreneurial concerns. They take on the form of an investment group or elite in search of a mass clientele. As Daniel Elizar reports, other reasons for sub-national partition are size and population diffusion, place of living and occupation, administrative effectiveness and efficiency.\(^7\)

The statuses of partitions about which we are concerned are those at the national and supranational levels. Subnational divisions and partitions (while frequently of questionable status) are determined by the law and customs of the state. No matter what the basis of the status of a particular partition is in national and international law, few if any are maintained by accident; therefore, if we are to understand their status we must understand why they are created and maintained.

CONCEPTS OF DUAL-OR MULTI-SYSTEM NATIONS AND POLITICAL PARTITION

If by political division one means factions and sub-units, all nations are divided. The study of the politics of divided nations, by such a definition, would take in the entire universe. Hence, in the desire to narrow our focus, the introduction of terms like "dual-system nations" and "multi-system nations" will certainly improve our science if, in fact, the concepts carried by such terms are clearly specified and possess explanatory power. These two terms immediately beg the questions of defining what is meant by *system* and what is meant by *nation*. My understanding is that the term "system" is used to describe the existence of a governmental regime claiming autonomy and legitimate authority over both a people and a geographical territory. The term "nation", from the writings so far presented to me, is a little more mystical. I take it that scholars like Yung Wei really refer to the Chinese people in using the term. However, they never really specify which people are Chinese and which are Tibetan, which are Mongolian, which are Burmese and so on. Nation is a word that is all encompassing or all excluding and is used to include those who are "in" and exclude those who are "out" of political favor. Political geographers like Roger Kasperson and Julian Minghi fare a little better in defining nation as a racial, ethnic, linguistic, and

---

cultural group of people marked by feelings of kinship, of belonging together, of being a culturally common kind of people. While this is a little more specific it leaves us with no clear and exclusive rationale to go from the concept to empirical measurement.

Despite these conceptual shortcomings, I will attempt an approximation of the meaning of a dual-system and a multi-system nation. "Such a nation is, evidently, one in which two or more governments claim to represent the entire national grouping." With the exception of Korea (North and South), there is perhaps no such system on earth. None of the three Chinese governments claims autonomy over, or guardianship of, all Chinese people. Nor do the German or Dublin governments make such claims, and so we could enumerate some 35 or more cases of recently divided or partitioned nations.

Still another way to use the terms is as descriptions of the situation of two or more competing regimes, both claiming sovereignty over the same people and territory and both having effective control over some part of the people and territory. As rare as this situation is, it appears to exist in areas such as Korea, Germany and China/Taiwan. As descriptive terms of real situations our concepts of dual-system and multi-system nations lose their theoretical universality, but gain in unique empirical application. As such we could call the dual-system nation one in which two regimes have risen having some control over territory and people with at least one of the regimes claiming legitimate right to represent the whole. This sounds similar to the case of East and West Germany today. A multi-system nation would be similarly defined to describe a situation in which two or more regimes have arisen with at least one claiming to be the legitimate government of the whole. Again, however, we have to question the scientific value of such conceptual labors. Since the ideas describe unique historical events they contribute little to scientific knowledge or to theories of political cleavage, division and partition of nations.

---


The realities of the world are such that China has two governments claiming the legitimate right to rule a specified people and territory. Both governments have legitimacy within part of that territory and control of part of the population. Within the parts more or less separate systems of leadership, administration, economics and social-cultural life have come about. In Germany, again, two separate entities have occurred, with two separate and differing economies, cultures and social patterns. One government — East Germany — still claims in its party dogma to represent the whole. However, both parts have recognized the right of the other and have entered into agreements of co-existence. New states are rising from the old; it is still possible to tear these new German states down, to reamalgamate, but the costs would undoubtedly run into hundreds of thousands of lives. What we are dealing with are political cleavages, divisions and partitions. Whether we call them dual-system or multi-system nations doesn’t alter that fact. We need to recognize how these cleavages, divisions and partitions come about, how they are maintained, and how they evolve toward new integrations or toward violent forms of conflict and destruction.

Before turning to concepts of cleavage and partition, I want to note that the idea of multi-state nations has become quite popular with the increased interest generated in the area of minority group politics, ethno-nationalism and human rights. The idea of the multi-state nation is well exemplified by the Kurds and Albanians. Both groups are more or less identified with a specific geographical region; each group also has its own habits, cultures, language, historical identifications and communal identifications. However, each group finds itself controlled by more than one sovereign nation-state system. The Albanians find the majority of their population claimed as citizens of both Albania and Yugoslavia. The Kurds live in Southeastern Turkey, Northern Iraq, Northwestern Iran and part of Russia. This territory is more or less contiguous and forms what is once known as Kurdistan. Such a multi-state nation may provide the basis for political division and partition. During the recent "hostage crisis in Iran" speculation that Iran would be divided along these old Kurdistan national-ethnic lines was rampant in both the popular press and in folk knowledge. Speculation along these lines has resumed since the ouster of Bani Sadr in the summer of 1981.
Given the definition of a dual-system or multi-system nation to be one in which two or more regimes have gained legitimacy and control over part with at least one making claims over the whole, and the above definition of multi-state nation, we can see that both are closely related to the problems of division and cleavage. Both situations lead to lasting partition and the emergence of new states out of the old. Both can lead to peaceful integrations. These outcomes depend upon a host of domestic and international factors, among which is the legal and international status of the different systems.

An assessment of the international status of such systems may be provided by theoretical concepts developed for the study of divided nations and political partition. My purpose here is not to re-develop a set of concepts and theoretical propositions; but, rather to present enough theory to enable us to say something about the current status of the so called multi-system nations or dual-system nations. I assume that by knowing what is meant by political cleavages, political partition and political division, we can at least assess the cases — Germany, Korea, and China/Taiwan — in terms of these statuses.

I have already written that a useful approach to the study of divided nations is to develop a universal theory or general theory of political partition such that it covers the phenomenon no matter where it occurs. Hence, a useful concept of political partition must be broad enough to enable the researcher to isolate the phenomenon and to differentiate it from other genre of political fragmentation. The concept and related theoretical framework must also apply to different levels of the political system, the sub-national, the national and the international. With these requirements in mind, I offer a few definitions and attempt to apply them to an assessment of the Republic of China on Taiwan. Political Partition is a legal, political and behavioral process as opposed to a decision by which a group of people advocate disassociation from other groups and from the structural relationships within a particular society. This definition of partition is very close to the one offered some years earlier by Norman J. C. Pounds:

"Political partition is the division of a state so that it loses its identity or even disappears from the political map; or, the

11. See supra, note 6.
creation of two or more systems within a territory which had previously been subject to only one system."\textsuperscript{12}

While I have discussed the process of partition at length in earlier writings, what I clearly want to suggest here is that partition is a phenomenological process through which a people draw apart and attempt to succeed in divorcing themselves from the problems and concerns of the "host society." This process generally begins with political cleavages and culminates in the decision to divide the group geographically by political boundaries. This is not an inevitable process since cleavages can lead to all sorts of other outcomes. However, the meanings of both cleavage and division are different from, and exclusive of, political partition.\textsuperscript{13}

In system analysis terminology, political partition is accompanied by a disjuncture of both functionally-universal and functionally-specific relationships. With partition, two or more independent sets of relationships, along with the accompanying structures, are established. The number of sets of course depend upon the number new political systems which have risen from the old system. This proposition of disjuncture of relationships provides an operational rationale to empirical measurement.

Political partition is, at the national and international levels, also accompanied by leadership demands for autonomy over the life fate of the seceding group. Where such demands of autonomy are made early in the process, political partition takes on the form of a nationalistic movement. Equally important is the fact that the demand for autonomy to guide the life fate of the group provides much of the political content of the partition process. The legal content is the claim for legal autonomy and a disjuncture of the old legal system. The establishment of a separate government and set of laws and judicial practices, and the search for and obtaining of recognition as a member of the community of sovereign states provides much of the legal content of political partition. The international legal content, in addition to the search for recognition as a state, is decided by treaties, trade agreements, contracts to buy and sell and obligations resulting from the decisions of foreign, domestic and international tribunals and courts of adjudication.

\textsuperscript{12} Pounds, "Perspective on Partition," \textit{supra}, 9, p. 162.
\textsuperscript{13} See \textit{supra}, note 6, pp. 159–74.
For the purposes of this paper, division and political division remain relatively primitive terms denoting a final decision to bound or "differentiate" a group, role structure, process, or territory. Thus, all sorts of boundaries are referred to as divisions including boundaries internally and externally derived resulting in political partition. Divisions may be either horizontal or vertical. Horizontal divisions layer society into strata of various types ranging from caste and class systems to, say, managerial line systems. Vertical divisions cut up the landscape or separate groups into different stratified systems such as the division of the federal systems into separate states. Political division generally carries a specification of a boundary line. The boundary is legal in character.

Again, what I want to emphasize is that the decision to draw a political boundary does not necessarily result in political partition. Boundaries, however, can take on meanings and an existence of their own in the minds of the populace. In the case of the Kamaroons, the original boundary was no more than an arbitrary line drawn for colonial trading purposes. The boundary became a cause celebre in the search for nationhood and for a national myth upon which to base the nation. One of the reasons for this is that boundaries tend to demarcate a cessation of interactions of one or more human relationships. While political geographers have noted that the only function of a boundary is to mark the limits of some type of authority or ownership, they become symbols of both rewards and deprivations. 14

Cleavages or Political Cleavages shall remain relatively undefined. In recent political science literature cleavages and cross cutting cleavages are the precursors to political instability and mark the deterioration or disappearance of political systems. Cleavages, accordingly, denote the existence of factions, parties, and racial, ethnic, cultural, class, caste and ideological groups among others. Where cleavages are cross-cutting, political analysts believe partition is unlikely. Where the cleavages tend to fall along the same issue lines, contemporary analysis has it that instability and the potential for

civil war and division run high. There is a fault with this modern analysis, the fault being that cross-cutting cleavages are seen as differentiated role structures, where there is a high degree of subsystem autonomy. A consequence of both the role differentiation and the sub-system autonomy is the creation of high degrees of sub-system interdependence. This is the dependence of one group upon another which in turn is supposed to avert divisive conflict. However, this is just where the fault lies in this type of analysis. The most highly militant and ideologically committed groups are willing to sacrifice sub-system autonomy and its material benefits in favor of dividing and later setting up a new system of differentiated role structures. The fear of permanent minority group status within a society or the stigma of permanent minority group status can give rise to demands by minority group members for political partition. In fact, an earlier review of the literature indicated that being placed in an apparent minority position is one of the primary causes of the demands for political separation. Political partition is a method of reestablishing majority status. If the minority can separate into an autonomous political unit or even into a semi-autonomous political unit, the members of the group will ipso facto be the ruling majority. This is what I have called the "fear of permanent minority status" hypothesis. It is similar to the more familiar "relative deprivation" hypothesis which has been used to explain civil disorders ranging from riots to revolutions. However it differs in some significant ways. First of all minority status does not automatically bring with it relative deprivation. The ruling class of whites in South Africa are in a minority position of great wealth and power and have selected to defend their wealth, power and position by apartheid and division of the Republic of South Africa into "homelands." Second, permanent minority status is not necessarily accompanied by

violence while relative deprivation generally is. Minority group members may adopt either cultural or structural assimilation strategies to become part of the host majority. The members of a permanent minority may also seek to claim a diaspora relationship with ancient or modern, distant or nearby, external groups. Through this process, the minority group members claim equality with the culture of the host-majority through assertions of being the legitimate carriers of an equally valuable and significant culture. This culture is that of the "mother country." When minority group members seek attachment to a mother country they are performing in a manner similar to what E. E. Schattschneider referred to as expanding the conflict. When a minority claims to be related to an external mother country and also demands political partition, it may find itself in a position of translating the legitimizing role of the mother country into an interventionist role of providing logistical, tactical and supportive asylum during the secession stage of the partition process.

GREAT POWER POLITICS AND THE INTERNATIONAL STATUS OF DIVIDED NATIONS

The international status of partitioned and divided nations (multi-system nations), according to many observers, rests with the politics of the great powers or super-power nations. These observers also report that the status of divided nations has varied as the world moved from a balance of power system to a bi-polar system. As great powers settle their disputes among themselves, according to these reporters, they create and destroy nations. Germany and Korea are the products of this conflict resolution between the United States and the Soviet Union. Historically the status of the Benelux nations was

---

INTERNATIONAL STATUS OF PARTITIONED NATIONS

a product of the exigencies of the Concert of Europe which reduced the Benelux nations to pawns in the game of international balance of power politics. "The partitions of Poland in 1772 and 1795 which saw the status of the Poles reduced to a subject people was as much a product of external politics as it was of internal politics. The status of the Poles was determined by a handful of influential people in Russia, Prussia and Austria."

It is common parlance in the United States for academics and practitioners alike to speak of the status of Korea, Taiwan and Berlin as if it is something to be decided by the U.S. Executive.

In no small way, the politics of national security of great powers is coterminous with the politics of economic supremacy and economic imperialism in world markets. To gain marginal increases in the command of units of world energy, the super-powers are likely, according to several observers, to sacrifice divided nations and do so under the rubric of national security and assuring world peace. Thus, several scholars have been led to suggest that changes in the balance of trade or balance of military power will find the great economic powers advocating partition, reunification, or amalgamation of lesser power nations and related territories. One observer advances evidence for the hypothesis that the larger powers would deliberately set about to bankrupt the economies of smaller, divided nations and thereby force them to either reunify or to capitulate to demands of annexation to larger and more dominant powers.

Six different forms of political partition appear in the history of great power politics, dating back to the Empire of Alexander the Great. There is, speaking of empires, the ancient technique of creating satrapies — these are generally partitions intended to give significant subordinates of a political regime a vested interest in governing a territory and people. Closely related is imperial pyramid­ing of administrative authority which can occur in both private and public empires. This pyramiding describes the governance of the


Roman Empire among others including modern multinational corporations. The technique, as most of us know, grants universal citizenship to all peoples (e.g., everyone is a Roman) while they simultaneously remain members of rather autonomous local tributary states or administrative units. Under this system, members of an empire owe loyalty to many different masters. Balkanization is a type of political partition frequently imposed by external powers upon a people and territory. Those who impose these divisions do so by rationalizing it in the name of nationalism or national self-determination of nations. The term is derived from the break up of the Balkans prior to and as a consequence of the peace settlements of the First World War. Balkanization, in those days, divided people along linguistic, cultural and national claims of sovereignty. This status of national sovereignty is frequently in need of guarantor superpowers. The original balkanization was probably motivated out of the desire of the protagonists of the First World War to create buffer zones. The creation of buffer zones, an idea much older than balkanization, among great powers may well be the second most frequent cause of political partition. Colonialism is a familiar form of great power political partition. The colonial process divides people and territory with almost no regard for the legal status of regimes therein. Colonialism as “the scramble for territory” explains most of the conflicts resulting in boundaries and boundary disputes in North and South America and in Africa. Nationalism and national movements are the most frequent form of political partition in the world today. It can be argued that nationalism is a process that both causes and overcomes partition and division, which makes an excellent subject for still another paper. The final form of partition associated with great power politics is in fact a sub-national form of functional and territorial decentralization of power and authority. At the national level, federalism may be considered such a form of territorial decentralization of power and authority, since each federation consists of regional units of political authority. Feudalism is not considered a form of partition since the above six processes all contributed to the age of Feudalism in Europe.

THE DURABILITY OF POLITICAL PARTITION AND POLITICAL BOUNDARIES

The international status of divided nations is based in part upon the durability of boundaries and divisions. The political geographer
has long been interested in the durability of political boundaries. Gilfillan in 1924 and Boggs in 1940, among others, have traced many of the major European boundaries backward to the period roughly around 1500 A.D. However, cogent arguments can be made that one need look at much older disputes to understand the partitioning of nations and the durability of partition. Tracing the German sub-unit boundaries and the disputes they resolved or exacerbated, one finds that many of them date back to the Carolingian Empire. Similarly, a historical look at the North and South American boundaries shows them to be measured in centuries. For example the Papal Bulls of 1481 and 1493 along with the Tordesillas Treaty of 1491 fixed the boundaries and settlement of South America until the present time. The Partition of North America — the major divisions of Canada, the United States and Mexico — aside from border disputes now dates back two centuries. The sub-unit partition of the North American federations has proven durable and measures several centuries for those along the eastern seaboard, states and provinces.

Note well that insofar as all these historical boundaries represent partition in the strict sense as I have defined it above, divided nations tend to take on a rather durable status. Insofar as these boundaries provide a basis for predicting the future status of more recent boundaries, the historian, as gambler, would place his bets on their durability.

The underlying motive for this durability is that international boundaries constitute walls of partition among people. International boundaries become administered and guarded; they become less permeable with time; and, they become fixed in the minds of men. "The real partition those which are the most stable and least flexible are in the minds of men." The very existence of boundaries between the parts of a former nation-state represents differences among men, serving to distinguish competing elites. If these differences are not virulent and present-day in character, they are, at least, embedded in the immediate history of the partition. Where contemporary divisions are drawn along older, inveterate boundaries, the resulting partition should be most durable. This durability is based in part on older,

historical divisions, and seems to be a part of the character of the status of such "dual system" nations as China/Taiwan and Germany.

What lies at the foundation of this durability of boundaries and ingrained divisions which re-appear historically? If the world is marked by movement of people and materials and such movement contributes to instability and change, then it always has an established order favoring a certain pattern of flow and resisting change. Political partition and order is established first; then the favored pattern of flow is institutionalized; and, finally, the resistance to re-unify, amalgamate and annex emerges:

What lies at the foundation of this resistance? [sic] Economic vested interests? That would be difficult to demonstrate; no actual economic interest can be proved theoretically to be developed to its full, ideal optimum. An established order, however, normally has a tendency to defend itself, insofar as it is a structure within which those at the upper levels are afraid change may bring them a different less enjoyable level. Moreover, any social and political structure has some abstract values to preserve; those on which it is founded.23

Boundary disputes and partitions of the 20th century have tended to be very old fights and have resulted from the settlement of very old disputes. For example, the politicians and generals who sat down to "hastily draw up" the occupation zones of Germany at the end of Second World War appear to have either wanted to settle some very old scores dating back a thousand years or to have read their history well. At least the resulting boundary suggests that much older conflicts than those commonly assumed played an important role in contemporary decision-making. If the boundary is to provide an indication of these war leaders’ knowledge of history, then the status quo ante bellum which they sought dates back to the Treaty of Verdun in 843 A.D. This boundary which now divides East from West Germany is one of the oldest in European history. Moreover, it calls to my mind that partition and division, rather than national unity, has been the common state of affairs for Germany. This observation is shared by Professors Gottfried-Karl Kinderman and Jurgen Domes

23. Ibid.
who argued that German national unification is the rare exception to
the German rule. Equally important is the idea that the study of
boundaries provides a clue to recall capabilities of the "collectivity". There apparently are those among us who would like to rectify some very ancient arguments.

Boundary disputes alone suggest that the collectivity keeps in
mind very ancient struggles and is willing to return to them upon occasion. For example, the continuous shifting of the boundaries of the Alpes Maritimes suggests that the quarrel of today dates back to at least 1630. The Alpes Maritimes dispute suggests that the rancorous quarrelling over territory is never dropped. The disputants have shifted and reshifted the boundary over the 351 years but seldom more than ten miles at the widest.

Still another aspect of the durability of partition is that once a boundary — administrative or nationalistic in origins — is drawn, it takes on meanings of its own and can serve a multitude of ideological purposes. For example, probably few partitions have been more arbitrary and capricious than those Germany drew around the Kameroons of Africa. No indigenous community was provided political expression by these boundaries and in fact no political community even existed prior to the establishment of a boundary. The boundaries were drawn, as suggested earlier, simply to mark an exclusive trading area. Even the name was a mistake of both spelling and fact. However, once bounded, once administered, once people of at least a "middle class" social standing benefited from the existence of the boundary, then a myth of nationhood was successfully fabricated to historically legitimize its existence and perpetuation.

The status of some of the current dual system nations or divided territories is less the result of a political partition than a conquest and nationalization of frontiers. In many respects, both Israel (or Palestine Eretz Israel) and Taiwan fit this description. In the case of Israel, the most elementary reading of history shows that neither nationalism nor colonialism had been given much expression among the peoples of the areas prior to the First World War. The Ottoman

24. I owe thanks to both Professors Kinderman and Domes who so eloquently made this argument at the meeting for which this paper was originally prepared.
25. Pounds, Political Geography, supra, note 4, p. 422.
Empire had incorporated most of the territory and people until the end of the war. Prior to the Ottoman Empire modern nationalism was no real force in the area. As a result of the peace settlements, the area was cast up as mandated territories by the League of Nations. The area remained in mandated status until the end of the Second World War. Once again Palestine was mandated or entrusted to Great Britain. Modern, sovereign statehood for this area of the world had to await Israeli expression in 1949. For the case of Taiwan, I will present a much longer discussion below.

APPLICATION OF CONCEPTS AND THEORIES TO REPUBLIC OF CHINA ON TAIWAN

In order to understand the status and potential future of Taiwan with respect to the government in Peking, it is necessary to understand that political boundaries are not part of Chinese political tradition and thought. Moreover, China has always been a land-based and land-directed society. The sea and coastal mountain ranges (coastal slope) formed, until most recently, both natural boundaries and barriers for China. The Chinese of the early empires viewed those people living on the seaward side of the coastal slope as neither critical to China nor Chinese. The Chinese people were those living within the hinterlands of the Hwang-ho and Yangtze-kiang river valleys. China's expansion was inland and its trade routes were westward, across India and Asia Minor, to Europe. "The Great Wall itself is not in fact a linear frontier; it is more the most important delimitation of what is in fact a zonal frontier, of which there are also other minor delimitations." What could not be included in the Empires had to be excluded.

This was especially true on the north, vis-a-vis the peoples of the steppes. China's southern frontier was one on which the Chinese mode of agriculture could expand; that on the north could be crossed only by adopting another mode of life. The Chinese state was built on the base of irrigated agriculture. In Wittfogel's

27. This argument is based on the lectures of Professor David N. Sopher, Sacramento State College, 1958-1959.
terminology, it was an agromanegional despotism, ruling a hydraulic society. Its organization was incapable of the steppes. But the ideal of a linear boundary between China and the steppes was never fully realized in practice. . . .

China's organization was also unsuitable for both the steppes and the sea regions. Moreover, neither could be conquered without drastic changes in the Chinese mode of life.

Even today, Taiwan can be viewed as a frontier area which China has never properly incorporated. The longest period of Chinese administration was between 1683 and 1895. Before that, except for Dutch and Spanish colonial rule, Taiwan was a retreat for Japanese pirates, Chinese bandits, refugees and fleeing war lords. As a matter of fact, and despite earlier Chinese forays and sporadic emigration from Fukien Province, Taiwan had to await Portuguese discovery in 1517 and Dutch colonization in 1624 before the Chinese government became seriously concerned over the population and management of the Island.

Even during the period if Imperial rule, from 1683 to 1895, the Island was ruled as a part of Fukien Province. The aborigines were either assimilated into the Chinese population or pushed back into the Mountains. The Imperial government treated the Island with little, if any, attention. From 1884 with the French Blockade and 1895 with the Japanese rule, the Island passed out of Peking's control. The Chinese on Taiwan refused to accept it and declared their independence and claimed to be a republic. In 1949, the remnants of the Kuomintang under the leadership of Chiang Kai-shek retreated to the Island claiming it to be a province of China and the Kuomintang to be the legitimate government of China. By tracing the expansion of the Chinese Empire outward and southward and by contrasting the incorporation and development of Canton with the awareness and administration of Taiwan, further evidence is provided for the claims that Taiwan was never politically incorporated into China and that it remains a disputed frontier area. Its republican government of 1895 was dominated, ignored, and has been conveniently long since forgotten.

<table>
<thead>
<tr>
<th>Period</th>
<th>Status of Taiwan</th>
<th>Status of Canton</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Chou Dynasty West-Pre-Ch'in; China limited to Yellow River Basin — a germinal hydraulic society. (c. 1122–771 B.C.)</td>
<td>Unknown</td>
<td>Undeveloped</td>
</tr>
<tr>
<td>2. Chou Dynasty East; Pre-Qin China was not expanding and was divided within. (c. 770–256 B.C.)</td>
<td>Unknown</td>
<td>Undeveloped</td>
</tr>
<tr>
<td>3. Ch'in, The Great Wall and unified metric system was adopted; expansionist period included Han Former (c. 221 B.C. to 9 A.D.)</td>
<td>Unknown</td>
<td>Undeveloped as part of China concept.</td>
</tr>
<tr>
<td>4. Han Later was a divided period of the three Kingdoms and War Lord competition, (c. 220–280 A.D.)</td>
<td>Unknown</td>
<td>Expansion into Canton with Han Armies reaching Viet Nam.</td>
</tr>
<tr>
<td>5. Tsin, Sui, and Tang Warlord competition. Tibet was brought into China (c. 280–906 A.D.)</td>
<td>Unknown</td>
<td>Arabic settlements established by Arab Merchants.</td>
</tr>
<tr>
<td>6. Five Dynasties, Song North and Song South, internal conflict and division and an expanded definition of China was incorporated into the political tradition. (c. 907–1279 A.D.)</td>
<td>Unknown</td>
<td>Canton now became a part of China proper.</td>
</tr>
</tbody>
</table>

31. See Yung Wei “The Unification and Division of Multi-System Nations...” in Chapter III for unity and disunity periodicity tables.
INTERNATIONAL STATUS OF PARTITIONED NATIONS

7. Yuan expansionist period, Ghengis Kahn and Mongolia brought into China (c. 1260–1368 A.D.).

8. Ming Dynasty ended with Manchurian revolution (c. 1368–1644 A.D.).

9. Ch'ing (Manchu rule) Dynasty (c. 1644–1912 A.D.)

10. The Republic of China (c. 1912 A.D.—)


A political geographer could argue from this chronology and physical location, that the Republic of China is to be in possession of a "frontier territory" upon which they have established a viable community, which operates a viable sovereign state, but which through its founding ideology still claims legitimacy over all of China. The Taiwan Straits still form a natural boundary and barrier between China proper and Taiwan. No legal national delimiting boundaries have yet been established between the two governments and their people.

The recent China/Taiwan debate reveals at least seven primary factors against procedural re-unification. First, political partition and political division create independent political power structures whose perpetuation is of primary importance to the elite members of each part. Reunification or reconquest signifies the demise of at least one
elite-regime. Second, most divided nations in the world today are supported by external nations who are in opposition to each other. Third, these competitive relations among the external blocs are inversely related to bi-lateral negotiations between the \textit{intra-elite} units. Fourth, the regimes and elites of the parts of a divided nation tend to ascribe to each other antithetical political formulas which deny reconciliation and compromise. Fifth, the potential for one part to lose military power measured in terms of minutes of firepower, keeps other parts from seriously negotiating toward some form of reconciliation. As Kenneth Boulding pointed out, if one side begins to remove itself from the field of conflict, there is little incentive for the other to move. Again, in this case, the dominant military power can begin to actively remove the other by conquest and retaliation. Sixth, the relative disparities of standard of living among members of the parts and differences of issue attitudes intensifies the desire for continued partition. Seventh, when people begin to act, live and think as members of different political states then the members no longer find reunification attractive or desirable.\textsuperscript{32}

On June 14, 1981, Secretary of State Haig was reported to have said that the United States wanted to "beef up" its military as well as its non-military relations with China while continuing to relate to Taiwan on an informal (businesslike) basis. Haig also reported that the United States would continue to sell defensive weapons to Taiwan in the amount of about 700 million dollars a year. The United States, according to the Secretary, would like to find out what kind of military hardware China would want through technological exchanges. Opposing Soviet imperialism now appears to have taken precedence over the countering of international communism in U.S. strategy. This conclusion of precedence arises from Haig's claims that the Soviet threats to both China and the United States compelled him seek to strengthen U.S.–Sino relationships. This is but one of the many conclusions that may be drawn from Haig's diplomacy.

On the other hand, if the United States includes the defeat of communism as a critical element in its world strategy, then Taiwan and the Republic of China become important. Taiwan has over the years proven to be a strong and unwavering friend to the United

States and a staunch foe of communism. However, American strategy now seems to be one of “having our China and keeping Taiwan, too”. No matter, the international status of Taiwan and the Republic of China on Taiwan is inextricably intertwined in the cold war politics of the United States and the Soviet Union and equally intertwined in U.S.–Sino politics.\textsuperscript{33}

What should U.S. policy toward Taiwan be? Most Chinese — mainlanders, those from Hong Kong, or those from Salinas, California and especially those from Taiwan — would advise the Americans to rid themselves of the idea that Taiwan belongs to the United States or that it is something to be negotiated away by the U.S. government. Second, and perhaps even more important is the advice offered by many that the leadership of the United States should place the China/Taiwan problem in the context of a U.S. world strategy rather than in the narrower U.S.–Sino strategy. United States leadership should not hold the mistaken view that any American policy toward Taiwan is non-negotiable in terms of U.S.–Peking relations. In short, Peking or, more specifically, the Chinese Communist Party (CCP), cannot afford to take a non-negotiable stance with America on Taiwan issues.

\textsuperscript{33} I would like to make an observation which is worthy of a longer and more detailed analysis. The verdict is now coming in on the trial of communism throughout the world. While communism will remain attractive to many parts of the world, especially the poor nations emerging from colonial rule, the record of communism is not that impressive. Wherever the communist party has gained power and rulership, the verdict is that it forms a ruling class rather than a democratic party of the proletariat. With the emergence of the ruling class party, the people lose freedom, life becomes harsher, feudal practices are established, and people lose all hope. Even those who followed the party for its revolutionary promises, which were kept for the top of the party in Russia and in China, have lost hope after a generation of sacrifice. This past year, Leonid Brezhnev apologized to the Russian people for not making Russia the greatest consumer economy in the world, a promise he made 20 years ago. This year the Polish workers acknowledged the need for a union and collective bargaining as protection against the Polish Communist Party which acts like a ruling class vis-a-vis labor. During the past few years, China has stepped away from Mao’s 30 some years of movement and countermovements that pitted Chinese against Chinese, that brought hardship and death in the hundreds of thousands, that set China back for many, many years in terms of intellectual and scientific development. An entire generation of scholars was sacrificed in that bloody cultural revolution. Marxism may work well as a means of critical evaluation of the shortcomings of capitalism; but, communism and the communist parties have offered little in the way of practical working alternatives.
In formulating U.S. strategy our leaders must keep in mind that the CCP must face the Soviet and Vietnamese borders with or without U.S. concessions on Taiwan policies. Moreover, China is faced with four-fifths of a billion people tied to the land in a subsistence economy and a generation of youth clamouring for a chance to work and make a meaningful life. China needs agricultural and industrial technological help from the United States. The government of China literally has to bring about an industrial-urban revolution in a very few years. This has been an ever present and unsolved problem of the CCP. The Party needs help if it is to retain its legitimacy among the populace. It needs strong support from the United States. These needs give the United States a great deal of decision-making latitude vis-a-vis Taiwan. The Party in Peking knows this, though it hopes the party in Washington D. C. does not.

Another question arises: What should U.S. world strategy be vis-a-vis China and Taiwan? Surprisingly, the answer I obtained from talking with mainland Chinese, and the most recent arrivals from China and Hong Kong, is that the most important element of U.S. world strategy should be “winning the battle against communism; and, especially the Soviet brand of communism.” The Soviet brand of communism is viewed by both communist and non-communist Chinese as most aggressive and imperialistic and is militarily the most threatening to American and Chinese national security interests.

Many Chinese agree that the United States should continue its relations with Peking while at the same time continuing to enhance the international status of the Republic of China on Taiwan. Many Chinese believe that the Chinese people can have more than one government and one country. They argue that the goal of American policy should be to help establish Taiwan as a sovereign unit. Why do Chinese, many of them citizens and loyal to China, hold these seemingly contradictory views? Again, many Chinese throughout the world desire to see a strong China. While they would like to see China become stronger and stronger, there are few Chinese anywhere who would like to be “liberated” by the Chinese Communist Party. The Chinese cannot forget that for more than 100 years, they have been denied citizenship, safe passage, passports, property ownership, and they cannot forget they have been forced into coolie positions, suffering under the yoke of servitude, slavery and subjected to pogroms in the most recent of times. This suffering, to a great extent, has been at the hands of foreigners. The Chinese have longed for a stronger “motherland” which could offer them solace and protection.
As one Chinese citizen from Canton said, "If China is weak, the foreigner will continue to bully [the] Chinese; but, if China is strong, the Chinese in Hong Kong and even those in San Francisco will have a stronger motherland to prevent this bullying."

The contradiction of attitudes is also explained by the fact that Mao's policy on Vietnam and Deng's war with Vietnam finds the overseas Chinese once again forced to flee their homes without citizenship or hope, to migrate as refugees and boat people. There exists the belief that if China had a strong government, countries like Vietnam and Cambodia could not simply set Chinese communities adrift upon the ocean. A strong Chinese government, one of great international status and repute, could simply say "stop" and such practices would cease. As strong as China presented itself during the 60s and 70s, Mao could not prevent the pogroms that occurred in the Philippines, Malaysia and Indonesia. Overseas Chinese will accept a strong Motherland despite the ideology of the ruling party.

American's are currently having a romance with China. The United States and Peking have some very profound differences regarding Taiwan. In the romantic efforts to woo China, Americans should see the place that the Kuomintang and Taiwan play in the reforms now going on within China. Since the death of Mao, China has been undergoing many wrenching changes. Many of these changes and trends have been directed toward the West. In fact, the Chinese Communist Party has permitted direct American influence to occur within China. This American influence, or even the same kind of foreign influence from any country, was unthinkable in Maoist terms.

Taiwan is difficult for the CCP to swallow. The Party is embarrassed by Taiwan's brilliant economic, cultural and industrial successes. Despite the Party's accusations that the Kuomintang is a reactionary force, more and more of the informed Chinese are becoming aware of the personal successes and individual freedom afforded in Taiwan. These Chinese people know that there is much more freedom there than the Party has offered; and, consequently they push for even more reforms within China. It is now "old hat" to speak of "windows" and "showcases" of the West, but the fact remains that Taiwan has been and remains a very attractive and influential window.

In my interviews with informed observers, I am told that the party will take a military solution to a problem like Taiwan whenever it thinks it can do so without retaliation or fear of being impugned. These respondents have pointed out that the use of
military force is a common Party practice. The fact that Peking is willing to agree to settle the Taiwan question in the future and by other than military means suggests that the CCP has already assessed the costs of a military solution to be prohibitive. Taiwan's independence is difficult for the Chinese Communist Party simply because, as one respondent said, "Taiwan is a rich, beautific and abundant gem. Given our action toward Tibet, we would annex Taiwan in a moment and do so simply out of greed." But for now, China cannot.

SOVEREIGNTY OF TAIWAN

Integration and community development theories provide yet another means for assessing and evaluating the international status of nations born of political partition and division. I have already suggested that the political partition and integration are parallel processes and are not mutually exclusive. For example, as a nation divides or is divided, integrative processes begin to occur in each of the fragmented parts. This process can be seen in the cases of the break up of the Malaysian federation when Singapore seceded in 1965, or in the rare case of the peaceful partition of Norway and Sweden in 1905. The integrative process is true of all divisions which result in political partition. Kristoff suggests in his discussion of boundaries: "The boundaries bind an area and a people which live under one sovereign government and law are, at least presumably, integrated not only administratively and economically but also by means of a state idea or creed."\(^34\)

In measuring the level of integration within recently partitioned national fragments, we must keep in mind that few states are coterminous with nations. For example, the nation of Jews is not completely included in the modern state of Israel. The Socialist Republic of Armenia does not include all of the Armenian nation. The nation of Ireland reaches beyond the borders of that state as does the Chinese nation reach beyond the borders of China proper. These are only a few examples which illustrate that with respect to populations, most states exhibit national heterogeneity, normally with one preponderant national group. The elite of the state tend to represent the preponderant group.

Sovereignty or sovereign nation-state status is the product of successful integrative and national-community development proces-

---

34. Ladis Kristof, "The Nature of Frontiers and Boundaries." In Jackson and Samuels, Politics And Geographic Relationships, supra, note 22, pp. 134-144.
Moreover, international law is also primarily concerned with states that are "sovereign" or independent, regarding them as legal personalities whose relationships it seeks to define and regulate. While the concept of sovereignty has been subjected to the most severe of criticisms by many political scientists, it nonetheless remains a basis upon which both the international legalists and representatives of divided nations frequently act; therefore, it becomes a reality which is not to be denied in evaluating the status of divided nations. In this evaluation of status as sovereign or non-sovereign, Mendelson argued that "sovereignty is more like a spectrum or continuum, with different states lying at different points on it." Critics have argued that states, being subject to various restraints, are not in fact sovereign. East and Prescott cogently state: "certainly many states appear to suffer from limitations of sovereignty as do members of the European Economic Community, Czechoslovakia in respect to the Soviet Union pressure, and both Switzerland and Austria which are subject to the duty of permanent neutrality. (i.e., they have no legal power to make war...). Such limitations do not however prevent these states from being classified as independent, if only because they stand in sharp contrast to those (units or systems) which are legally dependent, lacking the right to engage in certain political activities, notably in the field of foreign affairs."

Sovereignty claims can be settled without annexation or reunification. I want to introduce the idea of "sovereignty disputes" as a form of international conflict. Like boundary disputes, sovereignty disputes can be settled with varying levels and qualities of conflict. Among these variations one can find amicable negotiation among the disputants. The varying levels of conflict are found by contrasting the recent detente between East and West Germany and the somewhat more rancorous and sporadically violent border conflict that continues between North and South Korea. These cases are tentatively advanced as instances of sovereignty disputes which are being settled through negotiation and agreement on the part of both sides to recognize the right to disagree while they respect the integrity and autonomy of each other. More important is the idea or suggestion that "sovereignty disputes" or even the treatment of divided nation disputes as "sovereignty disputes" may serve as a first step and a fresh approach toward the development of a new integration at the international level.

36. Ibid.
37. The introduction of new terms, alone, frequently help negotiated resolutions of conflict.
How do we practically and empirically measure the degree of sovereignty? An insightful response to this question is that those parties to the dispute have their own measures and have applied them successfully to their own dissatisfaction. It is this mutual dissatisfaction which produces the sovereignty dispute. Karl Deutsch provides a conceptual beginning for the development of objective measures of systemic sovereignty. My interpretation of his work provides the following criteria:

1. Sovereignty is a product of the entire community and rests there rather than being the invention and possession of some individual, faction, or class.

2. Sovereignty is a reflection of the ability of the polity to learn, to change and adopt to a changing world. This I believe is what Deutsch means by "self-steering" and "self-control," or autonomy.

3. Sovereignty is illustrated by the ability of those who man the institutions of a political system to close the decision-making processes to any further information by which a particular decision might possibly be modified. This is the exercise of Deutsch's "system will."

4. Sovereignty is also a product of the power of a system to implement and apply decisions so as to obtain membership and non-membership compliance with new rules.

5. Sovereignty is seldom concentrated in a single group and when it is, the system is weakened by the inability of it to survive the destruction of that group.38

In a study conducted prior to and during 1978, I attempted to apply these criteria of sovereignty to the Republic of China on Taiwan by operationally defining these criteria in terms of measures of political integration, social mobilization and assimilation. I conducted a series of interviews with Chinese-American citizens, Chinese from Taiwan, and Chinese from other parts of the world. Most of my respondents either studied or worked in academics. I have presented this work in another report and will summarize its relevant findings as they show the international status of divided nations.

The integration process is one through which villages, baronies, and countries merge into larger and larger units and eventually become nation-states. This is accomplished through six parallel processes which are as follows:

1. Several peoples (of varying origins) or population clusters become united through an infra-structure of communication and economic activity, and therefore, begin to think of themselves as a country.

2. There is an integration and consolidation of language.

3. There is an integration of elites as an accepted model of reference, or, put another way, there is an elite whose members serve as role models for mass behavior.

4. There is an expansion of a feeling of kinship from kin groups to the whole people.

5. There is the development of a sense of trust, a "we trust each other more than we trust some foreigner".

6. The integration of administrative districts and the making of a state. 39

In the process of becoming a country, two different groups of people formed on Taiwan. The first group are those whose ancestors migrated to the Island over the past four centuries. The second group known as "Mainlanders" are those who followed Chiang Kai-shek in 1949. The first group will be referred to as Taiwanese and they number about 15 million. The Mainlanders, about 2 million, bring the total population of the country to about 17 million. The Taiwanese see themselves as having an identity separate from China proper. Most of my respondents said that they refer to themselves as "being from Taiwan", and not as "being from China." When Taiwanese respondents were asked to judge the position of the Mainlanders of the Island, they generally responded by saying that the Mainlander is separate from China. The Mainlanders themselves tend to agree that they have a separate identity from China proper. These Mainlanders from whom most of the political elite is recruited

and who form an "upper structure" of society on the Island continue to see Taiwan as a part and parcel of China proper. The Kuomintang has contributed to the development of a separate identity, rather unwittingly, by its thorough and constant anti-communist propaganda and through its continued successful and separate economic development.

Language consolidation was implemented by the adoption of "New Peking" as the official governmental language. Despite this adoption of an official language, some 80 percent of the population still uses local dialects in their daily lives. These local dialects are different from the official language in both accent and grammatical structure.

Integration of the elites is still an ongoing process. At the time of this writing, two groups of elite members serve as behavior models for most of people. The first group is the political elite, drawn primarily from the Mainlanders. The second group is an elite of professionals, scientists, entrepreneurs and celebrities drawn from both the Mainlanders and Taiwanese and serving both groups.

Most of my respondents felt that this dual elite structure persists as one of the important problems of nation building in Taiwan. However, these same respondents agreed that no single monolithic social structure exists on Taiwan and that useful aspiration models do exist in the minds of the mass members of society.

The next criteria, feelings of kinship occur along class lines and class cleavages. Members of both the major groups when traveling abroad identify themselves as Taiwan Chinese to the outsider. Some draw class distinctions between themselves and the other groups reporting that they are either "Mainlanders" from Taiwan or "Taiwanese" from Taiwan. However, in general they present a common front to the outsider. To the extent that this common front suggests that the two groups are beginning to feel or share a common identity there are growing feelings of kinship.

Feelings of trust were measured by asking and doing research on preferences of who receives employment, promotion and property and who is delegated responsibility in public and private pursuits. Like the feelings of kinship the data here are inconclusive. There seems to be a growing sense of social trust between members of the two primary groups especially in private sphere of workaday life.

Finally, the government has long ago integrated the administrative districts, the bureaucrats and the police. They have recruited local district administrators (at the party level) from both major groups of the population. I asked all of the respondents about the rule
of law and sense of civility. From their reports, I concluded that there appears to be a growing sense of civility among members of society and between members of society and the ruling leadership. Most of the respondents, despite their background, felt that the rule of law and civility were relatively greater on Taiwan than on the mainland. This was reported by respondents who had been in both countries for extended periods of time. These visits were during the past five or ten years.

Most of the respondents regarded questions of assimilation as irrelevant to Taiwan. They argued that the answers would show greater levels of mass mobilization and assimilation than the elites could in fact draw upon. Westerners who apply western sociological techniques would thus obtain a halo effect produced by the measures and not actually found in the population. Despite these reservations, the respondents answered all questions and seemed to think they made sense. Their answers suggest that the entire population is capable of mobilization to support the government in cases of (a) external threats and (b) actual invasion. When domestic disruptions occur, enough of the population remains out of the fray so as to permit the government to effectively maintain civil and political order. These observations suggest some degree of assimilation has occurred. In comparative terms, the people living on Taiwan have a feeling of more individual freedom than do their Chinese counterparts on the mainland.

Governmental services have become more and more satisfying. The government provides more health care stations, mobile units and public transportation each year. There has been an equalization of job opportunities and an encouragement of the expansion of the private sector. The economy is a "state directed" economy largely influenced by private enterprise.

In the opening paragraphs, I said that most states exhibit a national heterogeneity, normally with one preponderant national group. I conclude this section by noting that Taiwan, under the KMT, has developed the requisite structures and functions of a sovereign state. It has a mobilized population, an effective leadership structure and an effective administration and military. Its leadership can survive generational replacement. Taiwan — at minimum — has all the necessary elements of sovereignty if not sovereignty itself.
POLITICAL PARTITION: A NEGATION OF UNITY OR A NEW UNITY?

Political division, secession and partition are generally viewed as evils to be avoided; while consolidation, amalgamation, integration and the "art of getting bigger" are viewed as virtues to be sought. Only in the case of nationalism does one find a large body of literature favorable to one type of political partition. The hypotheses are that political partition demands lead to hostility and hostility in turn leads to riots, organized irredentist movements and finally to civil war. While consolidation demands or international integration demands or unification demands lead to modern, rational, effective and efficient governments. Interestingly, no one, to my knowledge, has compared the costs in human lives of movements that call for political division and movements that call for political amalgamation and international integration. If the Nazi experiment is reflective of the latter, we know that the human costs of a single world government runs into the millions. Those who have an ideological stake in the reunification, or even continuation of partition while giving lip service to re-unification, are generally the first to attribute human costs to division. Among the costs frequently cited are those of human lives, break-up of families, the breakdown of cultural and ethnic identification and autonomy, the disruption of production and distribution of economic goods and services, and increasing amounts of bigotry, dogmatism and hostility.

N. J. G. Pounds has said that the "term 'partition' is a perjorative one, carrying with it overtones of outrage or abuse, as if the act which it describes were itself contrary to the established order of things. The suggestion is always present — overt or implied — that it results from a show of force and that in carrying it out either the rights of the people or the intentions of the deity have been violated."

Measuring hostility in existing divided nations led Gregory Henderson to conclude that the price paid for political partition is tension, war, duplication and waste of dwindling resources, perhaps even civilization itself. However, we would probably need a new set of measures to test the costs of "bigness". Recent concern with the environment, multinational corporations, and the third world have led to some scholarly attempts to focus on these costs. E. F. Schumacher's _Small is Beautiful_ is one effort in this direction. We find in his, and others’ environmentalist literature,

that the costs of bigness (without a Hitler on the scene) are ecological damage and callousness toward humans, alienation of the individual from community and from the family, normlessness, social and psychological drift, system anomic, political repression, mass exploitation, and a high death count that results from all sorts of technological accidents.

The negative view of political partition and division — balkanization — is puzzling, since many nation-states in the world today are a product of partition. Some, it is true, are products of old empire breakdown and others of empire building. Whichever is the source, the nations of today are a product of partitioning and bounding.

Perhaps this negative view of political partition can be understood by considering man's search for immortality, a search which leads him to romanticize about the possibilities of a world wherein everyone is the same and there is no conflict. Such utopian views generally contain the idea of global security and peace. The desire for immortality is reflected in man's long romance with the rights and rituals of tribalism, the clan, the family and finally the nation-state. Our twentieth century movement for universal world order — overcoming the conflicts of rampant nationalism — reflects but one more level of the founding of a "Golden Age" of peace and immortality. The desire is similar to Eric Berne's notion that when most of us get on the marital couch we do so in hope of founding a new "Nation of Abraham." This hope is filled with many paradoxes.

What one has, his immediate possessions, his family, his language, his culture and his race become mystically endowed as symbolic of God's Ways. Those individuals who are different are the enemy, the "spawn of the devil", "the significant other" who diabolically cheat the chosen few of their immortality. Upon this myth nations are built and wars are fought. In the desperation of disparate situations, people are generally willing to recognize the myth and give it up rather than die for it.

This paradox is again reflected in Snyder's observation that the ancient community was based on primitive people's ancient and tribal instincts centering on fear and hostility toward the stranger. While making searches for a universal peace in a modern community


— as he did in days of old — mirroring the conditions of nature and producing the "natural man", modern man is at the same time driven to revere his differences from his fellow. This reverence of differences continues to be a primary motive in national political partition from the times of ancient theocracies to the modern state. In our efforts to explain the re-unification of divided nations, we should remember that the Phoenix of the Old State has never risen from the ashes of political partition and division; rather, what has always risen has been a new unity, a new order both similar and dissimilar to the past.

COMMENTS

Hungdah Chiu

Professor Johnston's statement on the historical development of Chinese settlement in Taiwan is not based on correct historical facts and legal theory. As to the historical facts, I would like to quote a recent study on the history of Taiwan by Professor Yu-min Shaw of the History Department of the Notre Dame University, which provides well-documented information on the subject.

There are documentary evidences indicating that by 1171, P'eng-hu (Pescadores) had become a Chinese military outpost, and at least by 1225 it was administratively incorporated into the Chinese Empire—placed under the jurisdiction of Tsin-kiang County of Ch'uan-chou Prefecture, Fukien Province. As for Taiwan, no massive settlement began until General Cheng Ch'eng-kung (Koxinga, 1624-62) expelled the Dutch from Taiwan in 1661.

From 1662 to 1683 Cheng Ch'eng-kung and his successors ruled Taiwan for 21 years. Cheng Ch'eng-kung died only five months after his victory over the Dutch, but during his brief rule

1. See pp. 20–22.
he set up guidelines for the governing of Taiwan that survived his demise. After his death his son, Cheng Ching, took over the reign. With Ch'en Yung-hua as his chief adviser, the Cheng government began to concentrate on the development of Taiwan.

The administrative policies of the Cheng government and its achievements throughout its rule in Taiwan can be summarized as follows: First was the recruitment of Chinese migrants to Taiwan. . . . with the influx of both settlers and soldiers, Taiwan's population increased to about 100,000 by the end of the Cheng rule in 1682.

In September 1683, [the Ch'ing government surrendered to the Ch'ing government and Taiwan became part of the Fukien Province.] Taiwan came under the rule of the Ch'ing dynasty for 212 years, until 1895.

In terms of assessing the administrative efficiency of the Ch'ing, its rule of Taiwan can be divided into two periods: from 1683 to 1870s and from the 1870s to 1895. Before 1874 the Ch'ing government carried on a passive attitude toward Taiwan. It tried to maintain only a semblance of law and order and made minimum effort to develop the island. However, after the Japanese invasion of Taiwan in 1874, the Ch'ing government realized that only the energetic development of the island would forestall further foreign incroachment there. Therefore a series of able administrators were sent to Taiwan and many reforms were undertaken. . . .

Taiwan's economic development took an upward swing after the mid-nineteenth century, especially in the production of the three major export items: sugar, tea and camphor. Between the 1860s and 1890s, tea production and exportation increased 50 times, sugar exportation grew 2.5 times, and camphor 5 times. This boom in foreign trade was also facilitated by the presence of western commercial firms in Taiwan after the 1850s.

Technological development was made possible by a succession of able Ch'ing administrators, such as Shen Pao-chen, Ting Jih-ch'ang, and Liu Ming-ch'uan, who came to Taiwan after 1870. Among them, Liu Ming-ch'uan's contribution was the

greatest. They promoted mining and foreign trade, set up telegraph lines, improved transportation both inside Taiwan and with the mainland, established postal and electricity transmission systems, built railways, opened up modern schools, and engaged in land survey and tax reform. By the 1890s Taiwan had become the most modern and progressive province in China.

Besides material progress, Taiwan by the end of the nineteenth century had also achieved a high degree of educational advancement.

Besides traditional-style schools, two modern-style schools were also established: a Western Academy (1887) offering modern subjects, such as foreign languages, mathematics, physics, chemistry, in addition to Chinese studies; and a Telegraph Academy (1890). 6

In 1894 war broke out between China and Japan over the question of Korea, and China was defeated by Japan. In the Peace Treaty of Shimonoseki, signed in April 1895, China agreed, along with other concessions, to cede Taiwan and P'eng-hu to Japan.

When the news of this imminent cession broke out, it triggered a strong wave of protest throughout all of China and Taiwan. In a memorial written in blood and submitted to Peking, the delegates of the Chinese gentry of Taiwan solemnly declared that they would prefer to fight to death than to live under Japanese rule. This helped to stimulate K'ang Yu-wei, the noted late Ch'ing intellectual leader, to lead the famous May protest movement in which more than a thousand Chinese literati participated. They lodged a petition with the Ch'ing court opposing the cession of Taiwan and demanding reforms. But these emotional outbursts could not alter the fate of Taiwan. The Chinese government, bound by treaty obligations, could not offer much help for Taiwan's defense.

After the failure of all earlier actions and in final desperation, the Chinese patriots in Taiwan decided to try the strategy of declaring Taiwan a "republic" under the title of "T'ai-wan Min-chu Kuo" (Taiwan Democratic Republic). By declaring Taiwan a republic, they hoped to win international sympathy and support and force Japan to give up Taiwan. To assuage any

6. Kuo, General history, pp. 178-209. On Taiwan's educational system and its various educational institutions, see Wang Ch'i-tsung, "On literary academies and learning centers in Ch'ing Taiwan," in Chiang-i hui-pien (A collection of instructional materials) (Taipei: Taiwan Historical Study Society, 1977), Chapter 7.
suspicions of their loyalty to China, they designated the reign name of the new republic as "Yung-Ch'ing" (Forever Ch'ing), and in their public announcements they never used the term *tu-li* (independence), but *tsu-li* (self-sustaining) or *tsu-chu* (self-governing). Further evidence of their loyalty to China was that T'ang, the president of the republic, offered to continue to serve as the acting governor of Taiwan for the Ch'ing government.

The resistance movement was certainly heroic. But the most impressive thing in the whole movement was the outpouring of loyalty by the people of Taiwan toward mainland China. Despite tensions, this manifestation of loyalty testifies to the basic racial, cultural, and political bonds between the Chinese people in Taiwan and their compatriots on the mainland.

Another salient aspect of this movement was that it revealed the intensity of modern nationalism among the Chinese people on Taiwan. One Western scholar made this succinct comment:

> It is clear that the prolonged defense of Taiwan and the establishment of a republic and its vestiges were manifestations of a rising nationalist spirit among the Chinese. The backers of the republic evinced a marked degree of patriotism in their utterances. Furthermore, their resistance effort, conducted in the name of the people and on behalf of China, certainly was indicative of an outgrowth of modern nationalism.\(^7\)

With respect to the international law aspect of the question, I think that under any principle of international law, the 212 years of control of Taiwan by the Ch'ing dynasty would definitely have conferred a valid title to the territory. If not, then the whole territory of the United States, which has only existed for 205 years, would be of questionable title.

As to multi-system nation problem, I think Professor Johnston missed a major crucial point — it is the Communist life style that makes the non-Communist part of a nation unwilling to unite with the Communist part. On the question of Taiwan, the people on Taiwan are ethnic Chinese and they share same cultural, historical and emotional identification with the people on the mainland. The reason why they do not want to unite with the mainland now is because of their dislike for the Communist system. It has nothing to do with the Chinese historical and legal claim to Taiwan.

---

\(^7\) Harry J. Lamley, "The 1895 Taiwan Republic: A Significant Episode in Modern Chinese History," 27 Journal of Asian Studies, 761 (No. 4, Aug. 1968).
Chapter 2

THE INTERNATIONAL LAW OF RECOGNITION AND MULTI-SYSTEM NATIONS — WITH SPECIAL REFERENCE TO CHINESE (MAINLAND-TAIWAN) CASE

Hungdah Chiu

I.

In a domestic legal system, the issues of whether a corporation has been duly incorporated or its board of directors has been legally selected can be easily determined by reference to domestic law. These disputes can be authoritatively decided by a domestic court. 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. 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. Ideally, each state should treat this question as a legal one and make its decision on objective criteria recognized by international law. 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, rather than of law.

Whether or not a government can represent a state (by domestic analogy, whether a board can represent a corporation) is also a complicated question in light of the fact that neither writers nor state practice has defined the applicable criteria for such a determination. 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. 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 which, as state practice shows, generally make their decision primarily on policy grounds rather than on legal considerations.

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 perfectly 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 as regards recognition of states and governments has created difficulty and inconvenience in international relations.

Although in law a state can deny the existence of an unrecognized state or government, in reality such a denial is sometimes impossible. And, under certain circumstances, domestic courts have held that it is even 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 Wulfohn 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 an 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)).

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 State de-recognized the Republic of China (ROC) on Taiwan on January 1, 1979, it was compelled to
enact the Taiwan Relations Act (TRA) of 1979, 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. 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 of 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 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 have frequently 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. . . .

Official contacts between two countries or governments not recognizing each other have also, sometimes, 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. 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.

II.

Applicable rules concerning recognition of multi-system nations or divided states or their governments, such as Korea, Germany and China, are even more complicated. Before further exploration of the subject, it is necessary to say a few words on the use of the term — multi-system nations or divided states. The term "divided states" is usually used in international law or by scholars in international relations to describe the situation in Germany, Korea and China. There is, however, one serious problem in using this term. This term implies a more permanent legal separation of two parts of a state, though none of the so-called divided states has so far accepted de facto separation as permanent and all of them have continued to insist that unification is still the ultimate national goal. Even in the German case, where both parts of Germany — the Federal Republic of

Germany (FRG: West) and the German Democratic Republic (GDR: East) — were admitted to the United Nations on September 18, 1973 and have normalized their relations through the Treaty of December 21, 1973 on the Basis of Intra-German Relations and accompanying documents, the Constitutional Court of the FRG held that the Treaty did not conflict with the FRG Constitution, i.e., Basic Law of the FRG, May 8, 1949. The preamble states that the Constitution was enacted "on behalf of those Germans to whom participation was denied [i.e., East German people]" and the "entire German people is called upon to achieve, by true self-determination, the unity and freedom of Germany." The Constitutional Court affirms the tenet that Germany in its entirety has not ceased to exist as an international entity, despite its lack of an active governmental organization. It held that the FRG-GDR Treaty merely accepted the existence of two parts of Germany with separate statehood, i.e., of "two states in Germany," whose relations inter se are governed by the rules of international law as well as by special rules flowing from their character as parts of Germany. For that reason, the FRG Constitutional Court expressed the view that the territory of the GDR is not foreign territory within the meaning of statutes of the FRG and remains eligible for intra-German judicial assistance. In view of such a serious and difficult problem in using the term "divided states," a more neutral term "multi-system nations" will be used to describe the situation in Germany, Korea and China. The advantage of this term is that it does not explicitly or implicitly challenge the national goal of unification of these states. Rather, it correctly reflects the political, social and economic situations in these states — the co-existence of communist and non-communist systems. The term "nation" is used here instead of "state" to avoid challenging the position of Korea and China as each part of these countries still refuses to recognize the other part as a "state," though they all insist that both parts are one nation.

Generally speaking, international law has not yet developed adequate rules to deal with the special case of the recognition of multi-system nations and many countries have dealt with this question by somewhat arbitrary application of existing rules or by political expediency. So far as the recognition question is concerned, there are several peculiar characteristics of multi-system nations that deserve attention. In the first place, each part of a multi-system nation had formerly belonged to a unified country; and while divided now, each part still maintains the national goal of unification. Second, until very recently each part of almost every multi-system nation, with the possible exception of the German Democratic Republic (GDR or East Germany), had claimed to be the sole legal government of that country in international relations. Thus, the representation of a multi-system nation in an international conference, until very recently, was given to one part only, while the other part was totally excluded from participation in that conference. Third, under the existing rules of the international law of recognition, each part of a multi-system nation can be recognized as an independent state because it possesses all the necessary attributes of a state in international law. However, this has not been the case in practice because each part, with the present exception of Germany, has declared that it would not be satisfied with such an arrangement. On the contrary, each government has insisted on being recognized as the sole legal government of both parts of a multi-system nation, including that part over which it has no effective control. Moreover, each part has used political pressure from its allies to prevent the other part from being recognized as a state or to prevent the government of the other part from being recognized as the legal government even within the territory under the latter's effective control. Fourth, despite the avowed goal of national unification, at least in the last decade or so, there has been no serious attempt, with the exception of Vietnam, by either part of any multi-system nation to achieve unity. This is because each part of a divided country has been in alliance with or under the de facto protection of a super-power — the United States or the Soviet Union — (or, like the case of the People's Republic of China, is itself a potential superpower) and any attempt to upset the existing division would risk a serious global confrontation. Although the 1954 United States-Republic of China Mutual Defense Treaty was terminated on January 1, 1979, under the Taiwan Relations Act of 1979, the U.S. has made it "clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future
of Taiwan will be determined by peaceful means,” considers “any effort to determine the future of Taiwan by other than peaceful means, including boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States,” and maintains “the capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.”

It is generally agreed that despite the lack of diplomatic relations between the United States and the ROC on Taiwan, any PRC attempt to take Taiwan by force would invite strong reaction from the United States. As a result, the divisions, though challenged by one or both parts of each multi-system nation, are rather permanent and are generally expected to be so at least in the foreseeable future.

Needless to say, this peculiar legal and political nature of multi-system nations has created difficulty and inconvenience in international relations for the many countries which have had to choose one part to the total exclusion of the other — an unhappy choice. Moreover, this choice is, in most cases, the result of political pressure or expediency. It does not have any basis in international law insofar as that part which is denied recognition is in every aspect as qualified as a state in international law as the part that is recognized. Since the division of a multi-system nation is, as stated before, almost permanent for all practical purposes and since the situation is not likely to be changed without resorting to the use of force, international law should not allow such an abnormal situation to continue without developing new rules to deal with this new situation.

The most objectionable part of the existing practice of recognition is the treatment of the decision to render recognition as a political act. This almost totally disregards the fact that, in making such a decision, a state concurrently fulfills an international duty for the international community, namely, identifying whether an entity does possess the qualifications of a state or whether a government does, in fact, exercise effective control over its territory and population.

Under existing practice, one or more states can ignore an entity which, by any objective criterion, is a state. Similarly, a government which is, in fact, the only effective governing authority over a

10. Sec. 2(b) of the Taiwan Relations Act, supra note 2.
territory and its population can also be denied legal capacity in the international community. On the other hand, an entity which has already lost one or more of the essential qualifications of a state, e.g., the loss of its territory for a considerable period of time, can still be recognized as a state, in total disregard of realistic conditions (e.g., the three Baltic states — Estonia, Latvia and Lithuania). Similarly, a government which is no longer in effective control of a part or all of its territory for a considerable period of time can still be recognized as the legal government of a state (e.g., the former Spanish Republican Government).

It is submitted that a sound principal of recognition is to treat recognition as a legal act; furthermore, the exercise of this legal act should be strictly in conformity with the reality of the situation. Thus, if an entity in fact possesses all the necessary qualifications of a state for a considerable period of time, it should be recognized de facto and de jure as such. Similarly, in the case of recognition of a government, the only relevant criteria should be whether the government is in fact the only effective governing authority over a territory and its population and whether there is a serious continuous challenge to that authority. In both cases, recognition only verifies a factual situation and signifies neither approval nor disapproval of the recognized state or government, or its policy or territorial or other claims.

If one applies the above-stated principle of recognition to the multi-system nations case, then their recognition problem can be satisfactorily solved. Each part of a multi-system nation should be recognized as an independent state or international entity by third countries. In the meantime, the national goal of unification of each part of a multi-system nation remains unaffected by the act of recognition. The domestic structure of each part of a multi-system nation can also remain intact because recognition will have nothing to do with the domestic structure or policy of the recognized state. Domestically, the government can still claim to be the only legal government of both parts of a multi-system nation, but such a claim should not prevent a third country from entering into diplomatic or other relations with the other part of a multi-system nation.

III.

In recent years, the Federal Republic of Germany (FRG) has taken an approach toward the German unification problem similar to the principle of recognition suggested above. While the FRG domestically is still bound by its constitution to represent all Germans, it has
abandoned its long-held policy of the Halstein doctrine by recognizing the legitimacy of the GDR. A treaty on intra-German relations was concluded in 1973, in which both German states agreed to continue to work toward unification by peaceful means.\textsuperscript{12} Article 3 of the treaty contained not only a pledge to settle the differences existing between the two parties exclusively by peaceful means but also emphasized the inviolability of their common border. On September 18, 1973, both German states were admitted to the United Nations; the next day, the foreign ministers of both, speaking before the General Assembly, renounced, on behalf of their countries, the use of force in their relations. On June 20, 1974, the two German states opened formal relations with each other.

In the case of Korea, in recent years the Republic of Korea (ROK, \textit{i.e.}, the South) and the Democratic People’s Republic of Korea (DPRK, \textit{i.e.}, the North) have also moved to normalize their relations and their former rigid claims to represent all Korea in international relations. In August 1972, Red Cross officials from the ROK and DPRK began a series of meetings in North Korea to negotiate an end to the separation of millions of families, and on October 12, 1972, both Korean states began political conferences at Panmunjom, with the object of improving their mutual relations and reunifying their country by peaceful means. Both series of meetings, however, soon collapsed. Nevertheless, both the ROK and the DPRK now have observer status at the United Nations and both are now members of many international organizations.\textsuperscript{13} Moreover, in recent international conferences convened by the United Nations, both Korean states were invited to participate.

The most difficult case among the multi-system nations is China. Because of the disparity of population and territory between the Republic of China (ROC, \textit{i.e.}, Taiwan) and the People’s Republic of China (PRC, \textit{i.e.}, the mainland) — many countries have been subject to pressure by the PRC to “derecognize” the ROC. The ROC has been expelled from the United Nations and its specialized agencies and from almost all international conferences convened by the United Nations. At one time the ROC was recognized by 60 or more countries of the world, but the countries that now maintain diplomatic relations with her number only 23.\textsuperscript{14} The PRC’s present policy is to

\textsuperscript{12} See supra note 6 and accompanying text. 
\textsuperscript{13} See Von Glahn, supra note 5, pp. 69-70. 
\textsuperscript{14} See Appendix 1.
step up diplomatic pressure on the ROC to make it a non-state and to insist on its right to liquidate the ROC by all means, including the use of force (See Appendix 2 of this chapter).

While the ROC is now isolated in international political relations, it has continued to develop economic, trade and cultural relations with more than 140 countries of the world. The ROC is the 20th largest trading country in the world and its annual foreign trade of about 40 billion U.S. dollars is more than that of the PRC. However, despite its continued growth in economic development and international trade, the ROC is confronted with a great number of practical difficulties as a result of its derecognition by many other states. For example, some countries go so far as to treat ROC citizens abroad as stateless persons, in flagrant violation of the Universal Declaration of Human Rights, which explicitly provides in Article 15 that "everyone has the right to a nationality."

It is submitted that the ROC population of 18 million, while small when compared with the PRC's 1 billion, is nevertheless larger than more than 100 other countries of the world. By any objective criterion, the ROC is a full-fledged subject of international law and should be recognized as such so as to comply with the principles of international law, justice and human rights. In resolving the Chinese case, however, one should also consider political reality as well as the legitimate interest of the PRC. It is believed that the

15. For example, Taiwan's delegate, whether from private enterprises or from the ROC government, cannot negotiate directly with the EEC's Textile Commission because the EEC does not recognize the ROC as a state in the international community. See Hungdah Chiu, "Certain Legal Aspects of Recognizing the People's Republic of China," Case Western Reserve Journal of International Law, Vol. 11, No. 2 (Spring 1979), p. 406.

16. Only a few international lawyers discussed Taiwan's international status after U.S. derecognition in their works. One recent work considers Taiwan a sui generis entity having international status similar to Vatican City. See Louis Henkin, Richard Crawford Pugh, Oscar Schachter and Hans Smit, International Law, Cases and Materials, (St. Paul, Minn.: West Publishing Co., 1980), pp. 208-209. Similarly, Professor Ian Brownlie also put Taiwan in entities sui generis, similar to Vatican City, in his discussion on the subject of international law. See his Principles of Public International Law, (3rd ed., New York: Oxford University Press, 1979), pp. 68-79. Professor Von Glahn wrote that "from a factual point of view, the Republic of China continued, of course, to exist as an independent entity, even though it was recognized by only twenty-two members of the family of nations." Von Glahn, supra note 5, at 68-69.
overriding national interest of the PRC is to prevent the emergence of an independent Taiwanese Republic which would foreclose its ultimate national goal of unification. This is also the national goal of the ROC. However, at least in the foreseeable future, the PRC could not achieve its goal of unification through peaceful means because both the government and the people on Taiwan do not want to give up their higher standard of living and their substantially more democratic political, economic and social system in order to achieve unification. Although the PRC has offered to maintain the social and economic system on Taiwan after "unification" in exchange for a promise by the ROC to relinquish its sovereignty, the people and government on Taiwan have very little trust in the PRC. Moreover, once the ROC has given up its sovereignty in exchange for the PRC's terms for unification, it could not trade, purchase arms or engage in any external activities without the approval of the PRC, nor could it prevent Peking from sending military forces to Taiwan. There would also be no legal restraints to prevent the PRC from reneging on its promises to Taiwan at the time of unification. In this connection the case of Tibet is a vivid example.

Under the threat of an armed invasion of Tibet, an agreement was concluded between the PRC and Tibet on May 23, 1951. Pursuant to this agreement, the PRC promised, among other things, not to "alter the existing political system in Tibet" or to change "the established status, functions, and powers of the Dalai Lama," and further pledged that all "officials of various ranks shall hold office as usual." The agreement also provided that the "Tibetan people have the right of exercising national regional autonomy." Despite this agreement, the PRC ruthlessly took Tibet by force in 1959, killing thousands of Tibetans and driving large numbers of refugees to India. The Tibetan government under the Dalai Lama was dissolved. The atrocities committed by the PRC in Tibet were condemned by the International Commission of Jurists as "genocide" and by the United Nations General Assembly as well. This example of the PRC's


inauspicious record vis-à-vis Tibet precludes any peaceful reunification with Taiwan.

If peaceful unification is not possible, the only other alternative of the PRC is to take over Taiwan by force. However, such an adventure would risk a major confrontation with the United States and possible intervention by the Soviet Union. It is believed that, at least in the foreseeable future, it is not in the national interest of the PRC to do so since it is now badly in need of U.S. support to develop its economy and to diminish the alleged Soviet threat. Therefore, it is believed that the status quo between Taiwan and the mainland will be maintained indefinitely.

At present, the PRC continues its political campaign to isolate the ROC internationally, pursues subversive activities against Taiwan, and reiterates its threat of use of force in the hope that it may force Taiwan to accept its terms of "unification." It is believed that such a policy might have an adverse effect. In desperation, the ROC might resort to radical measures such as developing a nuclear capability, or adopting a "two-China" policy rather than adhering to the goal of unification. Such a desperate situation would also provide opportunity for Soviet intervention.

On the other hand, if the PRC adopted a more realistic and reasonable policy toward the ROC, it could, in the short run, avoid pushing Taiwan toward radical measures and might, in the long run, achieve its goal of reunifying Taiwan with the mainland. Since politics can never be divorced from reality, the PRC must acknowledge that within the state of one China there are two different political, social and economic systems, one on the mainland and the other on Taiwan. So far, the ROC system on Taiwan is the more successful by far; unless the Chinese people on Taiwan see the clear benefit of their continued adherence to the concept of one China, there will be a tendency to move away from the goal of unification. The present PRC policy of armed threat, international isolation and subversive activities can only further alienate the Chinese people in Taiwan and make ultimate reunification more difficult.

In view of the above analysis, it would be in the interest of the PRC to stabilize the Taiwan situation within the context of the ultimate national goal of unification. To achieve that objective, the PRC must tolerate Taiwan's acquisition of appropriate international legal status in the community of nations. This is essential since it is

19. See Appendix 2.
the only way for the PRC to prevent Taiwan from moving toward a "two-China" policy to seek international status. If Taiwan could, within the context of the policy of one China and ultimate unification with the mainland, maintain appropriate international status through official or consular relations with other countries and through participation in inter-governmental organizations or conferences, the pressure for the people of Taiwan to urge the ROC government to a "two-China" policy would be drastically reduced. The PRC could tolerate such appropriate international status for Taiwan on the express condition that if Taiwan were to declare itself an independent republic, the PRC would immediately use force to unify Taiwan with the mainland. Other countries could also help to stabilize PRC-Taiwan relations by basing the establishment of official or consular relations with Taiwan on the condition that Taiwan not declare itself an independent republic to provoke a PRC attack.

If the ROC on Taiwan could gain appropriate international status vis-à-vis the PRC within the context of one China and if the PRC could attain a certain degree of political stability and economic development and the people there enjoy considerable political and economic freedom, then mutually beneficial relations could gradually develop between the mainland and Taiwan, thus making the peaceful unification of the two parts of China a more realistic possibility.
Appendix 1

Countries Maintaining Diplomatic Relations with the Republic of China

Bolivia
Costa Rica
Dominican Republic
El Salvador
Guatemala
Haiti
Holy See
Honduras
Ivory Coast
Korea, Republic of
Lesotho
Malawi
Nauru
Nicaragua
Panama
Paraguay
St. Vincent
Saudi Arabia
Swaziland
South Africa
Tuvalu
Tonga
Uruguay
Appendix 2

A List of Important Chinese Statements on the Use of Force Against Taiwan After January 1, 1979 — the Date of Establishing Diplomatic Relations between the U.S. and the PRC

(1) January 5, 1979 — Vice-Premier Deng Xiaoping said:

"President Carter indicated the wish that the solution of the Taiwan question be accomplished through peaceful means. . . . We make clear that the solution of this question is China's internal affairs. . . . We cannot commit ourselves to use no other than peaceful means to achieve the reunification of the motherland. We cannot tie our hands on this matter."

Beijing Review,* January 12, 1979, p. 17.

(2) January 29, 1979 — Vice-Premier Deng Xiaoping said:

"The way to resolve the question of bringing Taiwan back to the embrace of the motherland is China's internal affairs." (The phrase "internal affairs" amounts to a code word in Chinese parlance signifying that force may be used. Thus, in 1959 when Chinese forces massacred thousands of Tibetans in the name of unification, the action was characterized as an "internal affair" of China.)

Beijing Review, February 9, 1979, p. 11.

(3) January 31, 1979 — Vice Premier Deng Xiaoping said in an interview:

"If we are to commit ourselves to not using armed forces at all, then that will be equivalent to the tying of our own hands [on the question of reunification of Taiwan with the mainland]."

Beijing Review, February 16, 1979, p. 20.

(4) June 20, 1980 — An official Xinhua News Agency Commentary said:

"The Chinese Government has declared time and again that the settlement of the Taiwan question is China's internal affairs which brooks absolutely no foreign interference."

* Official Chinese government publication published in six languages.

(5) November 1, 1980 — Shijie Zhishi (World Knowledge) — a widely circulated magazine in China — wrote:

"If China resorts to non-peaceful means to settle the Taiwan question, it is China's internal affairs and the U.S. has no right to intervene."


(6) December 1980 — A Chinese Foreign Ministry spokesman's statement:

The spokesman stressed that the principled stand of the Chinese Government on the Taiwan issue [i.e., that force can be used to take over Taiwan] is irreversible.


(7) January 12, 1981 — The official Beijing Review's answer to readers' enquiries.

"if we . . . resort to non-peaceful means to solve the [Taiwan] issue, that is entirely China's internal affair which the United States has no right to meddle in, let alone claim that it poses 'a threat to the peace and security of the Western Pacific area.'"


(8) February 19, 1981 — Professor Wang Tieya of Beijing (Peking) University and an adviser to the Chinese Foreign Ministry said:

"If the Taiwan authorities insist on maintaining a stubborn attitude against communism and refusing the offer of peace, and if the United States continues to build up the military capability of Taiwan, we have no alternative but to resort to nonpeaceful means to solve the Taiwan problem. This is also China's internal affair, and the United States has no right to interpose."

(9) July 1, 1981 — An article in the first issue of the Guoji wenti yanjiu (Studies in International Problems) quarterly attacking the Taiwan Relations Act and claimed that “whatever means the Chinese use in bringing Taiwan back to the motherland to achieve national unification is entirely China’s internal affairs. . . .”

Reported in Dagongbao (Impartial Daily, a Hong Kong Communist newspaper), July 6, 1981.

(10) July 4, 1981 — The People’s Daily attacked the Taiwan Relations Act as amounting to obstructing Taiwan’s unification with the mainland and “as a result, China may be forced to resort to nonpeaceful methods to settle the Taiwan problem.”

Renmin Ribao (People’s Daily), July 4, 1981.
Chapter 3

THE UNIFICATION AND DIVISION OF MULTI-SYSTEM NATIONS: A COMPARATIVE ANALYSIS OF BASIC CONCEPTS, ISSUES, AND APPROACHES

Yung Wei*

The division of China, Korea, Vietnam and Germany into communist and non-communist political systems has been a major development since the end of the Second World War. The emergence of divided nations is not only a most unfortunate experience for the peoples of these nations but also one of the primary destabilizing factors in international politics. The Berlin Crisis, the Korean War, the Quemoy Crisis and the Vietnam War all involved the divided nations and the major powers of the world. What are the prospects for reunification of divided nations? How can governments and peoples of the divided nations work toward the goal of national unification? What kind of concepts and conceptual schemes can we use to best analyze the problems relating to divided nations? These are but a few of the questions which have been raised frequently by political leaders and scholars of the divided states.1

The purpose of this paper is to examine critically the basic concepts and approaches which have been applied to the study of multi-system nations, to compare the similarities and differences of various divided nations, to identify the major factors prohibiting or conducive to the reunification efforts, and finally, to make some projections into the future. A special section is devoted to an analysis of the problem of division and unification in the Chinese setting which historically has affected political developments in neighboring states such as Korea and Vietnam.

I.

The comparative study of divided nations has been a late development in political science. Critical interdisciplinary study of

* Originally delivered at Symposium on Functional Integration of Divided Nations, Seoul, Republic of Korea, October 6-7, 1980.

divided nations from a social science perspective rather than from a policy angle did not emerge until the 1960s. Prior to that, the studies of the unification of various states into a larger unit were focused on Western Europe and the emerging nations. Using concepts such as "social communication," "political integration," "security community," "overlapping membership," "multiply loyalty," and "nation-building," scholars like Karl W. Deutsch, Earnest A. Haas and Lucian W. Pye have made much contribution to our understanding of the process of unification efforts among national and sub-national political entities in many parts of the world.

Yet a survey of literature on divided nations reveals two basic problems. First, there is the lack of a commonly accepted term which is neutral and precise enough to be an effective operational concept for empirical research on "divided nations." Second, there is a failure in differentiating two separate types of division and unification processes, i.e., those which involve communist political systems and those which do not involve the confrontation between communist and non-communist systems.

As for basic concepts, a host of terms including "the partitioned nations," "the divided states," "the divided nations," and "two China's (Korea's, Germany's)" has been used. All of these terms designate certain features of the "divided nations," yet none is accurate and broad enough to reflect and include all the cases. For example, the term "partitioned nations" can not be used to refer to countries which were divided, not through international intervention or by international agreements, but through internal war, such as the case of

2. The formation of a "Divided Nations Internet" in the Comparative and interdisciplinary Studies Section of the International Studies Association in 1969 was a pioneering effort toward empirical study of divided systems and peoples. For some examples of the results of this intellectual endeavor, see Yung Wei (ed.), "Political Partitioning, Migration, Minorities, and Non-State Nations: Models, Propositions, and Intellectual Exchanges," (CISS working paper no. 49, University Center for International Studies, University of Pittsburg, 1975) and Ray E. Johnston (ed.), The Politics of Division, Partition, and Unification (New York: Praeger, 1976).

3. For a sample of the ideas of these scholars, see Karl W. Deutsch, Political Community at the International Level (Garden City, N.Y.: Doubleday and Co., 1954); K. W. Deutsch, Nationalism and Social Communication, An Inquiry into the Foundation of Nationality (Cambridge, Mass.: M.I.T. Press, 1955); Ernst B. Haas, the Uniting of Europe (Stanford, Calif.: Stanford University Press, 1958); Lucian W. Pye, Politics, Personality, and Nation-Building (New Haven, Conn.: Yale University Press, 1962); and Amitai Etzioni, Political Integration (New York: Holt, Rinehart and Winston, 1968).
China. The concept of "divided states" is broader than "partitioned nation," yet many of the leaders and scholars of the so-called "divided states" are very reluctant to accept the word "state" in the concept because it implies a more permanent separation of a nation into two or more legal entities under international law. The government of the Republic of China (ROC), for instance, has resisted the idea of calling today's China a "divided state." Similarly, most of the "divided states" resent terms such as "two China's," "two Korea's," and "two Germany's." As for "divided nations," it is a term used most often by scholars; however, it also has the misleading connotation that there are two or more nations in a "divided" state — an idea which is detested by most leaders and scholars of divided systems.

In order to avoid the shortcomings of the above-mentioned concepts, I propose that we substitute "multi-system nations" for "divided states" and "divided nations." There are several advantages in using this new term. First, it clarifies the fact that the reality in a so-called "divided nation" is not the separation of one nation into two or more nations, but the emergence of more than one political system within one nation, either as a result of international arrangement or as the product of internal wars. More significantly, the term "multi-system nation" reflects faithfully the true nature and cause of division, i.e., the confrontation and competition between non-communist systems and communist systems in various countries.

In fact, if it had not been for the expansion of communist forces with the support of the Soviet Union, all the three multi-system nations probably would have been united at the end of the Second World War. For in none of three multi-system nations was there serious cultural, ethnic, and geographical cleavages which could have prevented the restoration of a united China, Korea, and Germany after both Nazism and Japanese militarism were crushed. Both China and Korea had been united countries with thousands of years of history. As for Germany, it also had a history of political unification for about one hundred years. It is the emergence of communist regimes in these three nations and the failure of the free world to act decisively which has led to the continuation of competing political systems with different political ideologies, economic systems, and life styles. The key issue here then is not the creation of conditions for hitherto separate geographical units to develop common cultural and national identity, but a decision as to by which system — the non-communist or the communist — that multi-systems should be re-unified and restored to their previous state of national unification.
II.

Having clarified the concept of "multi-system nations" and the nature of their re-unification efforts, we may proceed to compare the similarities and differences among the multi-system nations. In terms of similarities, all the three multi-system nations historically have been composed of people of common background and have shared a common culture. The multi-system nations also share common features such as ideological cleavage along a communist-anti-communist line, military alliances or arrangements with opposing superpowers of the world, and frequent border incidents coupled with occasional large scale military confrontations. In addition, all the non-communist parts of the multi-system nations have been the recipients of refugees who have chosen to leave their homes to escape communist rule. The non-communist parts all also have higher living standards than the non-communist side. Data in Table 1 clearly illustrate the case.

There are, however, different patterns in the relations between the different parts of multi-system nations and between multi-system nations and other states. The two Germanys have somewhat "resolved" their problems, or to put it more accurately, reduced their mutual hostilities, which has led to: (1) the exchanges of representatives between Berlin and Bonn; (2) dual recognition of the two Germanys by other states; (3) dual representation of both Germanys in the diplomatic corp of other states; (4) membership for both East and West Germany in the United Nations; and, (5) direct trade and tourism between the two systems.

The situation between the ROC and mainland China represents the opposite end of the German arrangements. Here we find that there is virtually no interaction between two systems. Both political systems claim to be the sole legitimate government of China, and insist that they oppose the division of China into two legal entities. In October 1971, the Republic of China withdrew from the United Nations after the "important issue" resolution was defeated in the

U.N. General Assembly. Since then, Communist China has been the sole delegation representing China in the United Nations. In December 1978, the Carter Administration of the United States unilaterally recognized mainland China and abrogated the ROC-USA Mutual Defense Treaty on January 1, 1980. The government of the Republic of China (GRC) strongly protested the United States' action and asserted that "it will impair the long term interests of the United States and endanger the peace and stability of the Asian-Pacific region." A "Taiwan Relations Act" was passed by the U.S. Congress which led to the creation of two "private" organizations — American Institute in Taiwan and The Coordinating Council for North American Affairs in Washington D.C. — to conduct practical interactions between the two countries. In addition to their admission into the U.N. and the recognition by the United States, the Chinese Communists also made substantive advances in gaining recognition from other countries. But the GRC has been able to retain formal recognition by 23 nations.

The case of the two Koreas falls somewhere in between the two Germany's and two China's. Thus far, North and South Korea have not formally recognized each other. But a North-South dialogue has been maintained intermittently since July 1972. The "detente" between the two Koreas has not reduced significantly and hostility between the two Korean political systems. It did, however, lead to dual recognition and dual representation of the two Korean governments in a number of countries. It is hard to assess which side has gained more by opening up dialogue. But the digging of underground tunnels into the South by North Koreans definitely reduced the mutual trust essential for the success of this type of endeavors. Table 2 illustrates the different levels and extent of contacts between various parts of multi-system nations.


6. Numerous studies have been done on the question of reunification of the two Korean political systems, particularly by Korean scholars themselves. For a more optimistic view, see Hak-joon Kim, "Present and Future of the South-North Talks," Korea and World Affairs, 2 (Summer, 1979), pp. 209–222. For a somewhat pessimistic analysis, see Yong Soon Yim, "The Prospect of Peaceful Unification of Korea in the 1980's," Korea and World Affairs, 1 (Spring, 1980), pp. 187–208; see also Young Whan Kihl, "International Integration Theories and Problems of Unifying a Divided Nation: The Case of Korea," in R. E. Johnston (ed.), op. cit., pp. 55–66; Dong-Hyun Kim, "Building a Model of political Systems Integration — Toward Korean Unification,"
The continuing existence of multi-system nations creates unique problems for international law. According to conventional international law, there are three types of international personalities: the states, the belligerents and the insurgents. Judging by the criteria specified in international law, political systems in the divided nations fall between "state" and "belligerent." In terms of the qualifications of a state, such as a government, a population ruled by that government, a territory under effective control by that government and the ability of that government to carry out international obligation, almost all the systems within the divided nations qualify for state status. Yet, confrontation between various parts of multi-system nations in political, economic and sometimes military arenas, plus the impact of East-West bloc politics, have prevented a full recognition of all parts of a multi-system nation by other states.

Other than mutual hostility and cold war situations, another element which has prevented multiple recognition and multiple representation of the divided nations, or multi-system nations, has been the problem of overlapping claims of sovereignty and territorial control. By "overlapping claims," it is meant that various systems of a divided nation make claims that they represent not only the people and the territories which are under their effective control, but also the part of a divided state which they do not control. Consequently, diplomatic recognition and representation for the divided nation have become a "zero-sum game" in which other states are compelled to choose one of the political systems of a divided nation as the only legitimate government of all the territory of that nation despite the fact that it controls only a part of it.

The German solution almost amounts to the creation of two separate states. The Korean situation seems to be moving toward the German model. Whereas, before 1971, that is, before mainland China's entrance into the United Nations, the ROC had been the beneficiary of the "zero-sum game," with the majority of states recognizing only the government in Taipei. Since 1971, however, Communist China has fully utilized the conventional international law to gain diplomatic recognitions at the expense of Taipei.7

The government and the people of The Republic of China fully realized the plot of the Chinese Communists in trying to isolate Taiwan from the outside world. Every effort is made to strengthen existing diplomatic ties as well as to open new ones. Premier Sun Yun-suan's visit to Panama, Costa Rica and the Dominican Republic, coupled with increased contacts with European countries represent a growing dynamism in the external relations of the ROC.

III.

After a comparative analysis of the various multi-system nations, an examination of problems of division and unification of China is in order. One of the prerequisites in studying the problem of unification and division in the Chinese setting is to take a look at China's long history. During more than three thousand years of her recorded history, China as a nation has gone through many periods of unity and disunity. Dynasties and empires have emerged, prospered, degenerated, and disintegrated; yet the Chinese nation has always survived. An examination of the history of the dynasties and periods of China led to our discovery that there have been almost equal periods of unity and disunity, throughout the three thousand years of recorded Chinese history.

As data in Table 3 reveal, of the 3097 years of Chinese history covered by our survey, 1963 years, or 63.4 percent of the total years, were periods of unity. Whereas 1134 years, 36.6 percent of the total, were years of division. Given the fact that there were considerable periods of internal wars and uprisings even in the supposedly unified dynasties, the actual years of division should approach a parity with the years of unification. The implication of this historical fact is that most Chinese who have some knowledge of the history of China understand that the unification and division of China as a state has been a repetitive, and even cyclical process. With this kind of understanding, the Chinese people who happen to live during a period of division do not easily run into despair, for they can patiently wait for the eventual unification of the state at some point in the future.

Other than the cyclical oscillations of unification and division throughout Chinese history, another distinct feature of the Chinese experience has been the emphasis on cultural assimilation and unification. Since ancient times, the Chinese people have always been looking at their environment with a distinction between the "world of the Chinese" which was in the center, and the "world of non-Chinese" which was surrounding regions. Until contacts with
Western powers, leaders of China considered the sphere of influence of the Chinese civilization — the "T'ien-Hsia (under the sky)," or the world. Within this cultural sphere, the Chinese had, at times, rather elaborated "international systems" composed by smaller states. As a matter of fact, there were such detailed codes of behavior among the contending states during the Ch'ün-chiu period (722-481 B.C.) and Warring States period (403-211 B.C.) that a multi-states systems was actually in existence. 8

To both ancient and modern Chinese people, the existence of multiple political systems within the cultural sphere of the Chinese civilization does not mean the discontinuity of the "Chung-kuo (the Middle Kingdom)." A far more serious threat to the Middle Kingdom would be the invasion of foreigners (non-Chinese) with the intention of eliminating the Chinese culture. Hence, we may say that the Chinese people placed more emphasis on the perpetuation of cultural unification than territorial unification. Given different types of political systems in China, the Chinese people would probably rate and prefer, in descending order: (1) a unified Chinese political system; (2) a divided multi-system Chinese nation; (3) a divided China with both Chinese and foreign states; (4) a political system ruled by foreigners yet maintaining Chinese cultural patterns; and, (5) a completely foreign political as well as cultural system in China. (In order to illustrate this process of unification and partition along its various outcomes, a flow-chart analyses is presented in Figure 1.)

Several tentative conclusions or propositions can be drawn from this analysis. First, the Chinese consider cultural unification more important than political unification. They generally assumed that with a common cultural basis, a multi-system nation will sooner or later be reunited again. Second, as a people who are highly conscious of their history, the Chinese fully realize the cyclical nature of unification and division throughout the history of China. As a result, the Chinese generally demonstrate more patience when living during a period of division with the conviction that their nation will eventually be reunited. Finally, although the Chinese tend to treat their territorial domain as the "world," they also are painfully aware of the constant threat posed by neighboring foreign systems which have invaded China many times in the past. Thus, the preservation of the Chinese political system and Chinese culture against foreign invaders has preoccupied the Chinese. 9

---

9. For a more detailed discussion on this subject, see Yung Wei, "The Division and Unification of Chinese Political Systems," (CISS working paper no. 35, University Center for International Studies, University of Pittsburg, 1975).
Figure 1

UNIFICATION AND DIVISION OF CHINA: A FLOW-CHART ILLUSTRATION

Start

Emergence of a new political system

Are there competing ruling-elites?

yes

Consolidation of the new political system

no

A strong and expanding Chinese political system

After a long time

Decline of the system

Internal war among competing elites

Are there strong neighboring political systems?

yes

Invasion of China by foreign forces

no

Does one of the competing elites win over others?

yes

Partition of China into multi-Chinese-states

no

Establishment of a foreign political system in China

Division of China between foreign and Chinese political systems

no

yes

Enters another cycle
Having clarified some basic concepts in regard to "unification" and "division" in the Chinese context, we can now turn to the more concrete questions of unification or division of the ROC and Communist China. First of all, it should be pointed out that the present division of China into two hostile political systems is the result of more than fifty years of fierce struggle between the Chinese Nationalists and the Chinese Communists. From an historical perspective, we may view the present confrontation as a phenomenon comparable to the competition between different elite groups in the early part of dynastical change.

Several basic issues are involved in the prolonged struggle between the Chinese Nationalists and the Communists. First, there is the political issue focusing on the question: "Which is the better form of government for the people of China?" The nationalists have followed the teaching of Dr. Sun Yat-sen and have adopted a constitutional government since 1947. The Chinese Communists, on the other hand, have adopted the teaching of Marxism-Leninism and adhere to the idea of a "people's dictatorship" as the basis of government. Since the fall of the "gang of four," and the start of the "Four Modernization" program, the political structure on Mainland China has undergone rapid and drastic changes, yet the principle of proletarian dictatorship has persisted. At the present, there is no sign whatsoever that either side would accept even part of the political ideal and political structure of the other side.

Other than the political issue, there is the issue of the attitude of the political leaders toward the traditional social structure of China. The GRC basically accepts the social structure of traditional China, although it tries to improve, through land reform and a social welfare program, the lot of the poor sector of the Chinese population. The Communists, on the other hand, view the traditional society of China as a class society with the "exploiting class" on one side and the "exploited class" on the other. It is the task of the Communists to carry on class struggle to suppress and to eliminate the so-called "exploiting class," and to elevate the workers and peasants in China to the position of a ruling class. In short, while the Chinese Nationalists call for a mild social reform, the Communists seek for radical social revolution in China. On this, there is very little room for compromise between the two opposing political elites.

A third important issue between the Nationalist and Communist political systems is to be found in their attitude toward economic activities of the people. The Nationalists recognize and protect private ownership, although they do have programs to discourage
excessive use of property rights to the extent they may be detrimental to the interests of society. The Nationalist leaders also recognize and appreciate the role played by the entrepreneur in a free-market economy.

The Communists detest and prohibit private ownership and run a tight state-controlled economy in which there is little room reserved for the pursuit of profit by private businessmen and industrialists. Recently there have been some indications that the Chinese Communists have relaxed somewhat their suppressive hold on the economy. It is, however, unlikely that Communist China will go all the way towards the so-called "Market Socialism," as practiced by Yugoslavia, which is still considered a restricted economy by Western standards.

IV.

Having examined the issues between the Chinese Nationalists and Communists, we may proceed to conduct a probabilistic analysis on the endogenous as well as exogenous variables on the future relations between the ROC and mainland China. Let us first turn to the endogenous variables. As a closed system, mainland China’s moves toward Taiwan will largely be determined, not by the attitude of the people, but by China’s political elite. At the present time, the leaders of mainland China seem to be temporarily satisfied with a peace offensive coupled with psychological warfare against Taiwan. But if a power struggle occurs, it is possible that a new leadership may try to consolidate its rule by adopting a far more militant attitude toward Taiwan.

Since its recognition by the government of the United States, the communist regime on mainland China has become quite aggressive in its political propaganda and psychological warfare against the ROC. On January 1, 1980, a so-called "letter to compatriots in Taiwan" was released by the Chinese Communists in the name of the standing committee of the People’s Congress. In that letter, the Chinese Communists offered to open up trade, postal service and tourist service arrangements with the government and people of the ROC. These offers were categorically rejected by the GRC. On January 11, 1979, Premier Sun Yun-suan issued the statement that unless the Chinese Communists abondon Marxism-Lenism and class struggle, restore the human rights of the people on mainland China and respect private ownership by the people, there was no room whatsoever for any dialogue. The Premier warned the people of the ROC that "peace talks proposed by the Chinese Communists are only
a form of class struggle through which the Communists seek to induce us to surrender. . . . We have learned from history that those who place their trust in Communists falsehoods face a tragic end. The usurpation of the Chinese mainland and the fall of Vietnam are tragedies that are fresh in our memories.\textsuperscript{10}

From the statement of Premier Sun, and many similar statements issued by the GRC, it is clear that the government and people of the ROC have no inclination to start a dialogue with the Chinese Communists. The government of the ROC has ruled out trading with mainland China. With the exception of contacts between Chinese students both from Taiwan and from Mainland in Western countries and occasional rendezvous between scholars from both sides at international academic meetings, there is no contact between the two separate systems.

The government and people of the ROC are confident that their path toward modernization is more scientific, effective, revolutionary and humane than the Chinese Communist approach. As the Chinese Communist leaders have already admitted that in "economic matters, we will learn from Taiwan," the people in the ROC reminded the communist leaders on mainland China that in politics, they also should learn from Taipei.\textsuperscript{11} This is followed by the slogan, "learn everything from Taipei. National unification will be easy to attain."

V

Looking to the foreseeable future, several general projections may be made on the question of unification of multi-system nations. First, short of a major war, it is unlikely that any of the divided nations will be able to reach total national unification in the near future. The forceful and brutal annexation of South Vietnam by North Vietnam through the so-called "war of national liberation" should serve as a painful reminder to the non-communist side of the multi-system nations that the communists never rule out the use of force as a means of solving "domestic" issues.

Second, the communist side will continue using "unification" as an instrument to expand its influence into the non-communist side,


just as it has used nationalism as a means to carry out its "united front" tactics. It always tries to manipulate the sentiment toward national unification whenever it sees fit, but will back out from substantive steps toward unification whenever it finds conditions unfavorable to its interests. Furthermore, Communists in various countries constantly talk about national unity but will never hesitate in establishing separatist movement and local illegal regimes such as the Soviet regimes created by the Chinese communists in some remote regions of China while the Nationalist central government was engaged in a bitter war of resistance against the Japanese during the Second World War.

Third, the economic gap between the non-communist and communist sides of multi-system nations will be enlarged, making unification efforts even more difficult. As a matter of fact, poor living conditions and a lack of political and social freedom have been the two major reasons which led to millions of people leaving the communist part of divided nations. In the final analysis, it is essential for the non-communist side to keep a strong economy, to develop a solid base for political cohesion and stability and to maintain a military force which is strong enough both for self defense against communist aggression and for preparing to respond to the request for freedom from the compatriots on the communist side. More than any other method and process, these are probably the three sure ways not only for safeguarding our security but also for preserving the opportunity for eventual unification of our motherland.
Table 1

The Multi-Systems Nations: Comparative Data on Territory, Population, GNP, and Per Capita Income

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Thousands Sq. Mi.</td>
<td>Percent of Total</td>
<td>Figure</td>
<td>Percent of Total</td>
</tr>
<tr>
<td>China ROC</td>
<td>14</td>
<td>0.38</td>
<td>16.3</td>
<td>1.9</td>
</tr>
<tr>
<td>China Mainland</td>
<td>3,700</td>
<td>99.62</td>
<td>835.0</td>
<td>98.1</td>
</tr>
<tr>
<td>Germany FRG (West)</td>
<td>96</td>
<td>59.6</td>
<td>61.5</td>
<td>78.7</td>
</tr>
<tr>
<td>Germany GDR (East)</td>
<td>42</td>
<td>30.4</td>
<td>16.7</td>
<td>21.3</td>
</tr>
<tr>
<td>Korea ROK</td>
<td>38</td>
<td>44.7</td>
<td>35.8</td>
<td>68.8</td>
</tr>
<tr>
<td>Korea North</td>
<td>47</td>
<td>55.3</td>
<td>16.2</td>
<td>31.2</td>
</tr>
</tbody>
</table>

Table 2

Relations Between Multi-System Nations: A Comparative Paradigm

<table>
<thead>
<tr>
<th></th>
<th>China (ROC/Mainland China)</th>
<th>Korea (ROK/North Korea)</th>
<th>Germany (FRG/GDR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stationing of Formal</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Representative In Each</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other's Capital</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dual Representation In</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>The U. N.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct Trade And Exchanges</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Of People</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct Face-to-face</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Negotiation By Government</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delegates</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Formal Dual Representation</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>In Third Countries</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Informal Dual Representative</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>In Third Countries</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct Contacts Of Students</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>In Third Countries</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 3

UNIFICATION AND DIVISION OF CHINA:
A CHRONOLOGICAL CHART

<table>
<thead>
<tr>
<th>Periods (dynasties) of Unity</th>
<th>Periods of division</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch‘in (211–202 B.C.) Han, Former (202 B.C. — 9 A.D.)</td>
<td>Han, Later (9–220 A.D.) Three Kingdoms (220–280 A.D.)</td>
</tr>
<tr>
<td>Tsin, West (280(265)–317)</td>
<td>Tsin, East (317–420) South and North Dynasties (420–590)</td>
</tr>
<tr>
<td>Sui (590–618) Tang (618–906)</td>
<td>Five Dynasties (907–960)</td>
</tr>
<tr>
<td>Sung, North (960–1126)</td>
<td>Sung, South (1127–1279)</td>
</tr>
</tbody>
</table>

Total years of unification: 1963 years. Total years of division: 1134 years.
Percentage of the total years covered: 63.4% 36.6%

Chapter 4
MULTI-SYSTEM NATIONS AND INTERNATIONAL LAW,
WITH SPECIAL REFERENCE TO DUTCH PRACTICE

Ko Swan Sik

Introduction

This paper is intended to present a survey of Dutch practice with regard to the three multi-system nations constituting the main objects of analysis of this Conference. The Dutch are not known to be particularly adventurous in unusual situations. Their virtue lies more in being cautious and rather conservative. Being a small country they would rather follow the lead of bigger Powers than act as a vanguard. Being the heirs to a great Calvinist tradition, however, they are capable of being radical in following the imperatives of their conscience, and of legal rules. Besides they have been, of old, the traditional merchants of Western Europe. These may be among the reasons why the harvest of my endeavours has been rather meager in quantity, sometimes touching for the attachment to scruple, but also sometimes the surprising pragmatism appearing from it.

The survey of Dutch practice will be preceded by some remarks concerning the general aspects of multi-system nations and the specific aspects of the German, Korean and Chinese cases.

1. The concept of "multi-system nation"

The term refers to a territorially defined nation within the socio-cultural sense of the word, which is for one reason or another not politically united in one state structure, and parts of which are under the factual authority of more than one mutually contending governmental regimes. For all its ethnic and cultural characteristics

---

1. See, inter alia, the following literature on "divided States": Luis Martinez-Aguillo, "L'Etat divisé", 91 Journal de droit international (Clunet) (1964) 265–284; Gilbert Caty, Le statut juridique des Etats divisés (Pedone, Paris 1969); J. Crawford, The Creation of States in International Law (Oxford, 1979) Chapter 10: "The Divided States".

2. Jochen A. Frowein has devoted a legal analysis of the international status of such entities in their relations with States which have not recognized them as a separate State or as the legal government of an existing State. See, Das de facto-Regime im Völkerrecht [The de facto regime in international law] (1968) p. 7.
the nation in question could normally constitute one state and in most cases it actually has in the past. Consequently, the contending regimes in some form assert their endeavour to achieve reunification. This means that for the parties directly involved the current divided situation is not considered to be final. The causes of such situations may be internal, such as a civil war, either for governmental supremacy or secession; they may also be external, such as an international war and the accompanying impact of, or pressure by, outside Powers and ideologies.

In themselves, these elements do not present evidence of a special, legally relevant situation, nor the need to create a new legal category. Unconstitutional change of government, partition, transfer of territory, and other kinds of change in the existence or dimensions of a State are familiar phenomena to the law of nations. It is submitted that from the international law perspective, the relevant distinction lies in the indefinite and prolonged length of time during which it has not been possible to reach a settlement which is conclusive enough to serve as the basis for future legal relationships under general international law.

2. The variety of multi-system nations

A comparison of the actual cases of multi-system nations reveals a number of differences in the attitude of the contending regimes. For a better understanding of the nature of these differences and of their legal implications, a categorization like the one drawn up by John H. Herz in 1974 appears to be a useful point of departure. In terms of recognition between the contending power centers, the following three categories may be distinguished: (1) mutual non-recognition, (2) unilateral recognition, and (3) mutual recognition.

In category 1, the "purest" one, each of the power centers claims jurisdiction over the whole country, and the factual division is consistently seen as a purely intermediate phase in a civil war in which the parties struggle for control over the entire country. Consequently, the contending regimes will not, and in fact cannot, move to the recognition of the opponent since that would imply the relinquishment of its claims.

In the second category, one of the parties does claim jurisdiction over the whole country as well as the right of sole representation, but the other strives for a legally independent and separate status of the

---

territory under its de facto control. In legal terms this may amount to either secession or dismemberment, depending on whether or not the party claiming control over the whole country considers itself identical to, and the continuation of, the original nation State. While the regime aiming at a separate existence is, of course, prepared to recognize the other one as an equally separate entity, a similar attitude would be self-destructive for the claims of this latter regime.

Finally, in the third category, both power centers claim a separate existence for each within the limits of its actual control. Consequently, each will be prepared to recognize the other. But for the more distant aim of re-unification, the resulting situation may here too be legally defined as dismemberment or secession. In view of the professed striving for re-unification, it might be said that the phenomenon of multi-system nations could continue to exist politically even when it has already ceased to have legal relevance. The developments since the early seventies with regard to the two Germanies seem to confirm this in principle.

Among the three multi-system nations which constitute the object of analysis at the present conference China is up till now a clear example of the first category. The facts and arguments used in the debate are sufficiently known and need not be repeated here. One could of course speculate about future developments which are, so far as the legal alternatives are concerned, not excitingly new. Briefly the two possible developments are: (a) unification, either peaceful or by force; and, (b) further and continuing separate development of the two parts, either resulting in formal separation or continuing the present ambiguous status of Taiwan in international law. Under the first alternative one could envisage a constitutional structure allowing for autonomy to some extent. So far as international law is concerned, such autonomy goes farthest where the autonomous part would have competence to enter international relations. The UN membership of the Ukraine and Byelo-Russia offers an example. However, since the ideological and economic ties would be absent in the Chinese case its feasibility remains remote. With regard to the second alternative, since Mr. Clough has analyzed this problem in detail in Chapter 7, I will not be repetitive here.

The Korean case may at least historically be included in the first category. Originally, both contending regimes claimed jurisdiction over the entire peninsula. While the North based its claim on the

"Joint Conference of Representatives of North and South Korean Political Parties and Social Organizations" of April, 1948, and the elections of August, 1948, of deputies to the Supreme People's Assembly, resulting in the Proclamation of the DPRK in September, 1948, the South referred to the May, 1948 elections and the relevant UN resolutions. The all-Korean claims were consequently included in the constitutions, particularly Art. 3 of the ROK constitution of 1948 and Art. 103 of the 1948 DPRK constitution. On the international level the claim was expressed in some sort of Hallstein Doctrine.

Later developments show that the apprehension for political and economic survival, and the efforts to prevail over the ideological adversary provided stronger motives for the policies of both the ROK and the DPRK than the upholding of the banner of all-Korean national unity. Even the long-time objections of the DPRK against the idea of simultaneous UN membership of both Korean partial-States are not sufficient proof of a consistent one-Korea policy on the part of the DPRK. Reference could be made, inter alia, to the competition between the two Korean regimes in entering into diplomatic relations with other States, whether or not combined with the suggestion of "cross-recognition", and, especially since the general decrease of tension in the early seventies, the simultaneous membership of several international organizations, and the idea of a peace treaty or non-aggression pact between the two power centers. So far as the ROK is concerned, the evolution in its policy with regard to the intra-Korean question has been characterized as one from "legality" to "legitimacy".

It seems that the pursuit of re-unification remains alive but does not take first priority among the many concerns of State and society. It would be achieved rather as the end-result of a time-consuming process that should commence with the consolidation and normalization of intra-Korean relations.

Germany, finally, could well be classed in the second of our three categories. Apart from the various theories that German scholarship

6. "The territory of the ROK shall consist of the Korean Peninsula and its accessory islands".
7. "The Capital of the Democratic People's Republic of Korea is the City of Seoul". This provision was changed by the constitutional amendment of 1972: Pyongyang instead of Seoul is now mentioned as the State Capital.
has elaborated on the legal nature of the post-war German situation, there is no doubt that the FRG has consistently considered itself to be the continuation of and identical to the pre-war German Reich, while the GDR has for all practical purposes considered itself a new State which is at most a partial successor to a dismembered Reich.

The FRG initially claimed jurisdiction over all Germany but has considerably watered down its views since the introduction of the Ostpolitik and the resulting treaties. It has in fact retreated to the initial GDR thesis of "two States and one German nation" (GDR Constitution of 1968, Art. 1). On the other hand the GDR has now taken a step further, and has developed the thesis of two States and two German nations, itself embodying the separate, socialist German nation ("sozialistischer deutscher Nationalstaat" — socialist German Nation-State). 9

It may be concluded from this survey that while it is not impossible to find situations which can fairly neatly be placed into one of the three categories, it is much more probable to find mixtures and transitional phenomena.

The basic legal problem involved in the multi-system situation is the fact of competing claims to jurisdiction in the first and second categories. This jurisdiction may refer to territory or to persons. Internationally, the competing claims could raise various questions. One of them is the little-analyzed question of the territorial applicability of treaties entered into by a government claiming to represent a divided State in its entirety. Reference may be made to the exchange of notes between Japan and the ROC relating to the 1952 peace treaty which provided, inter alia, that "the terms of the present Treaty shall, in respect of the Republic of China, be applicable to all territories which are now or which may hereafter be, under the control of its Government". This example may confirm the suggestion that, in spite of their inclusive claims, the contending regimes will define their policies with a view to the factual control over their part of the nation's territory 10 and that third States will

9. Note in this connection the absence of a reference to One German nation and reunification in the GDR-USSR Treaty of Friendship, Co-operation and Mutual Assistance of 7 Oct. 1975 which substituted the earlier treaty of 12 June 1964. See Th. Schweisfurth, "Die neue vertragliche Bindung der DDR an die Sowjetunion" [The new treaty ties between the GDR and the Soviet Union], 30 Europa Archiv (1975), pp. 753–764. See also B. Meissner, "Der Sowjetische Nationsbegriff und die Frage des Fortbestands der deutschen Nation" [The Soviet concept of a nation and the question of the continued existence of the German nation], 32 Europa Archiv (1977), pp. 315–324, who indicates the Soviet interest in a definitive partition in view of the buffer function of the GDR.

take due care of the factually limited authority of the regime concerned.

Another question concerns the binding effect of such a treaty on the competing government when the latter succeeds in taking over power over the whole country: the question is in fact whether and to what extent a change of government and constitutional structure should result in a clean-slate with regard to treaty obligations. We refer to statements made by the Peking Government in this respect\textsuperscript{11} and to accession by the PRC to multilateral conventions already signed by the ROC.\textsuperscript{12}

In the EEC arrangement with regard to Germany we find an example of how an international organization takes account of the claim of one of the contending parties in a multi-system nation. Reference is made here to the Protocol on German Internal Trade and Connected Problems in which it was agreed that "trade between the German territories subject to the Basic Law for the Federal Republic of Germany and the German territories in which the Basic Law does not apply is a part of German internal trade".

Competing claims to personal jurisdiction are almost unavoidable if each of the contending regimes applies a different nationality law. In the German case the FRG has continued to apply the old German nationality law, and in addition much of its law uses the category of "German" in contradistinction to the more limited "German national" as a connecting factor. As a consequence most if not all GDR Germans are included. Legal conflicts have increased potentially with the introduction of a separate GDR nationality law in 1967. On the international plane this competition has raised questions for third States: the GDR has been trying to include a clause in its consular treaties according to which the nationals of the sending State will be defined as those who possess the nationality of that State under its legislation. This raises the question whether such clause would bar FRG representatives from acting on behalf of such persons who are "Germans" within the meaning of FRG law and who would under that law be entitled to claim FRG protection.\textsuperscript{13} Some Western European countries have refused the inclusion of the clause,

\textsuperscript{11} See infra, text at sect. 4.3.
\textsuperscript{12} For example, the accession in 1973 to the 1966 International Load Lines Convention instead of ratification of the signature by the Taipei Government in 1966.
\textsuperscript{13} This right to diplomatic protection was affirmed by the FRG Constitutional Court in its decision of 31 July 1973 (BVerfGE 36,1) on the legal implications of the FRG-GDR Treaty "on the basis of relations".
like France and Belgium, while the UK does not seem to have insurmountable objections to it. (See the UK-GDR Consular Treaty of 4 May 1976.) The Netherlands has not yet concluded a consular treaty with the GDR and, consequently, has not yet been confronted with the problem. It is suggested that Professor Salmon is right in stating that the clause does not imply any partiality and does not constitute an obstacle to a simultaneous competence of the FRG.

In the Korean case it is not known to what extent people originating from the "other part" of the country are treated in terms of nationality law. The ROK Nationality Act of 1948 does not offer any indication in this respect by simply referring to [the territory of] the Republic of Korea, without further clarification. So far as the DPRK is concerned no information at all is available with regard to nationality matters in the period up to 1963, in which year a Nationality Act was introduced. Article 1 paragraph 1 of this Act is of an inter-temporal character and mysteriously refers to persons who "held Korean nationality before the establishment of the DPRK". It has rightly been suggested that the provision equally qualifies for a restricted or an extensive interpretation. If interpreted extensively, it would mean that all Koreans would be claimed. It is not known, however, in which way the provision is being applied in practice.

Finally the unclear situation with regard to PRC claims to personal jurisdiction is well-known and little improvement appears to have been reached by the introduction of the new summary Nationality Act of 1980.

14. See Jean J.A. Salmon, "L'impact de la détermination de la nationalité allemande en RFA sur les conventions consulaires passées avec les Etats tiers" [The impact of the determination of German nationality in the FRG on consular treaties with third States], 15 Revue Belge de Droit International (1980), pp. 187–201, and also D. Blumenwitz, "Die deutsche Staatsangehörigkeit und die Konsularverträge der DDR mit dritten Staaten" [German nationality and the consular treaties between the GDR and third States], Politische Studien No. 221 (May-June 1975), pp. 283–292. Cf., however, the U.S. position according to the letter of the Department of State of 23 May 1962: "... the position of the Department of State has been that consuls of the Federal Republic are not authorized to act on behalf of German nationals residing in East Germany", 57 AJIL (1963), p. 410. Apparently this position was taken to avoid unnecessary confrontation with the other bloc.


16. Data from E. Tomson, Das Staatsangehörigkeitsrecht der ostasiatischen Staaten [The nationality law of the East Asian States], 1971 (being vol. 32 of the series Sammlung geltender Staatsangehörigkeitsgesetze, published by the Forschungsstelle für Völkerrecht und ausländisches öffentliches Recht of the University of Hamburg).

3. The international law framework: recognition and non-recognition

Any unconstitutional change relating to the governmental authority in a nation State and resulting in more than one governmental regime or "power center" claiming authority over the whole or part of the country leads to uncertainty with regard to both the legal relationships between the power centers themselves and those between the State concerned and third States. This twilight phase is usually brought to an end by the prevalence of one center over the other, or by secession or dismemberment, and by third State confirmation by way of recognition.

The uncertain situation referred to does not normally stretch out over a very long time and, despite its annoying and harmful implications, is usually sooner or later removed and its consequences more or less neatly regulated ex post facto. Besides, when confronted with unequivocal facts a third State as a rule cannot withhold recognition for too long, unless it can afford to completely avoid relations with the entity concerned. Thus, the Netherlands did not find it necessary to recognize the Soviet Union until 1942!

Since the end of the Second World War, however, mostly but not exclusively under the impact of the prevailing bipolarity in the world, territorial entities which used to constitute single States in the immediate or more remote past became factually divided for decades, and in some cases there is still no prospect of a final settlement. In these cases recognition has been withheld by third States for very prolonged periods, either for reasons of bipolar politics and ideology or because such recognition is barred by the attitude of the contending parties concerned. The Chinese problem is a case in point. Moreover, the policy of non-recognition in these post-war cases did not coincide with the possibility or intention to avoid relations.

Since neither the division nor the uncertainty could be lifted, a stalemate evolved, in which the contending power centers, as well as third States, have tended to accommodate their attitudes and relationships to the factual situation. This has given rise to questions for which the traditional rules and principles of international law have not been able to provide a ready answer. These questions concern the legal admissibility and the legal nature of relations within the context of non-recognition, problems of implicit recognition, the avoidance of legal incompatibility, and, finally, the legal significance or insignificance of recognition itself. Consequently, it is suggested that the prolonged, semi- or quasi-permanent and yet not definitive or final character of the multi-system situation raises questions of the
applicability of traditional international law doctrines and of the need for new ones.

The question of the admissibility of certain kinds of relations in the absence of mutual recognition of the international actors, and the question when the relations or behavior in question amount to implicit recognition primarily depend on our perception of the scope and nature of recognition. The more fundamental the role attributed to it, such as in traditional doctrine where practically all relations presuppose recognition, the more acts and relations will be considered to imply recognition. This appears hardly to be the case any more. There is a clear tendency to consider recognition as an expression of approval of the appearance of the recognized entity or government on the international plane, instead of an affirmation or a constitutive element of a legal fact. This means that many useful and practical relations may take place without necessarily being preceded by recognition. It also means that, as a consequence, the doctrine of implicit recognition loses much of its import.

In 1958 the U.S. Secretary of State, Dulles, made a statement distinguishing "recognition that [a State] exists" from "diplomatic (or: general) recognition." Referring to the PRC he said: "We negotiate with it. We deal with it, wherever that will serve a useful purpose. But we do not give it all the surplus advantages which would flow from general recognition . . .". The "recognition that it exists" is practically the same as an extremely liberal interpretation of what is considered possible and admissible without recognition in the more traditional sense of the word.

Frowein's reasoning resembles the above effort to salvage the traditional idea of recognition as the basic requirement for all or most relations, by introducing intermediate forms of recognition. He proposes to demonstrate that according to the constitutive theory of recognition it is perfectly possible to accord some status in international law to the non-recognized entity. This would amount to a "constitutive recognition of a limited legal capacity" which should be distinguished from the "constitutive recognition as a State or Government". Reference may also be made to H. Lauterpacht who put it more simply and speaks of "treatment of the unrecognized community for some purposes as if it were a subject of international law".

---

19. 2 Whiteman p. 606.
The extent of the freedom to enter into transactions in case of non-recognition is hardly determined by legal logic or standards of justice, but by political expediency, involvement, and preference. For example, before the East-West détente of the later sixties and early seventies the limits of the permissible scope of action vis-à-vis the non-recognized GDR were drawn much more strictly by the Western Allies than by the countries of the Third World. Reference may also be made, first, to the way in which relations between Japan and the ROC were maintained after Japan's recognition of the Peking Government, particularly to the use of the façade organizations with their hardly concealed quasi-governmental character. Second, there is the U.S. practice with its Taiwan Relations Act which in an even more overt way purports to ensure that the relations with a de-recognized entity will differ as little as possible from those with a recognized entity.

The increased significance of the state of non-recognition has already led to attempts to distinguish between several sorts of non-recognition. B.R. Bot thus differentiates between "legal" or "objective" non-recognition, and "subjective" non-recognition. In the former case "essential legal criteria" are applied, leading to the conclusion that the entity lacks the capacity to enter into official international intercourse. In the latter case, however, non-recognition is the result of subjective preference. Dr. Bot of course notices that such non-recognition is used by States unsympathetic or even hostile toward the unrecognized entity. We now know that this is only part of the picture: non-recognition may be applied in spite of the full sympathy extended by the non-recognizing State towards the non-recognized entity for want of better alternatives under current international law, which in principle still adheres to the traditional doctrine of recognition.

The relative significance of recognition and of its implications is clearly expressed in the following laconic account: "Should a State for political or legal reasons consider the conclusion of an international agreement [with a non-recognized entity] not to be in accordance with its policy of non-recognition, it would refrain from such conclusion and it might find a justification [for such avoidance] in the [fact of] non-recognition. If, on the contrary, it considers the conclusion of the agreement not to be contrary to its non-recognition policy, it would proceed with the conclusion and announce that the conclusion does

not alter its non-recognition"! We cannot but admit the correctness of Green Hackworth's thesis that "[p]olitical recognition of a foreign State or government is primarily a matter of intention" (emphasis added).

4. Netherlands practice in respect of multi-system nations

International relations may refer to an infinite number of subjects, but it is evident that the relations between different pairs of States or actors need not, and usually do not, concern the same kinds of subjects. This applies to the relations between the Netherlands and the contending regimes in Germany (before Dutch recognition of the GDR), Korea and China. If only because of the geographical position of the Netherlands, its relations with the two German regimes have been much more numerous and close than those with Korea and China.

We have indicated before that in multi-system situations even relations with a recognized government could raise legal problems as a result of the claim of such government to jurisdiction over more than the part of the country actually under its control. It is, however, the relations in the context of non-recognition which usually give rise to most questions.

We shall limit ourselves to reporting the instances in which the multi-system situation has had an impact on Netherlands practice (or avoidance of practice) of international law, and shall consequently refrain from dealing with all the theoretical possibilities of such impact. It may be illustrative to precede the survey with a reference to an (admittedly very early) case in which the Netherlands acted as a non-recognized actor in international relations, and another reference to a remarkable case of Dutch practice towards an unrecognized entity. The first reference is to the treaty of 1596 between France and England on the one side and the Republic of the United Netherlands on the other, after the Republic had declared its independence in 1581 but long before this independence was formally recognized. The second reference is to the agreement between the Dutch government and the insurgent Franco regime in 1938 on mutual representation by agents, notwithstanding the fact that for the Netherlands the Republican Government at Valence remained the de jure Spanish Government.

24. See Frowein, op. cit. p. 94.
25. 2 Whiteman p. 48.
4.1 The Netherlands and the dual-system situation in Germany

As part of the Western Alliance it was quite natural that the Netherlands consistently supported Western views on Germany, and followed the stand of the FRG. It consistently refused to recognize the GDR until after the normalization of relations between the FRG and the GDR. It was only on January 5, 1973 that a joint communiqué was issued by the Dutch and GDR governments, announcing their agreement to enter diplomatic relations at the level of ambassador.27 There was no express act of recognition, and one can only assume that entering into diplomatic relations is sufficient evidence for implicit recognition and that recognition was indeed intended by the parties.28

In many respects the Netherlands appears to have maintained a very strict view of the non-recognized status of the GDR. This strictness found expression, inter alia, in steadfast refusal to call the GDR by its official name. Following West German usage, East Germany was called “the Soviet Russian Occupation Zone”, later to be changed into “the so-called German Democratic Republic”.29 In view of the general tendency to allow more acts and relationships without implication of recognition it appears exaggerated to emphasize abstention from such trivial matters like the use of a name. It might be recalled that the United States does not consider such use to imply recognition.30

It is usually held that official, inter-governmental bilateral agreements on “political” matters imply recognition. With regard to participation in multilateral treaties together with non-recognized entities it is said that this does not imply recognition when no approval is expressed about the signature, ratification, or accession by the unrecognized entity, or, on the contrary, that the implication

29. The year 1967 was more or less the watershed in Dutch government parlance between the use of "so-called GDR" and straight "GDR". Officially, however, it was only in 1970 that the Government consented to abolish the adjective or the quotation marks. See replies of the Minister for foreign affairs to written questions, 12 Feb. 1970 and 2 Apr. 1970, Aanh. Hand. II 1969/70 Nos. 623 and 895.
30. 2 Whiteman p. 602.
of recognition could only be avoided by way of express reservation. Various intermediate stages of treaty relations between a State and a non-recognized entity may be envisaged where opinions differ as to their implications with regard to recognition.

**Multilateral treaties**

In the case of multilateral treaties the Netherlands, in most cases, made an express statement to the effect that participation together with the GDR did not imply recognition. Such express reservation was, nevertheless, considered superfluous in certain kinds of cases: "Signature of a multilateral treaty, the purpose of which requires its world-wide application, does not imply recognition of [a non-recognized] regime".

When the GDR acceded to the 1949 Red Cross Conventions in 1956 the relevant issues of the Netherlands Treaty Series [Tractatenblad] contained the following information (transl.): "On November 30, 1956 the Swiss Federal Council received a letter from Mr. W. Pieck in Berlin, directed to the President of the Swiss Federal Council, and expressing the wish of the East German authorities to accede to the Convention [. . .]. The existence of the so-called German Democratic Republic is not recognized by the Netherlands".

The Netherlands also made an express reservation when the GDR signed at Warsaw (1957) and ratified (1959) the 1955 Hague Protocol relating to the modification of the 1929 Warsaw Air Transport Convention though at the time no information was provided by the Tractatenblad. Neither was reference made in the Tractatenblad to

---


32. Explanatory Memorandum to the bill of approval of the Nuclear Testban Treaty, Bijl. Hand. II 1963/64-7511 (R385) No. 3.

33. Tractatenblad (Trb.) 1959 Nos. 10–13 p. 3. The same issues of the Tractatenblad also included information about a similar letter "from Mr. Ho-Chi-Minh at Hanoi" with the similar addition that "the existence of the so-called People's Republic [sic!] of Viet Nam is not recognized by the Netherlands", and a similar letter "from Mr. Nam Il at Pyongyang" with the same addition with regard to "the so-called People's Republic [sic!] of Korea".

34. See Alexy, op. cit., at p. 520 n. 122.

the Netherlands reservation in respect of the "re-application" of the Revised Berne Copyright Convention by the GDR (which considered itself a successor State to the German Reich) in 1955. In reply to the Swiss notification of the East German letter containing its declaration of re-application, the Dutch Government stated,  *inter alia* (transl. from original French): "As is known, the Netherlands has not recognized the 'German Democratic Republic'. Consequently, the Government of the Netherlands can not attach any significance to the above-mentioned letter...".36

The next cases in which the Netherlands faced the problem of sharing participation in multilateral treaties with the non-recognized GDR were the 1963 Nuclear Test-ban Treaty, the 1967 Outer Space Treaty, the 1968 Non-proliferation Treaty, the 1971 Seabed Treaty, and the 1972 Bacteriological Weapons Treaty. All these treaties had in common the possibility of signing and depositing ratification documents at several capitals in the world. In all these cases the GDR signature was left out of the list of signatures in the  *Tractatenblad* though this carried an "information" in connection with the signature by the "East German authorities" to the effect that "The existence of the so-called German Democratic Republic is not recognized by the Kingdom of the Netherlands".37 At the time of the Dutch signature a press communiqué was issued by the Ministry of Foreign Affairs, stating that "the participation by the Kingdom of the Netherlands in the present Treaty may not be interpreted to imply recognition by the Kingdom of any non-recognized country or regime which also participates in this Treaty, as a State or a Government".38

Apart from the aspect of recognition there is the question whether participation by the unrecognized entity is considered to be valid in the sense of being creative of rights and duties. The Netherlands has made no clear pronouncement on this matter. In the case of the Revised Berne Copyright Convention, it was stated that "the Netherlands cannot attach any significance to the above-mentioned letter". This might imply that no Dutch State organ would in any way co-operate to give effect to rights of the GDR or of GDR nationals which are derived from the Convention. In connection with

37. The intentional nature of this way of publication was confirmed in the Memorandum of Reply concerning the bill of approval, Bijl. Hand. II 1963/64–7511 (R385) No. 6.
the Nuclear Test-ban Treaty, however, the Government expressly stated: "The Netherlands accepts that the so-called GDR considers itself a party to the Treaty to the extent that this country considers itself bound by the universal ban included herein. The acceptance of this fact has no further consequences".  

*Bilateral agreements*  

On the bilateral level the Netherlands has quite carefully abstained from inter-governmental arrangements with the GDR, maybe in an even stricter way than the FRG.  

The need for developing trade led to the conclusion, on a governmental basis, of a payments (clearing) agreement and a trade agreement between the Netherlands and the Soviet Military Administration in Germany in 1949. The trade agreement remained in force till 1954 when the first agreement for the regulation of Dutch-East German trade was concluded directly between Dutch and GDR parties on a formally non-governmental basis. It was concluded on September 4, 1954 at Leipzig, the site of the well-known Trade Fair, by the Netherlands Chamber of Commerce for Germany and the Chamber for Foreign Trade of the GDR. The agreement was usually called the "Chambers Agreement" after the parties to the

---

39. Memorandum of Reply concerning the bill of approval, 29 Apr. 1964, Bijl. Hand. II 1963/64–7511 (R385) No. 6. Frowein, *op. cit.* p. 122 n. 142, suggests that the Dutch declaration in respect of the Nuclear Testban and other treaties, according to which Dutch participation does not imply recognition, could be interpreted to mean, a contrario, that the Netherlands considers the participation by the unrecognized entity as valid.  


41. The payments agreement, supplemented by an exchange of letters of April, 1952, between the Dutch and GDR central banks, basically remained valid at least till official relations started in 1973.  

42. This phenomenon of non-governmental trade agreements has already been reported by Raymond F. Mikesell and Donald A. Wells, "State Trading in the Sino-Soviet Bloc"*, 24 *Law and Contemporary Problems* (1959), pp. 435–453 at 440. See also the information by Frowein, *op. cit.* p. 103 et seq. about similar agreements with the Federation of British Industries and with an Austrian Chamber.
The agreement was revised several times: December 12, 1956, December 16, 1958, January 18, 1966 and June 17, 1970. From the 1956 Agreement the Dutch side was represented by a specially established foundation, the "Netherlands Chamber of Commerce for Germany Foundation" which was abolished after Dutch recognition of the GDR.44

With regard to the preparations for the 1956 trade agreement, which took place in the Netherlands, it is known that nothing was left undone to keep a façade of genuine non-governmental relations. Even the site of the negotiations was carefully chosen: the main commercial center and official capital of the Netherlands, Amsterdam, instead of the center of government activities and the actual seat of the Government, The Hague. The Government's interest in the agreement and share in its shaping was, however, evident. During the negotiations regular consultations took place between the "delegation" and a team of representatives of various ministries, among them the Ministry of Foreign Affairs. After the agreement was concluded, both the GDR Government and the Dutch ministry of economic affairs gave their formal consent to the respective Chambers.

The contents of the trade agreements, while resembling those of normal inter-governmental trade agreements, were adapted to the non-governmental status of the parties. Whenever a provision refers to the grant of licenses or other discretionary governmental acts the agreement determined that "the parties to the agreement will endeavor"—instead of the clear commitment to grant—the permits or licenses. It occurred that the parties to the agreement also committed themselves to certain acts "after consultation with the competent authorities".

Mutual representation

Although it may be controversial whether consular representation is or is not compatible with non-recognition, the idea was out of the question vis-à-vis the GDR so far as the Netherlands45 was

43. The same German name "Kammerabkommen" was used for a similar non-governmental Austrian-North Korean agreement, see Frowein, op. cit. p. 105. These "Chamber Agreements" are comparable to similar agreements between Japanese and PRC non-governmental bodies before Japanese recognition of the Peking government, see Frowein, op. cit. p. 106.

44. At the time of the 1970 Agreement the Germans had replaced their Kammer with the more official Amt für Aussenwirtschaftsbeziehungen der DDR [Board for the external economic relations of the GDR].

concerned. This attitude was more confirmed than strengthened or caused by the Hallstein Doctrine. As late as November 1967, the Dutch Minister for Foreign Affairs stated that "the appointment of consular representatives means diplomatic recognition of the GDR".\textsuperscript{46} When representation was really needed, the Government would invoke the services of a solicitor who would receive instructions from the Dutch Consul-General at (West) Berlin.\textsuperscript{47}

The only real, mutual representation before recognition consisted of the representation in the context of the "Chambers Agreement": a representative office of the GDR Kammer was established in Amsterdam not long after the conclusion of the first Kammerabkommen\textsuperscript{48}, and the representative of the Dutch Chamber in Berlin, while living in West Berlin, had an office in East Berlin. Though this representative was never formally given consular tasks it seems that he was considered the first liaison between the GDR and the Dutch side, also in matters other than trade. Cases of Dutch nationals in distress were apparently reported to this representative.\textsuperscript{49}

\textit{Entry of GDR nationals into the Netherlands}

Before recognition GDR passports were not considered to be valid travel documents and could therefore not be furnished with a visa. Visas were granted on a "Temporary Travel Document" issued by the joint U.S.-British-French "Allied Travel Office" in West-Berlin. It is well-known how GDR sportsmen in particular suffered from these arrangements. In order to obtain a visa they were requested to state expressly that they would refrain from undesirable political activities, including displaying the flag or other emblems of the GDR, acting as GDR representatives, and playing the GDR anthem.

\textit{Dutch courts}

The Dutch courts have had the opportunity in a number of cases of pronouncing an opinion on the question of identity and continuity

\textsuperscript{48} Vertretung der Kammer für Aussenhandel der DDR in den Niederlanden.
\textsuperscript{49} The present writer was told of the case of about twenty Dutch riverbarges which were stranded in (East-) Berlin as a result of the war. Initially the GDR authorities were prepared to allow their departure only on a request to be made by the Dutch Government. Later permission was granted through the intermediary of the "Foundation" and its representative.
of state or state succession. Among the three "divided States" which concern us now, only the German case has been the subject of such pronouncements.

In all three relevant cases the court had to determine whether and to what extent pre-war treaties were still applicable, and in all three of them, the court considered the German Reich to have disappeared. One decision, of June 27, 1949, held that "in case of the (temporary) dissolution of a state international law does not prescribe the transfer of . . . [treaty rights and duties] to the state or states which have (temporarily) taken over the sovereignty over the . . . territory". The second one, taken by the District Court of Rotterdam on January 18, 1952, endorsed the position held by the FRG: while the German Reich had ceased to exist in 1945 that was not the case with the German State. State authority was first exercised by the Four Occupation Powers, and so far as the territory under control of the three Western Powers was concerned, transferred to the FRG which was not a new State but should be considered to be the continuation of the German State. The third decision, finally, was taken by the District Court of Amsterdam on November 25, 1975. It had to answer the question whether the Hague Marriage Convention of 1905 could be considered to apply to the territory of the GDR. It gave a negative answer to the question and considered, inter alia, that: "It is generally known that the German Reich ceased to exist in its original form as a consequence of the Second World War and was split up into several parts. Most of its territory has been divided between the present German Federal Republic and the present German Democratic Republic . . .".

4.2 The Netherlands and the dual-system situation in Korea

In comparison with the two other "dual-system nations" Korea has presented the fewest questions relating to the bilateral foreign relations of the Netherlands, either governmental or non-governmental.

Following the 1948 UNGA resolution 195(III) of December 12, 1948, the Netherlands, being part of the Western world, quite naturally recognized the ROK. From the course of events at the UN

50. Special Court of Cassation, 27 June 1949, Annual Digest 1949 No. 87.
and from the contents of the ROK constitution, particularly its Art. 3, one could infer that so far as the Netherlands was concerned the ROK was to be considered as the legal embodiment of an all-Korean State. It is a rather moot question whether the branding by the UN of North Korea as an aggressor within the terms of the UN Charter should be considered to imply recognition of it as a State, and whether UN Member States would automatically be included in such recognition. In any case the non-recognition of the DPRK was expressly stated when the DPRK acceded to the 1949 Red Cross Conventions in 1957.\textsuperscript{54}

A number of treaties have been concluded between the Netherlands and the ROK, but none of them includes any reference to the actual division of the peninsula.

The Agreement between the Benelux Countries and the ROK of April 28, 1970\textsuperscript{55} on the abolition of visas, the Netherlands-ROK Agreement on encouragement and reciprocal protection of investments of October 16, 1974\textsuperscript{56}, and the Netherlands-ROK Tax Agreement of October 25, 1978\textsuperscript{57} refer to "nationals", but so far as Koreans are concerned there is no indication that the term would include persons who do not fulfil the requirements of the Nationality Act of the ROK.\textsuperscript{58} The first two agreements also refer to "territory" and here the agreements offer no definition at all. Finally, the third agreement refers to "Korea", with the following definition: "The term 'Korea' means the Republic of Korea, and when used in a geographical sense, means all the territory in which the laws relating to Korean tax are in force."

There have been no bilateral relations between the Netherlands and the DPRK, either governmental or non-governmental.\textsuperscript{59}

Reference has already been made to participation in multilateral treaties. With regard to membership of international organizations the DPRK was accepted as a member of UNESCO in 1974 \textit{by acclamation}\textsuperscript{60} and as a member of WHO in 1973 by secret ballot.\textsuperscript{61} On neither occasion did the Netherlands express its views on the matter.

\textsuperscript{54} See supra, n. 33.
\textsuperscript{55} Trb. 1970 No. 89.
\textsuperscript{56} Trb. 1974 No. 220.
\textsuperscript{57} Trb. 1979 No. 13.
\textsuperscript{58} See supra, p. 81.
\textsuperscript{59} Cf. the "Chambers Agreement" between Austria and the DPRK, supra n. 43.
Finally there is the question of entry into the Netherlands. There are no data whether at any time a holder of a DPRK passport has ever applied for entry. In such a case the general criteria for permitting aliens to enter the country would apply. The DPRK passport would not be considered a valid travel document and, consequently, the visa would be granted by way of a separate "visa certificate". A residence permit would likewise be issued as a separate document instead of by way of a stamp in the passport.

4.3 The Netherlands and the dual-system situation in China

An inquiry into the Dutch attitude towards the Chinese multi-system situation includes the question of Dutch recognition of the Peking Government, the Dutch attitude with regard to Chinese representation in the UN, and the Dutch treaty and other relations with the ROC since the de-recognition of the ROC Government.

The Netherlands reacted fully in accordance with the declaratory theory of recognition when it recognized the (Peking) Central People's Government as the de jure government of China as early as March 28, 1950. Fully consistent with this recognition, it voted in October, 1950, in favor of the Indian draft resolution aimed at substituting the Nationalist representation of China in the UN by representation by the Peking Government of the Chinese State (then called PRC). 62

Being part of the Western Bloc in the bipolarized world at the time, however, the Netherlands soon changed its attitude and followed the United States in blocking the replacement of Chinese representation in the UN by supporting the so-called moratorium resolution and subsequently the "important question" resolution. Since it had then already recognized the Peking Government as the legitimate government of China, it (together with other States in the same position, such as the UK) placed itself in a legally dubious position. This position was quite different from that of the United States, for whom the Taipei Government was still the only recognized government of China. Out of (inconceivable) ignorance, or inten-

---

62. See K. Marek, *Identity and Continuity of States in Public International Law* (1968), p. 127, who correctly refers to the irrelevance of a State's name as a test of the State's identity and continuity. It is remarkable that Belgium, Netherlands' closest neighbor in geographical as well as other respects, decided to maintain recognition of the ROC Government. It is a moot question whether Benelux consultation had preceded this "division of labor".
tionally, the legal nature of the question of representation was not adequately analyzed and illuminated. Among other things, the Government said it could not see how its attitude in the UN could possibly upset Dutch-PRC relations. Anyhow, the resulting policy was ambiguous towards the officially recognized Chinese Government, while extremely favorable towards the unrecognized entity in Taiwan. The attitude within the UN also had its impact on the practice elsewhere. For example, in 1964 the Netherlands had no objection to the ROC ambassador in Brussels acting as ambassador to the EEC in contrast to France, which had at that time just recognized the Peking Government. Nevertheless, when the replacement of the Chinese representation at the UN could no longer be avoided in 1971, the Netherlands representative at the UN tried simply to forget the policy of the last twenty years, and gave the following explanation of vote (in favor of replacement): "... What are the main factors on which, after careful consideration, the Netherlands delegation bases its position? Evidently a factor of the greatest importance is the recognition by the Netherlands, as long ago as March 1950, of the Government of the People's Republic of China as the de jure Government of China, and the simultaneous withdrawal of its recognition of the nationalist regime [. . .] The objective of the Netherlands Government is clear: it wishes to see the People's Republic of China occupy the seat of China in all relevant organs of the UN and of the UN family . . . ".66

Outside the UN, the Netherlands appears to have kept rather strictly to the consequences of the recognition of the Peking Government, and, of course, this applied a fortiori after the China détente of 1971. When the Government was asked in Parliament in early 1972 whether "the Government share the opinion that after the Chinese seat in the UN has been occupied by [the] Peking [Government], it is desirable to entertain the best possible relations with Taiwan", the reply simply referred to the 1950 note of recognition and the simultaneous severance of relations with the ROC Government ("Taiwan"). It then concluded: "[I]t has been impossible since to maintain relations with Taiwan on the government level. So the answer to the question is in the negative".66

64. Bot, op. cit., p. 49-50.
The practice in the field of multilateral treaties is comparable though not identical with the practice toward the GDR. During the fifties and the sixties that practice reflected the ambivalent policy at the UN. “China” or “China (Taiwan)”, and even “Republic of China” was included in the lists of signatures and ratifications in the Tractatenblad and no Dutch declaration or reservation of any kind was made at the time of signature, ratification, or accession. This was contrary to, for example, the UK and Danish practice of express declarations. It was also contrary to the express statement of non-recognition that was usually made in respect of the GDR. In 1968 the Government “explained” the inclusion of “China” in the lists of signatures, as follows: “This signature is included because Nationalist China is a member of the UN”, though the Government memorandum added: “This information does not imply recognition”.

When the ROC ratification of the Seabed Treaty (Feb. 22, 1972) was published in the Tractatenblad in 1976 the Chinese UN seat was already occupied by the Peking delegation. The Tractatenblad accordingly included the “information” that “China (Taiwan) is not recognized by the Kingdom of the Netherlands”. Finally, in the case of the Bacteriological Weapons Convention of 1972 we come full circle to the GDR-model: ROC signature was not included in the list in the Tractatenblad, and instead the now familiar “information” was given: “The present Convention has been signed on 10 April 1972 at Washington by a representative of Taiwan [note the different terminology]. The existence of the so-called Republic of China is not recognized by the Kingdom of the Netherlands”.

Many other questions might be raised concerning the consequences of participation of non-recognized entities in multilateral treaties, but these have not yet given rise to problems so far as the Netherlands is concerned. For example, the participation of the Chinese State, as represented by the ROC representative, in a


69. This late publication resulted from the fact that the Netherlands did not ratify the convention until 1976. The same happened with regard to the signature by the ROC of the Convention on international trade in endangered species of wild fauna and flora, see Trb. 1975 No. 23, and with regard to the ROC ratification of the Agreement on the rescue of astronauts in 1973, see Trb. 1981 No. 37.


multilateral treaty might raise questions concerning the territorial application of the treaty, while a question might also be raised with regard to the responsibility of the Chinese State in case of non-application of the treaty in those territories which are not under the factual control of the treaty-making Government. No data are available either on the Dutch views in case of repudiation by the PRC Government of a previous “ROC participation” in a multilateral treaty, such as the Outer Space Treaty.\textsuperscript{72}

Although the long period of non-recognition of the ROC Government at Taiwan raises expectations of a rich fabric of bilateral non- or quasi-governmental agreements, no such agreement exists. As such agreements usually primarily serve trade interests, the simple conclusion is that the volume or methods of trade did not justify the effort.\textsuperscript{73} The German case has shown that there are no legal inhibitions on the Dutch side against the conclusion of such agreements.

Another relevant issue in the multi-system question is, of course, that of mutual representation. As I have tried to show elsewhere,\textsuperscript{74} the paradoxical experience of the Netherlands (and, presumably, of other Western countries as well) was that rather than (non-) relations with the unrecognized entity, it was the establishment of diplomatic relations with the recognized government which involved most of the problems. These were caused, as we know, by the fact that for the PRC the recognition of its government by another State does not automatically imply its commitment to establish diplomatic relations.\textsuperscript{75}

Vis-à-vis the Nationalist Government of China the existing mutual diplomatic representation was broken off simultaneously


\textsuperscript{73} Only since 1970 were the Netherlands separately mentioned in the ROC trade statistics. See China Yearbook 1972–1973, p. 269. At present the volume of trade would be no reason for the absence of a trade agreement framework. Since 1978 the Netherlands has reached the position of the number three trade partner of the ROC in Europe. See China Yearbook 1978, p. 343. Cf. the agreement of co-operation of 1 May 1976 between the Belgian-Chinese Chamber of Commerce and the Euro-Asia Trade Organization of the Republic of China, which may be compared with the Dutch-German Chambers Agreement, see China Yearbook 1977, p. 345.


\textsuperscript{75} See supra, n. 28.
with the Dutch recognition of the Central Peking Government. No Dutch legation needed to be closed since this legation was at the time established in Nanking, while the Nationalist Chinese legation at The Hague was informed by formal letter that it had lost its official status as a result of the recognition of the Peking Government.\(^7\)

Unlike the UK which already had a consulate at Taipei and which decided to continue this form of representation, all affairs concerning Taiwan were, so far as the Netherlands was concerned, henceforth handled by the Dutch Consulate General in Hong Kong. There seems to have been an arrangement with Belgium that, if necessary, the Belgian representative at Taipei would take care of Dutch interests.\(^7\)

No standing representative of any Dutch federation of industries or Chamber of Commerce was posted in Taiwan before 1980.\(^7\) In that year, the Netherlands Centre for Trade Promotion, which is a foundation without formal government subsidy, decided to establish such representation: the NCH (for: *Nederlands Centrum voor Handelsbevordering*) Taiwan Office. The emergence of a need for such standing representation at such a late point of time seems not to be the consequence of a stubborn clutching to international law rules of conduct, but simply of the lack of such need being felt in Dutch commercial circles.

The NCH representation seems to be a purely commercial affair so far, and there is no reason to suspect that it has been assigned to carry out public duties in any way. The representative was previously employed by one of the big Dutch industrial firms, and not, as is the case in the Japanese and United States façade organizations, by the ministry of foreign affairs or any other State organ. It is not yet possible to predict future developments, and we should not foreclose the possibility that the representative will, in fact, also act as an intermediary between the Taiwanese host society and the Dutch Consulate General at Hong Kong.

---

78. In 1979 six European countries, viz. France, Greece, Spain, the UK, West Germany and Belgium had their (non-governmental) trade or cultural representatives in Taipei. See *China Yearbook* 1979, p. 339; 1980, p. 345.
ROC efforts to establish a presence in the Netherlands seem to have been more persistent, but information is scarce and difficult to obtain. Since the fifties it has been known among interested circles that there were persons in the Chinese immigrant community in the Netherlands who acted as a liaison with, presumably, the nearest official ROC representative body at the time, which was the ROC embassy at Brussels. More recently, the ROC seems to have been involved in what was called the Sun Yat Sen Center at The Hague.\textsuperscript{79} The involvement seems now to be terminated, and the Center itself seems to have faded away. In any case the main representation of the ROC is now centered in the “Far East Trade Office” at The Hague.\textsuperscript{80}

There is no doubt that this Office plays a role in the issue of visas, though it seems less relevant for us to know whether they are entitled to decide on visa applications or whether they act as a liaison office. It should not be too difficult to issue documents (e.g., “letters of recommendation”) which have an informal appearance but which have the effect of a visa for all practical purposes.

It is not known whether the Office is approached by the police in cases involving ROC nationals, or whether the Office lends its services to ROC nationals in their dealings with the Dutch authorities. In view of the strict posture usually taken by these authorities, the former seems to be quite improbable. With regard to the latter, it is equally quite improbable that the Office, which clearly tries to keep a low profile, would present itself to be anything else than a commercial organization rendering friendly assistance to fellow countrymen.

Finally, I will offer a brief remark on entry of ROC nationals to the Netherlands. As in the North Korean case, a ROC passport, being a travel document issued by a non-recognized entity, would not be eligible to be “visa’d” by official organs of the Netherlands. Therefore, visas are issued by way of separate documents (“visa certificate”, \textit{visum-verklaring}). Residence permits would be issued similarly.


\textsuperscript{80} This seems one of the twelve ROC trade and cultural representative organs in European countries. See China Yearbook 1979, p. 339. Cf. the information in the China Yearbooks on the organizations established to maintain commercial and cultural relations with non-recognizing nations on a “people to people” basis.
4.4 The Dutch-Taiwanese submarines deal and its legal implications

Relations between the Netherlands and the ROC at Taiwan came into the limelight recently in connection with the sale of two submarines by the RSV Shipyards to a "customer" in Taiwan. The transaction raised several questions concerning the facts of the case, the municipal law rules applying to the transaction the compatibility of the transaction or, particularly, the involvement of the Dutch Government in it, with the non-recognized status of the ROC and the obligations of the Netherlands vis-à-vis the Chinese State as represented by the recognized Peking Government.

4.4.1 The facts

So far as can be ascertained, some time in the latter half of 1980 the RSV Corporation, which includes the biggest Dutch shipyard, succeeded in winning an option for the delivery of two submarines and plant for a nuclear power station to a "customer" in Taiwan. This "customer" later proved to be the official (Navy) authorities. Under current Dutch law relating to the export of military goods such export is subject to Government approval. Being conscious of the sensitive aspects involved, the matter was discussed in the full Council of Ministers, and consultations were also held with the Standing Parliamentary Committees for Foreign Affairs, Trade Policy and Economic Affairs. It is known that the Dutch Government also consulted the U.S. Government, not by way of a request for advice on how to react, but by inquiring about the U.S. attitude towards Taiwan in similar situations. According to newspaper reports, the U.S. Government gave as its opinion that although the transaction would certainly raise unfavorable reaction from the PRC, this reaction would not be too damaging and the expected worsening of relations would not be irreversible.

The Dutch Government finally decided that the deteriorating economic position of RSV and of the Dutch economy as a whole, and the tremendous impact of the expected "6,000,000 man-hours, or four years employment for 1000 workers" involved in the transaction far outweighed the risks of the deterioration of relations with the PRC. It


82. In view of the Taiwan Relations Act US-Taiwan relations can in fact never be similar.
considered that against the instant gains resulting from the transaction the prospects of economic co-operation with the PRC offered at best distant and uncertain advantages. Consequently, the Government held out the possibility of an export license by way of a letter of intent. Since the purchase agreement was not yet formally concluded, and since the submarines are not due to be delivered before 1984, no further decision was in fact required, nor applied for. As soon as news about the transaction found its way into the newspapers the PRC Government started to protest vehemently. It demanded that no approval be given to the transaction, and warned the Dutch of its serious consequences. After the Dutch Government took its decision, in spite of the PRC objections, the latter expressed its grave displeasure and disappointment, and announced its intention to freeze existing and future economic and cultural relations unless the Netherlands Government reversed its decision. It also expressed its wish to lower the level of the Dutch-Chinese diplomatic relations to that of chargé d'affaires (en pied).

When the talks on this latter issue finally started on April 28, 1981 the Netherlands seems to have tried to avoid the, admittedly unusual, formal downgrading of mutual diplomatic representation by suggesting that the same goal could be achieved by filling the ambassadors' posts with a chargé d'affaires ad interim, and later, by the additional proposal to change the designation of the embassies into "diplomatic missions". These efforts did not succeed, the PRC Government broke off the negotiations and on May 5, 1981 unilaterally changed the status of its representation at The Hague into "Office of Chargé d'Affaires" (en pied).

4.4.2 The municipal law aspects

The question to be asked is whether and to what extent municipal law rules have an impact on transactions between Dutch private firms and partners from a non-recognized country, particularly where the sale of weapons is concerned. No rule of Dutch municipal law contains any prohibition nor restriction on transactions with non-recognized entities as such.

The Import and Export Act of July 5, 1962 was, according to its preamble, intended to establish "rules relating to the import and export of goods, in the interest of the national economy, of the internal and external security of the country and of the international

83. See supra, n. 81.
84. Staatssblad (Stb.) [Statute Book], 1962, No. 295.
legal order. For that purpose the Act enabled restrictive measures to be taken by the Government with regard to the import and export of goods, such as a prohibition of import or export without express government permission. Under this enabling provision several Royal Decrees have been promulgated including, inter alia, the Export Decree for Strategic Goods 1963 as amended. Annexed to this Decree is a list of commodities which require a license for export.

The license applications are to be referred to the Central Import and Export Office of the Ministry of Economic Affairs, which consults the Ministries of Defense and Foreign Affairs before deciding on an application. In the process, an extensive report is to be drawn up for the assessment of the political implications. This report must deal with the nature of the commodities (offensive, defensive, etc.), the situation of the receiving country (existing or potential conflicts, internal situation, human rights, etc.), the nature of its defense requirements (replacement, expansion, possibility of re-export), the economic and financial state of the receiving State, precedents with regard to policy in respect of the country concerned or other, similar, situations, the applicable international arrangements, and the employment situation in the relevant branch of industry. The report will be the subject of inter-Departmental consultations. If these consultations lead to a positive result the license will be issued by the Minister of Economic Affairs.

The license has a limited validity and may differ depending on the kind of commodity involved. Licenses are granted “on the basis of the prevailing circumstances”. The scope of this proviso is not clear; it is said that the license could be withdrawn “in case of completely changed circumstances”. This seems not to refer to withdrawal of

88. See Bijl. Hand. II 1974/75–13461 No. 1–2, p. 64. See infra on this document.
90. Id. p. 2.
91. Minister for Foreign Affairs’ reply to parliamentary questions, 16 May 1980, Bijl. Hand. II 1980/81–16204 No. 2 p. 4. The Ministerial letter cited supra, note 89, refers to the case covered by Art. 10 of the Import and Export Act as the only one in which withdrawal is possible. This article, however, provides for the possibility of
licenses after their actual issue, but rather to withdrawal of the commitment to grant the license. In the case of the submarines deal the Government informed the applicant that "under the present circumstances [the Government has] no objections against the pursuance of the negotiations with the customer in Taiwan [. . .]. The implementation of the foregoing will include, subject to the proviso's referred to, the issue of the required licenses at the appropriate times". According to the Prime Minister this implies that a withdrawal of the commitment is only possible in case of subsequent facts or developments which could not be foreseen and which, because of their fundamental nature, would necessitate a reconsideration or, at least, justify such reconsideration. This may refer to a situation in which at the relevant time the application of the relevant criteria (see infra) would lead to a license being refused. It is striking that in a letter of September, 1980, the Minister for Foreign Affairs deemed it useful to inform Parliament that in case of the export of military matériel "importing countries sometimes require certainty about the permission for export before any definite order is placed. This means, for instance, that in the case of ship-building the export license will be issued before the actual building is started".

Under the license system, criteria must be laid down which are to be applied when deciding on an application. In connection with the subject of disarmament, the Government issued an extensive memorandum in 1975 which, inter alia, included a chapter on the arms trade. In it, the Government defined its policy as follows: "The Netherlands conducts a selective arms export policy, according to which the pursuit of peace prevails over strictly commercial interests. [. . .] Deliveries bound for sensitive and potentially sensitive areas will be carefully assessed for their political implications. This applies

withdrawal of all licenses and exemptions belonging to a certain category if such withdrawal is deemed to be necessary "for an important (gewichtig) reason". Besides Art. 9 provides for the possibility of withdrawal in case of the license having been issued on the basis of wrong or incomplete information being provided by the applicant.


94. Loc. cit., supra, n. 87 p. 3.

particularly to export to those countries which are involved in an armed conflict or where there is a danger of the weapons being used for the suppression of the country's own population. Besides, particular attention is paid to the relation between the kind of commodities concerned and their destination. When the assessment produces a negative result, an export license will be denied. The Netherlands strictly abides by the arms embargoes agreed upon within the UN". 96

These criteria are still applicable 97, as was confirmed during the parliamentary debates concerning the submarines transaction. These debates centered on whether the receiving country, i.e. "Taiwan", should be deemed to be involved in an armed conflict and whether it should be defined as a "sensitive or potentially sensitive area". Remarkably, the prevalence of the pursuit of peace over strictly commercial interests, the first criterion mentioned in the policy memorandum, was hardly, if at all, referred to in the debates. It would indeed be difficult, for the Government as well as for the opposition, to minimize the economic advantages in view of the high and ever increasing rate of unemployment in the country and the precarious state of the industry concerned.

Anyway, the questions which were considered relevant concerned political, not legal evaluation of factual situations. Rightly or wrongly, the questions were answered by the Government in the negative so that nothing prevented the issue of a license, or at least the promise of such issue at some future time. The non-recognition of the area to which the delivery is to take place and consequently its multi-system situation, is not an express factor in the law and could only play a role in defining the area as sensitive or potentially sensitive.

4.4.3 The international law aspects

In assessing whether and to what extent the submarines transaction is being covered by rules of international law it is necessary to state in advance that we are solely concerned here with the rights and obligations of the State of the Netherlands under such

96. Loc. cit. p. 64.
97. Reference may be made to another major policy memorandum by the Dutch Government of May, 1979, on human rights in foreign policy, which refers to these criteria: Nota inzake de Rechten van de Mens in het Buitenlands Beleid (Memorandum on the place of human rights in foreign policy), Bijl. Hand. II 1978/79–15571 Nos. 1–2 p. 65, and also to the replies by the Government to questions from Parliament with regard to this Memorandum, Biji. Hand. II 1979/80–15571 No. 5, especially paras. 79, 80, and 85.
rules. Since the transaction is entered into by a Dutch private firm the State of the Netherlands could be legally involved only by its acts or omissions aiming at permitting, facilitating, abstaining from, or preventing the transaction or its implementation. In the present case we may conveniently concentrate on the statutory power granted to the Government to supervise arms transactions by granting or withholding the necessary license.

It may be said that apart from a few UN-sponsored and "bloc-sponsored" arms embargoes, international law does not have any effective regulation of the arms-trade in the world. Since Taiwan does not fall under any of these limited embargoes, and assuming that at present there is no disagreement about the arms character of a submarine vessel, the nature of submarine vessels does not, in itself, constitute a bar to the delivery. Consequently, the remaining questions relate to the unrecognized status of the country of destination, the fact that the unrecognized entity is one of the contending parties in a "mutual non-recognizing" kind of multi-system nation, and, finally, the specific legal aspects in the particular case of the Netherlands vis-à-vis the PRC and the ROC.

The unrecognized status of the entity as such appears to be irrelevant, and to gain relevance only if looked at in relation to the recognized counterpart. Under general international law any recognition of a new international subject is perfectly lawful as soon as the entity to be recognized has fulfilled the requirements for its eligibility for recognition. Admittedly, opinions may differ about the exact nature of the requirements and about their fulfilment, but these uncertainties do not alter the validity of the main thesis. The recognition is not unlawful vis-à-vis the de-recognized entity though it may be considered an "unfriendly act". After recognition, all relations with the newly recognized entity are governed by general international law, and as a rule no obstacles would prevent the sale of arms to that entity.

It is generally agreed that instead of express recognition certain acts may be considered as implicit recognition. Admittedly, there is much doubt and controversy about what amounts to such implicit recognition, but there is undoubtedly complete freedom for the recognizing State to consider its own acts or transactions, such as the sale of weapons, to imply recognition. Finally, we now know of the possibility that the third State concerned may not consider "diplomatic recognition" to be a requirement for most relations with another entity.
The specific international law aspects of the submarines transaction involves the dual-system situation of the two contending centers of Peking and Taipei and consequently, the question of the Netherlands attitude to the legal government of China and the status of Taiwan.

We have already referred to the recognition of the Peking Government as the *de jure* government of China in 1950, the subsequent support for the exclusion of the recognized entity from the UN and the factual acceptance of the participation of the unrecognized entity in international relations, followed by the effort to wash away the traces of twenty years of policy by laconically referring to the 1950 recognition in the 1971 statement in the UN.

The next milestone on the road of Dutch-Chinese relations consisted of the Netherlands-PRC joint communique of May 16, 1972. This communique contained, *inter alia*, the Dutch reaffirmation "that it recognizes the Government of the People's Republic of China as the sole legal Government of China". Finally, we also refer to a recent statement of January 29, 1981 made by the Minister for Foreign Affairs in Parliament in the course of the "submarine debates": "In all my conversations with Chinese diplomats and in the conversations of the [Dutch] ambassador in Peking it has been emphasized that there has not been any change in the policy of the Netherlands which start from the assumption of one China only and that this [China] is represented by the Government at Peking", and "It also means that officially there are no contacts with the regime at Taiwan".

These expressions appear to put the Dutch position on the matter of the *de jure* government of the Chinese State, however named, beyond any doubt. Yet there remains the following, separate question: what, in the Dutch view, does China consist of, and, more specifically, what is the status of Taiwan?

There is no need to repeat at length the various arguments put forward in supporting the thesis of the "undetermined status" of Taiwan. It follows from the foregoing that in the period since the support given to the Indian draft-resolution in the UN General

---

98. Joint communiqués had by then become the standard form of bilateral document allowing for agreements and disagreements on various issues to be expressed. It allows more freedom in respect of the formulation of the common purposes of the parties than a formal treaty, and besides it offers the opportunity to also record existing disagreements. In short, it may be used to catalogue the state of relations between the parties without becoming too explicit.

Assembly in 1950 the Netherlands did not feel any compelling need to express quite unequivocally its stand on the legal status of Taiwan, and it preferred to join the Western policy of ambiguity. This attitude was not legally reprehensible in every respect, since the Netherlands had, after all, not granted any official recognition to the entity nor to the ruling government at Taiwan. On the other hand there did not occur any compelling factual necessity to express itself unambiguously vis-à-vis the Peking Government.100 During the parliamentary debates on the submarines transaction, the Minister for Foreign Affairs looked back into history and recalled: "Subsequent [to the Dutch recognition of the Peking government] the status of Taiwan has been rather ambiguous. By the Peace Treaty [of 1951] Taiwan was renounced by Japan and occupied by the so-called Republic of China. In fact the future status of Taiwan was not yet decided"101 (emphasis added).

The 1972 joint communique, finally, contained the following sentence on Taiwan: "The Chinese Government reaffirms that Taiwan is a province of the People's Republic of China. The Government of the Kingdom of the Netherlands respects this stand of the Chinese Government . . . .". As we know this well-known clause, with some variations (takes note, acknowledges, fully understands and respects, etc.), occurs in all the joint communiqués that have ushered in recognition of the Peking Government by many Western States and Japan, beginning with Canada in October 1970, and including the US-PRC Shanghai Communique of February 1972, the Japan-PRC Communique of September 1972, and the more recent US-PRC recognition communiqué of December, 1978.

The wording implies the striking reluctance of all the States concerned to endorse expressly the claim of the recognized government of China to full jurisdiction over Taiwan. Among the several reasons given for that aversion we mention but two: it would imply the freedom of the Peking Government to use force in bringing the island under its control, and: it would imply the risk for the population of the island of having the whole socio-economic organization of their society changed. The unwillingness indicates that the States concerned basically prefer not to see Taiwan coming under the

100. It should be noted that the Dutch position differed legally from that of the United States. The latter did recognize the Taipei-based government as the de jure Chinese government, and has never gone as far as considering that government to be a government in exile. Consequently, the territorial seat of that government has, it is submitted, to be considered Chinese territory.

complete legal and factual control of the Peking Government. The evident alternative, viz., the recognition of Taiwan as an independent international subject, however, is difficult to realize, because the prevailing international situation requires reasonable relations with the PRC Government, and, from a legal point of view, chiefly because those holding authority, and consequently acting as spokesmen for the entity of Taiwan, have up till now consistently refused to claim an existence for the entity separate and independent from the Chinese State.

Despite the reluctance apparent from the wording of the Communiqués referred to above the question may be asked, whether and to what extent the expressions and clauses used do bona fide imply a unilateral commitment not to deny, and consequently not to oppose, the Chinese position. Or, in other words: do the expressed attitudes constitute acquiescence and estoppel to future contrary behavior? While we will not go into the question any further, it deserves attention from a legal point of view. So far as the Netherlands is concerned reference must be made to the quite explicit and unambiguous statement made in Parliament by the Minister for Foreign Affairs on January 29, 1981: "One cannot say that the Netherlands has not recognized the claim of the People’s Republic on Taiwan. [What has happened is that] the Netherlands has not expressed its opinion on the matter before 1972. [. . .] We recognize one China that includes Taiwan the Government of which has its seat at Peking. This means that there are no contacts with the authorities at Taipei" (emphasis added).

We must finally turn to the question whether the Netherlands must be deemed to have committed a wrongful act against China—as-represented-by-the-Peking-Government. The premise is that the Netherlands has committed itself to consider (and treat) the Peking Government as the legal government of the Chinese State, and that it has equally committed itself vis-à-vis the Peking Government to consider (and treat) Taiwan as part of the Chinese State. The Government at Peking, however, considers the factual authorities at Taiwan (as part of its de jure territory) to be "rebels", and while it allows many relations between Taiwan and the outside world it raises insurmountable objections against the delivery of arms to the "rebels". While one could possibly argue about such objections it is submitted that in the absence of a recognized state of belligerency there is fairly general agreement about the right of the legal

government vis-à-vis the State which has recognized it as such to privileged treatment as compared with “insurgents”, i.e., factual rulers not recognized as legal authorities by the legal government.\textsuperscript{103} But, even if such privilege were not granted, it is inconceivable that third States would be entitled to deliver arms to rival authorities who are considered as insurgents by the legally recognized government or, to grant express permission for such delivery. It is particularly difficult to see how one could avoid drawing conclusions as to the wrongful character of a sale of submarines to such rival authorities having their “stronghold” on an island, or, of an express permission for such a sale.

The wrongfulness may of course be precluded by various circumstances, the most evident among which is the consent of the legitimate government.\textsuperscript{104} The consent may be granted expressly, but it may be asked what acts or behavior should be deemed to be considered implicit consent. The question is particularly important in the case of U.S.-Chinese relations, where the formal recognition of the Peking Government as the \textit{de jure} government was accompanied by the most unorthodox piece of legislation ever enacted in relation to non-recognition. I refer, of course, to the American Taiwan Relations Act with its purpose of practically undoing all but the verbal implications of de-recognition of the Taipei Government. This, taken together with the fact that the Peking Government did not react more vigorously than it did, raises the question whether one could draw the conclusion that, legally, Peking has apparently grudgingly consented or acquiesced to the contents and promulgation of the Act. As we know, the Act provides for, \textit{inter alia}, the supply of weapons although in the 1979 US-PRC communiqué the United States only asserted its intention to maintain “cultural, commercial, and other unofficial relations” with the people of Taiwan. In the Dutch case, however, there are no indications, either on the Dutch side or on the Chinese side, which could possibly be interpreted as consent by Peking to the sale of submarines to Taiwan.

Finally, it may be observed that the Taiwan submarines deal shows that even States belonging to the traditional Western world of

\textsuperscript{103} Lauterpacht, \textit{Recognition in International Law}, (1947), p. 230 et seq.

\textsuperscript{104} For a definition we borrow from Art. 29, para. 1 of the ILC draft articles on State responsibility: “The consent validly given by a State to the commission by another State of a specified act not in conformity with an obligation of the latter State towards the former State precludes the wrongfulness of the act in relation to that State to the extent that the act remains within the limits of that consent”. \textit{See Yearbook of The International Law Commission} (1979), Vol. II, Part II, p. 93.
international law may find themselves in a position in which economic considerations are considered weightier than legal obligations, and may act accordingly.

COMMENTS

Hungdah Chiu

In Dr. Ko's analysis of the Dutch submarine sale to the Republic of China (ROC) on Taiwan, he reached the conclusion that such a sale is contrary to international law. With this I could hardly agree. First, Dr. Ko applied the traditional international law rules relating to insurgents or rebels to the Chinese case, which is hardly appropriate. In the Chinese case, the rebels were originally the Chinese Communists who rebelled against the ROC government and finally gained control over the Chinese mainland in 1949. The legal government — the ROC government — withdrew to Taiwan in the same year. As a matter of fact, until 1971, more countries in the world recognized the ROC government as the legal government in China than recognized the People's Republic of China (PRC). The ROC represented China in all international organizations. After 1970, of course, more countries have recognized the PRC than the ROC. However, even today there are 23 countries which have continued to recognize the ROC government. As far as I know, there has never been such a case in the traditional rules of international law concerning a legal government and insurgents or rebels. In view of this, the Chinese case is a unique one and should not be based on rules applying to insurgents or rebels.

Second, in establishing diplomatic relations with the PRC, almost all Western countries carefully used words such as "take note," "respect" or "acknowledge" in referring to the PRC's claim to Taiwan. None of them used the word "recognize," which clearly demonstrates that Western countries did not want to legally recognize the PRC's sovereign claim to Taiwan in order to avoid giving the PRC a legal excuse to invade Taiwan or interfere with those
countries' economic, cultural and other relations with Taiwan. In the 1972 Dutch joint communique with the PRC on establishing relations at the ambassadorial level, the Dutch asserted that they merely "respect" the Chinese stand that "Taiwan is a province of the People's Republic of China." In this connection, one should only refer to the Japanese formula in treating the Taiwan question in the 1972 Joint Communique with the PRC on establishing diplomatic relations. Japan stated that it only "fully understands and respects" the PRC's claim to Taiwan, and the Japanese government sources indicated that Taiwan had not yet been returned to China under that wording.¹ The United States also took a similar position. On January 1, 1979 (released on December 15, 1978) a U.S. Communique on establishing diplomatic relations with the PRC only "acknowledges the Chinese position that there is but one China and Taiwan is part of China." U.S. Deputy Assistant Secretary of State for East Asian and Pacific Affairs Roger Sullivan told the Taiwan press on December 27, 1978, that the United States did not recognize the PRC's sovereign claim to Taiwan, in the Joint Communique.² Since the Dutch government does not formally recognize the PRC's claim to Taiwan, there seems to be no international law rule which prohibits Dutch private companies' sales of submarines or any other items to Taiwan.

Third, in reference to the question of "estoppel" created by such wording as "respect," for the PRC claim to Taiwan, the application of

---


such a principle should be applied equally to the ROC case. For many years the Dutch government supported the United Nations General Assembly resolution to consider the ROC as the representative of China. Under such circumstances, how can the Dutch government now deny that there are legal authorities in Taiwan. Moreover, the ROC possesses all four of the essential elements of statehood in international law, namely: (1) a defined territory; (2) a permanent population; (3) a government; and (4) the capacity to enter into international relations. According to a well-known authority on international law, Hackworth, former Legal Adviser to United States Department of State and later a Judge of the International Court of Justice, "the existence in fact of a new state or a new government is not dependent on its recognition by other states." In international relations, it is not unusual for countries or governments not recognizing each other to engage in various relations, including arm sales.

Finally, the human rights aspect of the submarine deal should not be overlooked. Inasmuch as the submarines will be used by the people of the ROC to defend their fundamental human rights and freedom guaranteed by the Charter of the United Nations and Universal Declaration of Human Rights, and not for aggressive purposes, the sale can also be justified under the principle of international protection of human rights.

3. Whether the ROC's territorial claim includes the Chinese mainland is not legally relevant since countries dealing with each other do not have to recognize each other's territorial claim. For instance, the Western countries almost unanimously deny Soviet Territorial claims to three Baltic states though they continue to deal with the Soviet Union.

Chapter 5

THE CASE OF GERMANY

Gottfried-Karl Kindermann

In the 1,970 years of its recorded history, Germany has had only 74 years in which it represented a politically unified, integrated state system — the period from 1871 to 1945. This period of unification can be subdivided into three systemic phases: the first 47 years falling under the period of the Second German Empire created by Bismarck and lasting from 1871 to 1918; the second fifteen years being the period of the Weimar Republic, spanning from 1918 to 1933; and, finally, the twelve years of Hitler’s Third Reich from 1933 to 1945. In the many centuries before this and in the subsequent era starting with the foundation of the Federal Republic of Germany in 1949, Germany has represented the almost classical type of multi-system nation.

After 1945, the four Allied occupation powers had no unified concept about the long-range future of Germany and Germany was divided into four occupation zones that were to exist and be maintained until an international peace conference was convened to divide the boundaries and address the other problems of Germany. As in the case of liberated Korea, the outbreak of the east-west conflict prevented the occupying powers from ever creating joint decisions and joint strategies for the reconstruction of some form of national unity in Germany and in Korea.

With the emergence of the Federal Republic of Germany in 1949 and with Russia’s simultaneous establishment of a separate communist state system in former Central Germany, now East Germany, Germany had reverted to the structure and pattern of a multi-system nation, in which the divided city and former capital of Berlin was given a special legal position of its own. Until 1974 the constitutional documents of both German states implied that they considered the existence of this system, representing only a part of Germany, as a transitional condition to be overcome in the future. East Germany’s constitution of 1968 still mentions in its preamble hopes for the “entire Germany nation,” and condemns the division of Germany caused by American and West German capitalism.

The German constitution defined its own state system as “a socialist state of Germany nationality.” These references were deleted with the 1974 constitutional changes, effected in East Germany 22 months after the basic treaty of relations between East and West
Germany had gone into force. Prior to that, West Germany main­tained a claim to its exclusive representation of the entire German nation, a claim that was based on the idea that legitimacy should have a democratic basis. This was backed up by the so-called Halstein Doctrine, by which Germany used its economic power and its political and cultural influence throughout the world to threaten other countries who wanted to recognize simultaneously both German systems with serious consequences if they did so. This was done in the assumption that the recognition of two German state systems tended to deepen the division of Germany and would work against an early reunification. Finally, after twelve years of Nazi totalitarian rule, West Germany wanted to do nothing in order to recognize the new totalitarian regime that had emerged under the auspices of Russia on the soil of East Germany, yet another reason for her claim to sole representation.

In 1961, the East Germans began to divide the country systematically following a manpower and brainpower drain resulting from the attraction to freedom in the FRG. East Germany had no way out but to seal its western borders against its own people. A new strategy evolved by which West Germany traded the recognition of East Germany as a state for an opening of the doors to enable annual meetings between millions of Germans from both sides. The new theory, in turn, was a sociological and psychological position in contrast to an otherwise legal position; the experience of joint 'German-ness' was more important for the maintenance of Germany than the maintenance of a legal position of exclusive West German representation for all of Germany.

Article 4 of the Intra-German Treaty on the basis of relations cites that neither of the signatories can represent the other internationally or act in its name. This has opened the way for diplomatic double representations of the German states in foreign countries and international organizations such as the United Nations. On the matter of citizenship, West Germany has taken the position that East Germans are not foreigners because East Germany is recognized as another German state. In a similar way, the two Chinese states do not regard citizens from the other Chinese system as foreign nationals. According to West German law, diplomatic representatives in Third countries have the right and the duty to represent and protect the interests of those East German citizens who ask them to do so, a position which, although denied by East Germany, is respected and practiced by many western states.
Key elements of the Intra-German East-West Treaty on the basis of relations are as follows: a mutual renunciation of force; inviolability of the present frontier and territorial respect; a pledge to develop good neighborly relations; an agreement to disagree on the nature of the national question; a respect for autonomy of each of the two sides; the principle that the jurisdiction of each is confined to its own borders; and an explicit agreement to develop and promote cooperation in a number of fields, including economics, science, sports, et al.

A number of commissions have been formed to deal with these and have put these clauses into practice on a much larger scale than originally envisaged. Included in this was the establishment of millions of person-to-person contacts through travelling and communications. For instance, there is an average of 8,000,000 telephone calls between both sides, and in addition to this, special laws were created to enable the exchange of permanent missions that are not embassies, in light of the West German position that East Germany is not a foreign country. Treaties between the two Germanys are not regarded as treaties between foreign countries. Furthermore, East Germany has become a silent beneficiary of all the advantages that have accrued to Germany due to its membership in the European Common Market.

The possible application of the German model depends on the presence of the will to apply any of it, and in the case of China, the history of the two Chinese parties' existence has demonstrated that if there was a will, there was a way. Negotiations always started out on a party-to-party level, and the constitutional reality shows the tremendous power of parties on each of the two sides.

Trade, for instance, would be one possibility that does not touch upon the claims of sole representation. A number of spheres of functional cooperation are feasible, such as intra-Chinese functional commissions in such areas as humanitarian concerns and postal affairs. As opposed to Korea, China has an area — Hong Kong — in which families could and do meet. In these areas, East Germany cooperates with West Germany. Thus, on issues of trade and functional, non-political cooperation, the German model might be applicable.

With respect to a question on how applicable the German model might be in the case of China, in light of population and territorial differences my use of the term "trade" was as an "initiation of non-political functional exchanges." The emphasis would be more psychological than in any economic sense. Furthermore, there might be a market attraction in that, being Chinese themselves, the
Taiwanese might have a better hand in evaluating Chinese needs than do foreigners, and can produce many goods more cheaply. While population and territory do stand out as factors, Taiwan has very often had about the same, if not sometimes a greater, volume of trade than the entire PRC.

COMMENTS

Jürgen Domes

I agree with most of Dr. Kindermann’s address. However, two points of slight disagreement must be raised. First, the statement that the German nation was unified for 74 of its 1,970-year history is questioned since the German state arose from a partition of the German nation at the Battle of Königgrätz in 1866. The second comment is directed at Dr. Kindermann’s reference to the fact that meetings between millions of Germans from both entities continue as people-to-people relations continue to improve. Though meetings do occur, they occur for the most part in East Germany, for East Germans can go to West Germany only if they are over 60 years of age or if they are Communist cadres on missions.

In examining intra-German relations since World War II, three stages can be differentiated. The first is from 1945 to 1955. This stage saw both entities officially aimed at reunification. The GDR had not developed the theory of an entirely separate entity. In the next stage, 1955 to 1969/1970, the GDR insisted upon the separate entity doctrine in the context of one nation. The FRG, on the other hand, considered itself the sole representative of Germany, and definitely aimed at German reunification. From 1969/1970 to the present there has developed a factual, though not necessarily a de facto, mutual recognition of both systems.

In the next ten to twenty years the status quo will most likely prevail between the two Germany’s. East Germany will maintain its two nation concept, i.e., a capitalist nation versus a proletarian nation, while West Germany will perpetuate the concept of two states or systems within one nation. Polls of the last two years show that 65–71 percent of the West German population still aspires towards national reunification and 80 percent of the East Germans (insofar as their attitudes can be measured accurately) hold to the same aspiration. However, 87 percent of the West Germans do not see German reunification as being likely in the foreseeable future.
Though continuation of the status quo seems most likely, there are the less likely prospects of reunification along either the FRG's terms or the GDR's terms. However, it has been put forth by the FRG, and was stated most notably by Adenauer, that if the GDR could change into a pluralist-system state with competitive elections and the guarantee of human and civil rights, the FRG would accept the GDR as a separate entity.

Concerning the two multi-system nations which have not settled into a status quo, that is, Korea and China, pluralist-system nations have more or less accepted the claim to legitimacy of the Communist entity of China. At the same time, pluralist-system nations have also accepted the claim of the smaller, less economically and politically successful part of Germany. This is an indication of the fact that the pluralist-system nations have not held their own position in the confrontation.
Chapter 6

DIVIDED NATIONS AND INTERNATIONAL LAW: 
THE CASE OF THE TWO KOREAS

Nam-Yearl Chai

Introduction

It seems trite and yet axiomatic to state that in the post-World War II era certain norms of international law have been put to severe strain. Even a cursory survey of the literature of international law of the period reveals that the old-established nations of the East and West, including those of Latin America, as well as those of the newly independent Asian and African states, have frequently insisted on unilateral interpretations/applications of certain norms in their pursuit of vital national interests. To illustrate, norms dealing with the seaward jurisdiction of coastal states, high seas fishing, diplomatic immunities and privileges, expropriation of foreign-owned investments and diplomatic recognition — to mention a few — were susceptible of extremely parochial interpretations by the nations invoking them.

What is perhaps the most vexing of all to the students of international law are the divided nations and their use or abuse of the norms pertaining to diplomatic recognition. One of the post-World War II anomalies of a stubborn character is the tenacity, teetering on obstinacy, with which the divided states of the two Koreas, the two Germanys, and the two Chinas have exploited the norms of recognition in their unilateral claims to legitimacy.

The objectives of this study are threefold. First, we shall examine the genesis of Korea’s partition and the place of the Korean Provisional Government. Second, we shall highlight the legitimacy issue as advocated by the two Koreas as they relate to diplomatic recognition. Third, we shall render some assessment of various unification proposals from the standpoint of international law.

Genesis of the Partition

The Korean case is quite unlike that of the German or Chinese case. Germany was defeated in the war and the victorious allies partitioned the country. China’s division is of its own making, i.e., a

1. For information in this section the following selected sources were consulted: Soon Sung Cho, Korea in World Politics, 1940-1950 (Berkeley and Los Angeles: University of California Press 1967); Bong-Youn Choy, Korea: A History (Rutland, Vermont: Charles E. Tuttle Co., 1971); Joungwon A. Kim, Divided Korea: The Politics
civil war resulted in the creation of the two rival governments. From the standpoint of international law, the Korean case is fraught with ambiguities, contradictions and irregularities — especially in so far as the genesis of the division was concerned.

Although many claim that Korea was a conquered belligerent state after the Japanese surrender, the fact that there had been a Korean government in exile since 1919 which, in December 1941, declared war on Japan, would present an argument against this assertion. However, the existence of this government was ignored by the United States. This fact is all the more confusing when one considers the case of Austria which was regarded by the Allied Forces as non-belligerent, even though it had been annexed to Germany in 1938 and did not have a claimant government nor a government in exile.

The Korean Provisional Government, which had its base of operation in China between 1919 and 1945, functioned with implied de facto recognition from the host country, China, and the French government in exile at London. Particularly noteworthy is its Legislative Assembly which consisted of representatives from all the provinces in Korea, including overseas Korean residents in Manchuria, the Maritime Province of Siberia, and the United States and Hawaii.

The mainstay of financial sources came from the taxes levied on the Korean residents abroad, supplemented by the sale of Korean Provisional Government bonds. With meager financial resources the Provisional Government maintained a modest-size resistance army that fought the Japanese invaders in China. A fact of considerable

---

2. In April 1942, the Chinese government proposed to extend an official recognition to the Korean Provisional Government but due to U.S. opposition "the Chinese government withheld recognition." Soon Sung Cho, op. cit., pp. 14–15. However, note that J. A. Kim recorded that "the KPG received de facto recognition and began to receive financial assistance from the Chinese nationalists." Joungwon A. Kim, op. cit., p. 42.

importance is that at one time a Korean army unit was deployed along the Burmese front in compliance with the Allied request to do so.\footnote{The request came from the Allied Command on August 13, 1943. Warren Y. Kim, \textit{op. cit.}, p. 513.}

To be sure, the U.S. government at no time extended diplomatic recognition, \textit{de facto} or \textit{de jure}. And yet the U.S. War Department was on record to have provided some financial assistance and advice to the Provisional Government in China with which to train and equip a Korean army of about 500 men.\footnote{Joungwon A. Kim, \textit{op. cit.}, p. 31.} Besides, in December 1945, shortly after the Japanese surprise attack on Pearl Harbor, the Koreans in the United States succeeded in having the U.S. Department of Justice issue a special proclamation affirming the non-belligerent status of the Korean residents in Hawaii, which was under martial law command.\footnote{Warren Y. Kim, \textit{op. cit.}, p. 414.} What was very memorable for the Koreans in America was to see their Korean flag fly at the Los Angeles Municipal Hall on Flag Day on August 29, 1942.\footnote{\textit{Ibid.}, p. 420.} By June 1943, the municipal authorities of Pittsburgh, Chicago, and St. Louis pledged to display the Korean flag on the occasions of displaying the flags of those other nations actively opposed to the Axis powers.\footnote{\textit{Ibid.}, pp. 423-425.}

In spite of all these, when the officials of the KPG in China set about to transfer the seat of government back to Korea in October 1945, the American military occupation authorities in Korea refused to allow the return of officials of the KPG as officials. Instead, they were directed to return to Korea as private repatriates, much like overseas refugees.

One may question the legal basis of such an act on the part of the U.S. military government. Admitting, for the sake of argument, that the Americans in Korea were the belligerent occupants, their actions are subject to the 1907 Hague "Convention Respecting the Law and Customs of War on Land" and its annexes. Article 43 calls for the occupation authorities to respect the laws in force in the country, unless absolutely prevented.\footnote{Gerhard von Glahn, \textit{The Occupation of Enemy Territory} (Minneapolis: The University of Minnesota Press, 1957), pp. 94–100.} This presumes the existence of a responsible local government which is capable of enforcing local laws in the occupied territory. Upon signing an unconditional surrender in September 1945, the officials of the Japanese government and its
nationals who lived in Korea were repatriated to Japan. It follows, then, that the only local entity that is capable of upholding local ordinance, excepting the American military occupants, was the Korean Provisional Government. This is so especially because upon entering Korea in September 1945, the American military authorities declined to recognize the Korean People's Republic, then the existing elected local government.

There is an even more compelling reason why the American military government should have been inclined to recognize the Korean government in exile. In a sense, the American military presence in Korea did not constitute a typical belligerent occupant of an enemy territory. The U.S. military came to Korea as friendly occupation forces with an avowed goal of liberating the country from Japanese bondage as mandated under the terms of the Cairo Declaration of 1943. That is precisely why the American occupation forces were greeted by the Koreans as "liberators."

This is not to suggest that the U.S. government was in any way obligated, under international law, to recognize the KPG. Recognition or nonrecognition of a foreign government — especially a provisional government — is one which falls exclusively within the competence and discretionary power of the government concerned. What is suggested here is that had the U.S. military government decided to accord recognition to the KPG, the decision to do so would have been defensible in point of law and policy.

An apparent justification for the U.S. military government's refusal to grant recognition to the KPG including the Korean People's Republic was to allow the Koreans to form a provisional government which would receive the broadest support of the Korean populace under the supervision of the American military authorities. However laudable the idea may have been in principle, the political exigencies of the day did not lend itself to the realization of the goal. In November 1947 — after two years of trials and tribulations following the time when the U.S. government "dumped" the Korean question in the lap of the United Nations — the Koreans were still without a duly constituted provisional government.

One wonders what the outcome might have been had the U.S. military government urged the Koreans to rally behind the Korean Provisional Government — then the world's oldest government in exile — as the only legitimate government deserving of popular support. Admittedly, an endorsement of such nature would not have come about from the State Department, if for no other reason than the fact that, as far as Stanley Hornback and Alger Hiss were
concerned, Syngman Rhee was *persona non grata*. But it might not have occurred to these and other officials at the State Department that their disenchantment with Rhee should not have stood in the way of making some accommodation with the Korean government in exile.

One can posit, though one could never prove nor disprove, that had the Korean Provisional Government been accorded an aura of legitimacy, it could have attracted the broadest support possible among the Koreans of the north and south. After all, the Korean Provisional Government personified the *Samil* spirit of 1919, the indomitable collective will of the Koreans for independence. Had this been the case, such a government could have succeeded in galvanizing a popular will strong enough not to allow the permanent partition of the country. This is not to underestimate the determined will of the Soviet occupation forces in the north to try to bring the area under its sphere of domination. However it may be, the point is that had the U.S. government given the KPG any support at all, the American government in the 1980s will not share the odium of having been the accessory to partitioning Korea at the 38th parallel line, even unwittingly and unintentionally.

It would not be entirely fair to heap blame on the U.S. government. It would be just as well for the Koreans to share the blame, too. What is very puzzling is that there was a conspicuous absence of a vigorous and concerted opposition, on the part of the Koreans, to what the military government did, i.e., to dismiss the Korean government in exile in such an unceremonious way. Why, one might ask, didn't Rhee, the Princeton-educated student of international law, dare condemn the action of the U.S. military government? It is an irony for someone like Kim Koo, not at all schooled in international law, to have urged the Koreans, on occasions, especially in utter despair, to boycott the military government and rally around the defunct Korean Provisional Government.

Looking back, one cannot help but feel a deep sense of sorrow over the opportunity forfeited so casually. With the historical hindsight now available, one may say that the partitioning, at least in the initial stage, was the result not so much of shrewdly calculated

10. Also, it is not very clear as to why the Korean Provisional Government was downgraded to become a mere political party at one point. If the change was brought about at the dictate of the American Military Government, one may wish to clarify the legality or illegality of this point from the standpoint of modern usage under *jus postliminium.*
strategies brilliantly engineered on the part of the Soviet Union and United States as of the lack of premeditated plans — that is, through clumsy indifference and sheer human inertia. It hurts even more to think that the genesis of a human tragedy of enormous magnitude could befall upon the Koreans as well as upon the international community so casually.

In the meantime, the world seemed to care little as to what happened to the Korean Provisional Government. Until 1965 few could explain whether or not the Republic of Korea, founded in 1948, was the successor to the erstwhile government in exile. Many believed that Korea as an international person had ceased to exist in 1910 when it was annexed by Japan. However, the terms of Article II of the 1965 Treaty on Basic Relations provides "that all treaties or agreements concluded between the Empire of Japan and the Empire of Korea on or before August 22, 1910 are already null and void." From this we now know that Korea's international person remained unadulterated throughout — even though the majority of the members of the world community had once paid but little attention to the Korean Provisional Government which was hung precariously in legal limbo between 1919 and 1948.

Rivalry for Legitimacy: Diplomatic Recognition Games

Upon achieving independent statehood in August 1948, South Korea declared to the world that it was the sole legitimate

government which represented the whole of Korea — and North Korea did likewise in September 1948. To be sure, it is not at all unusual for any political entity, upon entering into the community of nations, to proclaim the legitimate character of its own polity. To do so is a constitutional question which falls within the competence and discretion of the sovereign government concerned. But what is unusual, from the standpoint of international law, is for two political entities, which emerged as a result of partitioning of what was once one and the same political entity, to assert a claim of legitimacy to the other half of the political entity. What is even more unusual is for each claimant to make acceptance of the legitimate character of its state as a precondition for entering into diplomatic relations with other members of the world community. This poses an extremely vexing international legal question if for no other reason than the fact that each claimant is without actual nor even nominal control over the other's political domain.13

However perplexing and even fictitious such claims of legitimacy may appear, both South and North Korea pursued, between 1948 and 1971, with single-minded determination, the diplomatic recognition ploy not even sanctioned under traditional international law. So strong and unswerving was South Korea's commitment to upholding


13. The rulings coming out of the Eastern Greenland, the Clipperton Island, the Palmas Island, and the Minquiers and Ecrehos cases all confirm that as a prerequisite of claiming title to sparsely populated or even uninhabited areas the claimant state must display its state authority continuously in response to varying degrees of competing claims. The two Koreas must not have been unmindful of such legal principles. And perhaps their awareness of these legal rulings, in part, might account for Kim Il Sung's often-repeated pledges to "march South," or Rhee's sporadic outbursts of "march North."
the claim of legitimacy that it went so far as to adopt the so-called Korean version of the Hallstein doctrine. Under it South Korea would "derecognize" any country which extended diplomatic recognition to North Korea while maintaining official relations with the former. In 1964 and 1965, South Korea severed diplomatic relations with the Republic of the Congo (Brazzaville) and Mauritania, respectively, for their diplomatic "double dealings," as it were.

Within the first year after the Republic of Korea achieved independence, it received diplomatic recognition from as many as 38 states, in contrast to only 10 for the Democratic People's Republic of Korea during the same period. And throughout the 1950s, South Korea was remarkably successful in preventing other members of the international community from establishing diplomatic relations with North Korea. The only exception is North Vietnam's recognition of North Korea in January of 1950.

By the mid-1960s, however, the situation began to unravel. An increasing number of the Third World nations established diplomatic relations with North Korea throughout the 1960s and 1970s. And by July 1981 South Korea has maintained diplomatic relations with 116 nations, while North Korea has done so with 101. A point of special interest is that starting in 1973, when South Korea relaxed the Hallstein doctrine, as many as 64 states have established diplomatic relations with the two Koreas simultaneously.

Statistics aside, there are two theories concerning diplomatic recognition. According to the constitutive theory, a newly emergent nation or government acquires international personality only if it is recognized by other members of the international community. Under the declaratory theory, on the other hand, the mere fact that a state exists by performing certain governmental functions is all it needs to qualify to be a state; therefore, its status as a state does not depend upon recognition emanating from external sources. And yet one must hasten to add here that one can invoke either of these two doctrines without the fear of being pronounced as heretical or outlandish.

Quite apparently the foreign policy moves of both Koreas between 1948-71 and beyond were dictated by the constitutive theory. The fact that the two Koreas attached such an inordinate degree of importance to securing diplomatic recognition from other members of the world community speaks for itself. Both Koreas could have just as

well espoused the declaratory theory; and they both could have insisted on its legitimacy independently of external approval or disapproval. Given the political exigencies of cold war days, however, the two Koreas could have ill afforded to become so irreverent of the doctrinal niceties of the constitutive theory. That is, each side could not have shirked from extolling its own virtues to the point of making the other side look like an international outlaw.

But what is puzzling is the question as to why so many members of the world community had acquiesced in playing the "recognition games" with both Koreas, at least until 1973, the troublesome legitimacy clause notwithstanding. Is it not fair, then, to insist that the international community as a whole, and not just the two Koreas nor the two Germanys, for that matter, is to be castigated for having perpetuated the dubiously claimed legitimacy which could have been characterized as a legal novelty at best, or a legal perversion at worst?

At any rate, throughout the post-independence era, the issue of legitimacy served as a lynchpin which held in place practically all of South Korea's foreign policy moves. One ramification of this was for South Korea to subordinate all of its foreign policy moves to dovetail into this all-consuming question of legitimacy without due regard to short-term as well as long-term payoffs. Such a stance resulted in a rigidity and inflexibility which in turn resulted in the overemphasis on style and form rather than on substance. In essence, the tone and style of South Korea's foreign policy sounded, as well as looked, more like an all-or-nothing diplomacy, instead of one finely attuned to a variety of contingencies and nuances. One may argue that such a blunt and boorish diplomacy served well during the cold war days.

However, one fallout of that was to make South Korea's foreign policy quite vulnerable to outside pressures or even blackmail — not to mention apparent contradictions in policies themselves. To illustrate, between 1953 and 1959, the Japanese government repatriated some 100,000 Koreans residing in Japan to North Korea. To the Korean government, this was like being hit where it hurt the most — the legitimacy issue! The Rhee government sent the Japanese government a note of strong protest in a vain attempt to stave off this diplomatic, or rather undiplomatic, humiliation of a devastating order.

What must not be overlooked here is the apparent contradiction in South Korea's stance. Earlier in 1953, South Korea insisted on the freedom of choice principle whereby some 26,000 Communist Chinese and North Korean POW's were released prior to the signing of the
1953 Armistice Agreement. The Rhee government did just that in spite of the fact that Articles 118 and 7 of the 1949 Geneva Convention enjoined the belligerent parties to release and repatriate POW's without delay and that the POWs' right to repatriation is unconditional — not allowing them to waive such a right. 17

South Korea remained unconvinced when told by Japan that the Koreans were repatriated to North Korea with due regard to the time-honored principle of freedom of choice as to one's national allegiance. So inflexible was the foreign policy stance of South Korea that it never occurred to the Rhee government officials to simply shrug off the whole episode by telling the Japanese government that little mattered whether these Koreans were sent back to North or South Korea; and that they would fare better in Korea than they would in Japan at the mercy of the Japanese authorities. Such a nonchalant attitude would have been in keeping with South Korea's often-repeated stance that it, after all, speaks for both parts of Korea. The Rhee government, hoisted with its own petard, was not able to conceive such a flexible stance — let alone articulate some equivocation just to blunt hurt feelings.

All considered, the legitimacy issue has become an academic question for both Koreas in law and fact; and that no amount of bullying on the part of either government is likely to undo what the inexorable reality has wrought upon them. To bicker about the legitimacy question further in the 1980's would be like indulging in a sterile exercise in futility. This ushers us into the examination of the future role of international law in trying to bring the two Koreas together.

**Legal Analysis of the Unification Proposals** 18

As a prelude to keeping inter-Korea parleying on the right track, the two Koreas would do well to agree to treat the legitimacy issue in a practical and sensible way. One approach is for both parties to agree on a disclaimer much like the two Germanys did in 1973. 19 It is to be understood, however, that the net result of the German disclaimer is more like a formal acknowledgment of the existence of

18. See note 12, supra, for some relevant information contained in this section.
the two separate states both of which are enjoined from claiming legitimacy over the other. The one that the two Koreas might agree upon need not be the same in terms of its wording and intent. The Korean disclaimer, if agreed upon, should be of a kind which could merely dissuade either side from dealing with the legitimacy issue openly. It should be a covenant designed for the two parties to agree to leave the disagreeable issue to rest.

The other approach is to reach a tacit understanding, even without a formal statement, not to raise the legitimacy issue through the exercise of self-restraint. In this way, once the cantankerous issue is mothballed, the emotion-charged atmosphere will dissipate, thus setting the stage for constructive parleying. Analogously put, the two Koreas should do everything possible to keep the bull out of the China shop!

There is some reason for the two Koreas to cheer about. Unlike the two Germanys, the two Koreas seem to be in agreement on one point: i.e., the one-nation, one-state, two-government notion. In the absence of a positive demurral coming from North Korea concerning the notion, we can surmise that the legal position often articulated by South Korea passes unchallenged by the former. In fact, this notion of two governments within one and the same state turns out to be one of the welcome fallouts from the legitimacy syndrome in a sense that both sides scrupulously refused to acknowledge the existence of the other half as a separate state. In the case of the two Germanys, they find themselves unable to retreat from the legal position that they both have existed as two separate states since 1973. Prior to 1973 each was entitled to interpret the legitimacy issue in whatever manner their legal penchants dictated.

Of course, both Koreas' adherence to the notion of one nation, one state, and two separate governments is not without some attendant problems. Within the context of our discussion the notion of two governments within one state conceivably suggests a legal situation in which two estranged governments — one of them a breakaway, insurgent government — exploring the possibility of being reunited.

If nothing else, South Korea was ahead of North Korea chronologically in proclaiming its independent nationhood. Hence, the odium of being the breakaway government logically falls upon North Korea. The argument becomes even more convincing if South Korea should stress the point that it is the successor state to the erstwhile Korean Provisional Government which, in turn, succeeded the Yi dynasty Korea upon the death of the Emperor in 1919. There is also another factor which militates against any attempt on the part
of North Korea to turn the table around. That is, it was North Korea which committed an armed aggression upon South Korea. To dwell on this point further, one can argue that North Korea subsequently acquired the status of belligerency. And then, with the signing of the 1953 Armistice Agreement, North Korea gained some degree of legitimacy, hiding behind the protective shield of what was nothing more than a temporary demarcation line which became internationalized. Granted that South Korea is not a party to the Armistice Agreement, the United Nations Command under which South Korea fought against North Korea having signed the document on behalf of the former.

Ancillary to the one-nation, one-state, two-government notion, there is South Korea's proposal that the two Koreas be admitted into the United Nations simultaneously. The proposal was in Park Chung Hi's speech of June 23, 1973. However, in the interest of preserving the notion of one state and two governments, it would seem unwise for South Korea to persist on realizing the idea.

When and if the two Koreas are admitted into the United Nations, the Korean situation will resemble that of the post-1973 German model. Upon the two Koreas' admission into the U.N., the legal fiction of one nation, one state, and two governments which they have fortuitously or perhaps inadvertently nurtured thus far will no longer be preserved unaltered. Moreover, on practically all issues deliberated in the U.N. the two Koreas will find each other at opposite poles. A sense of incompatibility will inevitably drive them toward the road of antagonism. Oneupmanship in self-righteousness often reflected in the U.N. rhetoric may very well serve to lower the threshold of mutual enmity without proportionate gains in the end.

Fortunately, South Korea's attitude toward the admission question has never been so dogmatic and inflexible. Park's proposal has a built-in escape clause in that South Korea is ready to support the idea of two Koreas' entry into the U.N., provided that doing so will not prejudice the chances of achieving the goal of reunification.

In short, the two Koreas' entry into the U.N. is incongruous with South Korea's previously held belief in the one-nation, one-state, two-government notion. Moreover, North Korea's adamant refusal to respond positively to South Korea's proposal is, in a sense, a blessing in disguise.

It should be added that membership in the U.N. does not necessarily imply reciprocal acknowledgment of diplomatic relations. In fact, the U.N. members interact within the world body without the slightest fear that such interactions might in any way be construed
as having acknowledged the legitimate status of those with whom they must deal. The relations between Israel and the Arab bloc of nations are a case in point. But the same logic will not prevail when it comes to the question of whether or not two separate political entities could be admitted into the U.N. as one state.

However tenuous it may appear, the two Koreas would do well to keep the myth of one state with two governments rather intact. And one only needs to remember that nations for centuries have lived with such legal fictions as extraterritorial status of embassies and floating portions of a state territory in referring to a nation vessel on high seas, or the cannonshot distance, etc.

Related to the above discussion, North Korea’s proposal for the formation of Koryo Confederation and its subsequent admission into the U.N. as a single political unit calls for a careful examination. On surface the proposal appears to be in keeping with the notion of one nation, one state, and two governments. Upon scrutiny, however, it becomes apparent that the proposal, too, has certain shortcomings.

To begin with, the Koryo Confederation, as envisaged by North Korea, is to be a mere coordinating arm of the sovereign and independent Koreas. As such, the confederal entity is not bestowed with attributes having an international personality of its own; the two Koreas remain as sovereign and independent states. Hence, the confederal unit falls short of satisfying the admission requirement under the U.N. Charter, namely, a sovereign and independent state, properly speaking.

The only way to reconcile this disparity is to bestow upon the confederal unit all the attributes of sovereignty normally associated with a political entity having an international personality. Herein lie legal dilemmas. Should South and North Korea decide to create a political entity eligible for U.N. membership on their behalf, then, such a political entity will no longer be a confederation; it will be a federal union or a merger of two states into one. The United Nations has welcomed into its fold such federated or merged political units as Malaysia, Tanzania and the United Arab Republic (between 1958 and 1961); however, no confederal unit has ever been admitted into the world body.

Let us suppose, for the sake of argument, that South and North Korea forged the Koryo Confederation which possessed the necessary qualification to be admitted into the U.N. Let us further assume that both Koreas did so without forsaking their attributes of sovereignty. Then, the net result would show that there were created not one but as many as three separate political entities, each with its own international personality. To wit, in the name of preserving oneness we ended up having three-some political entities or a “political troika.” To argue otherwise would be like having one’s cake and eating it, too. Here again, Seoul’s negative response to Pyongyang’s proposal turns out to be a blessing in disguise.

At the heart of the unification talks lies the vitally important question of U.S. troop presence in South Korea — and what to do about it. Understandably, both Koreas attach the highest premium to the question of presence/withdrawal of these foreign troops on/from Korean soil. So critical is the resolution of this issue to the satisfaction of both Koreas that any prospect for the success or failure of eventually reunifying the peninsula as one seems to be hinged on it.

Admittedly, the decision as to whether or not the troop withdrawal should ever take place at all is a political decision of the highest order. The decision of such nature will be made within the context of political dynamics affecting not only South and North Koreas but also the United States, the Soviet Union, China and Japan. And yet, once the decision is made to effect troop withdrawal, how and when to implement such a decision becomes a matter for which international law is best suited. Obviously, the parties must sign legal instruments to effect the withdrawal; and the documents will detail the manner in which the troop withdrawal will be implemented. And it is here that international law comes to play a vital role. In other words, international law will provide modality and procedural safeguards which could facilitate troop withdrawal itself.

As is the case with many important transnational issues of our days, law and politics are inseparably enmeshed. So is this true with the question of reunification of Korea in general and the troop withdrawal in particular. Conceptually speaking, were it not for the belief that there is an equitable and fair way to realize troop withdrawal within the framework of normative imperatives it would never be possible for both Koreas to even explore the possibilities of reaching a political decision to begin with. In the final analysis, therefore, it is the conviction shared by both Koreas that it is humanly possible for them to have an honest and fair transaction
which will nudge them to reach an agreement. But whether or not they could even entertain such convictions also depends, to a significant degree, on the efficacies of normative restraints. In short, South Korea will never be disposed to agree to the U.S. troop withdrawal unless it is convinced that the withdrawal could be effected without jeopardizing its security requirements. By the same token, North Korea will be disinclined to agree on anything unless it shares the conviction that South Korea will fulfill its pledge honestly and scrupulously.

In practical terms, one must remember, the presence of the U.S. troops in South Korea was never meant to be an end in itself. In as much as the troops were stationed in Korea as a means to achieve certain objectives, the troop withdrawal issue must be negotiable if there are found some other alternatives which could help achieve the same objectives.

It is, of course, beyond the scope of this paper to do more than sketch a number of broad guidelines. One can, for instance, envisage a number of steps involved as a preliminary to achieving U.S. troop withdrawal. And at each of these stages pertinent procedural safeguards provided under international law must be made to work efficaciously. First, a legal instrument needs to be signed between the two Koreas broadly pledging against any future use of force against each other. And such a non-aggression pact must provide specifically and unequivocally, for the inviolability of the existing demilitarized zone which separates the two sides. Needless to say, the agreement must provide for effective sanctions — sanctions that are instant and overwhelming — in the event that violations of the terms of the agreement occurs either through negligence or treachery.

To make the sanctions credible, a sufficient number of international forces of disengagement and observation with highly sophisticated detection devices and military wherewithal must be positioned in and around the DMZ. The proposed International Disengagement and Observer Forces in Korea (INTDAOFINK) should consist of no smaller than 100,000 troop contingencies drawn exclusively from the Third World Nations forces under the leadership of a Swiss military personnel. Care must be exercised to include only those Third World Nations that are acceptable to both Koreas.

Once the inviolability of the DMZ is assured to an acceptable level, the U.S. troop withdrawal could commence. Upon completion of U.S. troop withdrawal part of the contingents of INTDAOFINK should set out to monitor and verify troop reduction to a level of 100,000 troops in both South and North Koreas' armed forces, as was proposed repeatedly by North Korea.
Ideally, if both Koreas could police inviolability of the DMZ and troop reduction level, it would be wonderful. But to expect the work of such delicate nature from the two Koreas would be a tall order, indeed! Short of realizing this, a third-party assistance must be sought. Third-party involvement need not be regarded as an admission of failure nor abrogation on the part of the two Koreas to try to solve Korean problems by the Koreans themselves. The engagement of the third party service of impartial and disinterested people and nations is not incongruous with North Korea's often-repeated shibboleth of Korean problems for the Koreans. One must make a clear distinction between being dictated to by the terms of the outside forces and taking advantage of third party help.

It would seem patently unfair and even an affront to human intelligence to admit the impossibility of engaging services of a disinterested third party. The world is not so depraved as to be utterly devoid of acts of integrity either by people or nations under certain prescribed conditions. Placing confidence in the third party integrity reflects our mutual concern for fellow human beings. Above all, it shows the maturity as well as mutuality or commonality of interests of mankind, the bedrock upon which the international community of today is founded — however fragile it may be.

A word must be said about cross-recognition. Cross-recognition is politically realistic but legally abusive in that the granting of recognition is tied to certain conditions that are not ordinarily found in the practices of diplomatic recognition. It is reminiscent of a big power joint guaranteeship arrangement over a small state.

Conclusion

In conclusion, for the two Koreas to explore the avenues of reuniting the country decimated into two halves is an imperative goal which few other national objectives can rival. Rightly, it is a chance, a challenge for all Koreans to demonstrate to the world that they are capable not only of fastidiously living up to disparate national lifestyles imposed upon them by different ideological imperatives, but also of burying the hatchet, the handmaiden of protracted ideological strife.

If both Koreas are to indulge in posturing rather than parleying in earnest, there is very little that international law could do to put them on the right track. If, on the other hand, both of them are genuinely determined to put an end to this tragedy-laden divided state of affairs once and for all, then international law promises to have a definite role to play.
International law, in spite of myriad shortcomings, is still one of the best man-made institutions designed to provide a facilitative framework of equitable nature — except, of course, when the victor's justice prevails at certain parleyings. It is the instrument which both Koreas are most likely to turn to in their search for an equitable means to ensure a symmetrical distribution of payoffs.

So long as the two Koreas keep making proposals and counter-proposals and let the dialogues continue in earnest, there is always a lingering hope that international law may be called upon to render its traditional role as an "honest broker.” But when both sides should retreat into frozen silence, then the gap becomes insurmountable; and even the “ten thousand” volumes of international law books will just lay wayward in utter disuse.

But we need not despair too much, because even in a situation like that there still is a role for it to perform. As Maxwell Cohen once remarked, "Law is often a useful plaster to cover the cracks in an otherwise divisive social order until time helps fuse the parts socially more closely together.” Meanwhile, it is hoped that international law will serve precisely the role of plaster holding the divided Koreas together until such time as when the twains may not only meet but be fused as one.

There have been both similar and different experiences among divided nations. All the divided nations emerged as an outcome of Communist expansionism after World War II. These countries have grown up on the basis of two different ideological and political systems, western democracy and Communism, mainly under the influence of the United States and the Soviet Union. Militarily tied with the superpowers, each has had relatively large military capabilities. And the potential for destabilization has always existed. Nevertheless, the Korean case has been somewhat different from the other multi-system nations for several reasons. First, the armistice agreement of the Korean War in 1953 still remains in force, and therefore the Korean peninsula theoretically is in a state of war. In this connection, the degree of hostility between the two Koreas has been higher than that of any other divided nations, despite their increased contacts since the early 1970s. Second, interests of the four major powers (the United States, the Soviet Union, China and Japan) converge upon the Korean peninsula. As a result, the strategic reality of the two Koreas has been influenced by the evolution of the rivalry among these four powers. Third, diplomatically, the Korean case is in some respects different from the other two cases of the divided nations — Germany and China. In spite of the fact that South and North Korea each claims to be the sole legitimate government and does not recognize each other, there are dual recognition and representation arrangements for the two Korean governments in over 60 countries.

During the past decades, one important instrument for the maintenance of the balance of power on the Korean peninsula was the existence of military alliances: the U.S.-ROK mutual defense treaty of 1954, and the mutual defense treaties of USSR-DPRK and PRC-DPRK in 1961. In accordance with the defense treaty, South Korea has closely cooperated with the United States to maintain both the international status quo and domestic stability on the peninsula. In particular, the presence of American ground troops in South Korea has played a role of defense and deterrence against the Communist invasion.

From the legal standpoint, North Korea's treaties with the Soviet Union and China provided a more solid degree of commitment than one finds in the U.S.-ROK treaty. For instance, article 1 of the
USSR-DPRK treaty and article II of the PRC-DPRK treaty stipulate immediate military and other actions to assist the other party in the event of war. In contrast, the ROK-U.S. defense treaty provides that mutual defense action would be taken in case of enemy attack in accordance with the "constitutional processes" of the two countries. This wording could allow the United States to withdraw its military commitment to South Korea if the climate in the U.S. Congress so dictated.

Under the auspices of its military alliances with the two Communist giants, Pyongyang has attempted to unify the whole peninsula by various means. During the second half of the 1960s, for instance, North Korea adopted a militant policy against the South, dispatching armed saboteurs and infiltrators across the border. In the 1970s, however, it shifted its policy to a "peace offensive" against the South and the United States, accepting the South Korean proposal for South-North dialogue. Pyongyang hoped to undermine the U.S. commitment to security in Korea, having perceived the weakness of the U.S.-ROK mutual defense treaty of 1954 and the new U.S. Asian policy under the so-called "Nixon Doctrine."

From the mid-1970s, the North Korean leadership continuously made efforts to hold bilateral talks with the United States, arguing that South Korea had neither the intention nor capability to discuss questions of peace on the peninsula. The American government rejected this offer. Instead, Washington proposed the so-called "cross-recognition formula" and "three-way talks" including Seoul, which Pyongyang categorically rejected.

At the same time, while engaging in its "peace offensive," North Korea pursued active diplomatic activities to improve its international recognition and to isolate the South. The first objective was largely successful. North Korea became a permanent observer in the United Nations in 1973 and also obtained twelve memberships in international organizations by 1980. In addition, its diplomatic relations with other countries increased to 102 countries by 1981.

Throughout the 1970s, South and North Korea attempted to work for the reduction of tensions and ultimate reunification of the Korean peninsula by peaceful means. Their efforts at dialogue, however, were unsuccessful mainly as a result of a failure to compromise on major issues. The North demanded an excessive first step, proposing three major themes: the end of the arms race; the withdrawal of U.S. troops from South Korea; and confederation of the two Koreas. South Korea on the other hand desired a "step-by-step" approach: a cultural and economic exchange at the first stage, and
political negotiation at the next. The position outlined by South Korea has been, in effect, a policy of “two Koreas.”

The unification of the two Koreas is not likely to occur in the foreseeable future. The two regimes have conflicting objectives, literally, "the same bed with different dreams," and neither makes major concessions. In addition, the concentration of the interests of outside powers upon Korea further complicates Korean unification.

In the 1980s, the Pyongyang regime will probably continue its "peace offensive" against the South and the United States, while continuing to strengthen its economy and defenses. Nevertheless, the degree of tension and hostility between South and North Korea does not seem likely to decline. The North Koreans have continuously expanded their defense capability, and now the stockpile of North Korean military equipment surpasses that of the South two-to-four times. They are probably waiting for the so-called "decisive moment" to achieve their strategic objective and to unify the peninsula under the Communist flag. Indeed, a time may come when Pyongyang could decide to destabilize the situation on the Korean peninsula by increasing cross-border activities.

Under such circumstances, the strengthening of the economic and defense capability of the South and strategic cooperation with its allies (including the United States and Japan) will serve to neutralize Pyongyang's threat and to maintain stability in the region.

COMMENTS

Se Jin Kim

In analyzing the Korean situation and for the purpose of finding a solution to the Korean issue, three major factors must be considered: the geopolitical environment in Northeast Asia, inter-Korean relations in historical perspectives and the legal norms and political and moral imperatives that each of the divided halves are pursuing. Let me draw a balance sheet of positive and negative forces impinging upon the inter-Korean relations, and explain how these forces are operating in the Korean peninsula.

On the negative side of international environment on the Korea issue, the regional geopolitical balance or the interest that the four powers are pursuing in the Korean peninsula, are based on the strategic premise of maintaining the existing status quo or perpetuating divided halves. On the positive side, there is a looming system of cooperation among Japan, China, and the United States against the
Soviet Union. Possibly, this system of cooperation could induce north Korea into this dominant camp. If North Korea could be lured away from the Soviet Union, perhaps this could result in some moderating influence in North Korea which, in turn, could create an atmosphere of accommodation and flexibility between the two Koreas.

However, so long as Sino-Soviet conflict persists and North Korea skillfully exploits the conflict to her advantage, both the Soviet Union and the Peoples Republic of China, out of their strategic requirements in the region, must remain closely tied politically and militarily with North Korea.

Secondly, inter-Korean relations can be seen from positive and negative realities. On the negative side of the Korean reality, unlike Professor Kindermann's example of inter-German relationship, not even mail is being exchanged between two Koreas. Indeed, the two Koreas, having waged a major war less than thirty years ago, still have fundamental psychological problems: lingering mutual animosity and distrust, particularly among families who suffered either material or human losses. In addition, there are ideological differences from which stem systemic differences in political and economic sectors. Moreover, there are genuine value differences between the two halves, reflected in linguistic expressions, i.e. equality, freedom and 'democracy'. On the positive side, however, there are some 60 countries who have recognized both Koreas, and the two Koreas have the legal representation in various international agencies and organizations. This reality of legal acceptance of two Koreas by the international community could compel the two to hold bilateral meetings for the establishment of a new *modus vivendi*.

There is a positive and negative reality in the internal politics in two Koreas. North Korea has been under the reign of Kim Il-sung since 1946 making him the longest power-holder today, while, there has been a leadership change in the South. President Chun of the Republic of Korea is definitely more flexible and open than Kim Il-sung on the unification issue, as has been manifested by President Chun's January 12 and June 5 announcements to meet with Kim to discuss inter-Korean issues. However, the ominous sign of dynastic succession from Kim Il-sung to his son, Kim Jung-il, is inherently problematic. Junior Kim is known to be far more adventurous and reckless than his senior, portending a serious political power struggle in the post Kim Il-sung era.

Thirdly, with regard to the issue of political imperatives or legal norms, the North Korean basic policy toward the South has been predicated on the notion of national "liberation". Regarding this
unification policy as its supreme and absolute political imperative, the North Korean leadership has been obsessed with unification issue totally oblivious of the existing politico-economic realities in the Koreas — the argument being that unification will be followed by peace and the erasure of any remaining problems thereafter. In the south, however, the approach has been one of peace through mutual renunciation of force, and with that creation of a peaceful atmosphere, unification would become feasible. More technically, North Korea has been advocating confederalism for the resolution of the Korean issue, while totally disregarding systemic, ideological and value differences of two Koreas. North Korea, in fact, has been using the unification issue as a political ploy rather than making an earnest effort to create some kind workable framework whereby unification could be possible. In short, it is a question of a top-down system whereby all problems would be solved upon the creation of a confederation or federation. South Korea's approach, on the other hand, is a 'bottom up' or incremental approach, calling for simple issues to be solved first, such as opening channel of communication, forming a joint sports teams, starting bilateral trade and the like. through these types of contacts, particularly in non-political and non-controversial areas, the two Koreas could restore mutual trust and confidence with which more serious political interactions could be realized.

In conclusion, given all those regional and local forces militating against the resolution of the Korean issue, present status quo is likely to last for some years to come. In the meantime, North Korea is being urged to accept the South Korean proposals to resume the dialogue hitherto stalemated by North Korean obscurantism.
Chapter 7

TAIWAN’S INTERNATIONAL STATUS

Ralph N. Clough

Taiwan’s international status is unique. It differs from that of the other divided countries, Germany and Korea. Those states were divided by international agreement between outside powers, while China was divided by an unfinished civil war. The greatest difference from other divided countries, however, lies in the diminutive size of Taiwan compared to the rest of China. Each of the smaller parts of the divided states has about the same population, around 18 million, and each has long operated as an independent state with all the attributes normally possessed by independent states. Each is larger than two-thirds of the states belonging to the United Nations. But East Germany has nearly one-third the population of West Germany and North Korea has almost one-half the population of South Korea, while Taiwan has less than one-fiftieth the population of the People’s Republic of China (PRC).

Among the divided countries, only the PRC has had enough political clout to prevent other nations from establishing diplomatic relations with both parts of the divided state. West Germany and South Korea long ago abandoned their efforts to force others to choose between Bonn and East Berlin, Seoul and Pyongyang. Scores of countries now have established diplomatic relations with both parts of Germany and Korea. But the PRC’s enormous size, its importance in world affairs, and its control of the vast majority of the Chinese people has enabled it to enforce the stipulation that countries wanting diplomatic relations with the PRC cannot maintain such relations with the Republic of China (ROC) on Taiwan. Forced to choose, most countries, many reluctantly, have chosen Peking over Taipei.

In terms of formal diplomatic relations, the status of the ROC declined greatly after its expulsion from the United Nations in October 1971. At that time the number of countries maintaining relations with Peking and Taipei was about equal. Less than two years later, in February 1973, only 39 countries still maintained relations with the ROC, while 85 had relations with Peking. Today only 23 countries have diplomatic relations with the ROC compared to 122 with the PRC. Following its expulsion from the United Nations, the ROC also lost its place in almost all intergovernmental
organizations, including (in 1980) the International Monetary Fund and the World Bank. Even private organizations in Taiwan have been excluded from a large number of non-governmental international organizations as the result of PRC pressures.

Despite its loss of diplomatic links with most nations and its exclusion from international organizations, Taiwan has prospered and has developed unorthodox ways of dealing with the rest of the world. This paper will discuss its techniques for survival, especially its relations with its most important partners, the United States and Japan since January 1, 1979 when the United States shifted its diplomatic relations from Taipei to Peking. Because Taiwan's relations with the rest of the world depend in large part on the attitudes of Taipei and Peking toward each other, the paper will first look at the positions and policies adopted by the governments in these two capitals.

The "One-China" Principle

Peking and Taipei have followed separate and divergent roads for over thirty years, but both insist that China is one and that Taiwan is a province of China. It is one of the few points that they agree on.

The PRC insists that foreign governments recognize it as the sole legitimate government of China and refuses diplomatic relations to any government that maintains official relations with Taiwan. It refuses to participate in any intergovernmental organization to which the ROC belongs. Its goal is to incorporate Taiwan again into China and it refuses to renounce the possible use of force to accomplish this objective.

The government of the ROC also rejects the "two-China" or "one-China, one-Taiwan" concept, holding that it is the authentic representative of all the people of China. It preserves the constitution and governmental structure transferred to Taiwan from the mainland in 1949 and, to the extent possible with mortals, maintains in office those elected to national government bodies on the mainland before 1949. The ruling party in Taiwan, the Kuomintang, continues to affirm its commitment to final victory in the unfinished civil war, to be accomplished 70 per cent by political means and 30 per cent by military means.

The leaders in Peking and Taipei have compelling reasons for maintaining the one-China position. For the PRC Taiwan is a piece of terra irredenta, a part of China for centuries; it was wrested away
TAIWAN'S INTERNATIONAL STATUS 143

briefly by the Japanese and returned to China by agreement among the allied leaders at the end of World War II. Any Chinese leader who assented to the permanent separation of Taiwan from China would risk being swept away by the powerful force of Chinese nationalism. Moreover, the rival government in Taiwan, while comparatively small and weak, is a potential political threat to PRC leaders, especially since it has been more successful in modernizing than the PRC has been. Taiwan, allied with a superpower hostile to China, could also be a strategic threat.

The legitimacy of the national government in Taiwan rests on the contention that it is the constitutional successor of the government that ruled the mainland before 1949. The justification for the dominant role of people from the mainland in that government is that it represents all of China; that justification would disappear if the government reduced its claim to one of representing only the people of Taiwan. There is an additional practical reason for the ROC to maintain the one-China position: a declaration of independence from China would be highly provocative to the leaders in Peking, increasing the risk that they would be impelled to use force to bring Taiwan under their control.

Both the PRC and the ROC regard the offshore islands, the only pieces of territory still under ROC control that were in the past administratively attached to the mainland rather than Taiwan, as vital links between Taiwan and the mainland. They are symbols of national unity. Consequently, the PRC has not attempted since 1958 to interdict resupply of the offshores by the ROC; on the contrary, alarmed by rising international support for cutting the link between Taiwan and the offshore islands, Foreign Minister Chen Yi told foreign diplomats in Peking in December 1958 that the PRC's policy was either to liberate all the offshore islands, Penghu and Taiwan together, or to preserve the status quo.¹

While both sides have maintained principled one-China positions, they have made concessions in practice when compelled to by political realities, especially in connection with their relations with the United States. For example, the PRC agreed in 1973, as a temporary measure, to the establishment of liaison offices in Peking and Washington, a form of diplomatic relations, despite the existence of full diplomatic relations between Washington and Taipei. As for the ROC, the closer the United States came to normalizing relations

with the PRC, the more willing the government of the ROC became to tolerate the so-called "German solution", in which the United States would have full diplomatic relations with both Peking and Taipei. The Carter administration's commitment to maintain only unofficial relations with Taiwan virtually destroyed hope for such an arrangement, but the hope was revived by candidate Reagan's statement in August 1980 that he favored official relations with Taiwan.

The year 1979 marked the greatest shift in the relative fortunes of the PRC and the ROC since 1950, when the United States abandoned its hands-off policy and intervened to prevent a military assault on Taiwan. The replacement of the ROC by the PRC in the United Nations in 1971 and the U.S. decision to develop relations with the PRC were heavy blows. The termination of official U.S. relations with the ROC in 1979, the ending of the security treaty, and the recognition of the PRC by the United States as the sole legitimate government of China were even more damaging. These actions appeared to remove the principal obstacles to the incorporation of Taiwan into the PRC.

Despite the blow to the prestige of the ROC caused by the American actions, the authorities in Taiwan held out firmly against submitting to Peking's control. For a variety of reasons, the PRC was not in a position to compel submission. It lacked the military capability to assure success in a costly and risky amphibious attack across the 100-mile-wide Taiwan Strait. To build such a force would divert large amounts of resources critically needed for the urgent task of modernizing the country. Moreover, the United States had made clear in the Taiwan Relations Act that it would be gravely concerned by any attempt to subdue Taiwan by force. The PRC could not foresee how and to what extent the United States might intervene to frustrate such an attempt. The United States continued to supply substantial amounts of weapons for the defense of the island. The use of force against Taiwan by the PRC would shatter the expanding web of relations with the United States and Japan on which it relied heavily for modernization and for political support against the Soviet Union.

Making a virtue of necessity, the PRC adopted a conciliatory policy toward Taiwan following the normalization of relations with the United States. It promptly announced a halt in the odd-day shelling of the offshore islands that had continued since the early 1960s in the form of shells containing propaganda leaflets. The Standing Committee of the National People's Congress issued an
appeal to "compatriots in Taiwan" calling for talks between the government of the PRC and "the Taiwan authorities" to end the military confrontation along the Taiwan Strait. The statement offered assurances that reunification would be carried out carefully "so as not to cause the people of Taiwan any losses." It urged the early establishment of postal and transportation services and trade between Taiwan and the mainland.² In early January 1979 Deng Xiaoping told a group of visiting U.S. senators that an integrated Taiwan would be fully autonomous, retaining its existing social and economic system and even its armed forces. It would, however, have to acknowledge PRC sovereignty over Taiwan and haul down the ROC flag. Deng said that force would be used against Taiwan only if the Soviet Union interfered there or if the Taiwan authorities refused indefinitely to enter into negotiations on reunification.³

For the past two and one-half years the PRC has maintained the basic position toward Taiwan enunciated in January 1979. PRC media have issued a steady stream of articles and statements aimed at encouraging unification sentiment among the people of Taiwan. These describe the growing trade between Taiwan and the mainland and the popularity of Taiwan-made TV sets, tape-recorders and electric fans among the people of mainland China. They report cordial conversations between scientists, writers, and university professors from Taiwan and the mainland when they meet abroad and the special treatment accorded athletes of Taiwan origin from Japan and the United States when they visit the mainland. Mainland TV has shown a documentary on life in Taiwan. According to Peking radio, special reception centers have been established for fishermen from Taiwan forced by need for repairs or approaching typhoons to seek shelter in mainland ports. 200 boats and over 1000 fishermen were said to have been received in Fujian province alone during 1979 and 1980.⁴ The People's Literature Publishing House published a selection of fiction by Taiwan authors; the first printing of 100,000 copies was quickly sold out. The publishing house promised royalties to the Taiwan writers and invited them to submit original manuscripts for publication.⁵

The Taiwan authorities regard the PRC's conciliatory posture as a united front tactic aimed at undermining resistance on Taiwan to a

takeover by Peking. They continue to reject flatly PRC proposals to negotiate, to open direct trade, or to establish postal, shipping, or airline connections. The manifesto of the 12th National Congress of the Kuomintang in March-April, 1981 reiterated the KMT's unyielding anti-Communist position and declared its determination to unify China under Sun Yat-sen's three principles of the people. The manifesto warned: "We know that to talk peace with the enemy amounts to inviting our own collapse and that to compromise with the enemy is the same as destroying ourselves."6

Despite the firm opposition of the Taiwan authorities to opening direct links with the PRC, they have tolerated a growing indirect trade between Taiwan and the mainland, which probably exceeded $300 million in 1980.7 They also permit scientists and others from Taiwan to sit down with their counterparts at international meetings and even encourage fraternization between students from Taiwan studying abroad and PRC students. The Chinese crew of a German-registered freighter that docked at Keelung was given a conducted tour of Taipei and a table tennis team from the mainland whose plane had been diverted because of weather conditions to Taoyuan airport for a few hours was courteously received. Thus, contact and communication between individuals in Taiwan and the PRC is slowly increasing, despite the fear of Chinese Communist united front operations harbored by the Taiwan authorities.

The United States continues to be the principal target of the foreign policies pursued by Taipei and Peking: the rivalry between them in this regard has intensified since the advent of the Reagan administration. Taipei, encouraged by Reagan's August 1980 campaign statements, presses hard for a greater degree of "officiality" in relations with the United States and seeks more advanced arms for its defense. The PRC repeats its view that the Taiwan Relations Act conflicts with the joint communique on normalization of relations and reminds Americans that it never agreed to arms sales to Taiwan. The Reagan administration has responded cautiously to these opposing pressures, seeking to develop further relations with the PRC, which it regards as very important for geopolitical reasons, while at the same time adopting a somewhat more cordial style than the Carter administration did in conducting unofficial relations with Taiwan. The politically explosive decision on whether to sell high performance aircraft to Taiwan has been deferred for the time being.

Taiwan's International Status

Substantive Relations — 1971-1980

Taiwan's ability not only to survive in the face of PRC pressures, but to prosper, is dramatically demonstrated by the expansion of the island's international economic relations since the expulsion of the ROC from the United Nations. Two-way trade with the rest of the world increased ten-fold, from $3.9 billion in 1971 to $39.5 billion in the 1980s. Within this total, trade with Taiwan's principal trading partner, the United States, jumped from $1.3 billion to $11.6 billion and that with Japan from $1 billion to $7.6 billion. All this trade is carried on almost entirely without the benefit of diplomatic relations; the only significant trading partners with which Taiwan still has diplomatic relations are Saudi Arabia, South Korea, and South Africa.

In recent years, especially since the severance of diplomatic relations with the United States, the economic decision-makers in Taiwan have emphasized trade with Western Europe, partly in order to diversify Taiwan's trading pattern, but also in order to raise its visibility among Europeans and build political support over the long run. Consequently, trade with Western Europe has increased at a faster rate than overall trade, from $400 million in 1971 to $5.3 billion in 1980. The EEC countries in 1980 became Taiwan's second largest export market, surpassing Japan.

The latest effort to diversify and boost trade occurred in November 1979 when the government removed the ban on direct trade with five East European states: Yugoslavia, East Germany, Poland, Hungary and Czechoslovakia. Businessmen from Taiwan are allowed to visit these countries and East Europeans are admitted to Taiwan for trade purposes. Taiwan businessmen have now been to Poland, Hungary and East Germany. Taiwan organizations exhibited the island's products during 1980 at the Leipzig trade fair and at the National Agriculture and Food Show in Budapest. A textile trade mission participated in a garment show in Budapest in January 1981 and a Hungarian textile purchasing mission was scheduled to visit Taiwan in March-April 1981. Although direct trade with the Soviet Union, Romania, Albania and Bulgaria is still forbidden, trade with these destinations through third countries is permitted. Premier Y. S. Sun announced that trade with Eastern Europe exceeded $70 million in 1980.


Foreign companies and banks continue to regard Taiwan as a desirable place to lend and invest. Real economic growth has averaged 8 per cent annually since 1971, despite a decline of 2 per cent in the recession year 1974 brought on by the spurt in oil prices. Taiwan's long-term foreign debt is only $5 billion, its foreign exchange reserves about the same amount, and its debt-service ratio is 6.3 per cent, extraordinarily low for a developing country. Because of Taiwan's established record of economic performance, there was no slackening in foreign and overseas Chinese direct investment after 1971. The amount of approved investment never fell below $100 million annually. It hit a record high of $329 million in 1979 and surged to $466 million in 1980.

Foreign confidence in Taiwan's economy is perhaps best illustrated by the accelerating rush of foreign banks, particularly European banks, to open branches in Taiwan. During 1980 alone, eight banks, five of them European,10 opened branches in Taipei. American banks there now number thirteen, up from eight in 1976, and the total number of foreign banks in Taiwan as of early 1981 was 23. More are standing in line, awaiting approval.

Taiwan's banks are also expanding their activities abroad. The International Commercial Bank of China, which has had branches or offices for some time in Chicago, New York, Tokyo, Osaka, Bangkok, Panama and Saudi Arabia, opened a branch in Houston in 1981 and is planning to open branches in Europe. The First Commercial Bank, which has branches in Guam and Singapore, has announced that it will open a branch in London in 1981. The International Commercial Bank issued $20 million worth of floating rate certificates in 1980 in Europe and the Bank of Communications followed suit with an issue of $25 million. The Bank of Taiwan has also announced its intention to raise funds in the Eurodollar market.

Taiwan has had no difficulty in continuing to secure loans from abroad. The aggregate amount of all major loans ($1.5 million or over) received during the period January through November 1980 exceeded $1.2 billion. This included loans from the U.S. Export-Import Bank ($404 million), American private banks ($308 million), European banks ($327 million), the Japanese Export-Import Bank ($19 million) and Japanese firms ($30 million). Although Taiwan

10. These were: Grindlays Bank Ltd. (UK), Banque de Paris et des Pays-Bas and Societe General (France), European Asian Bank (W. Germany), and Hollandische Bank-Unie (Netherlands). Lloyds International (UK) opened early in 1981. Taiwan: Economic Relations in 1980, p. 10; Far Eastern Economic Review, Mar. 27, 1981, pp. 72-77.
TAIWAN'S INTERNATIONAL STATUS

149

depends primarily on domestic capital for its investment needs. Taiwan's policy-makers expect that more foreign capital will be required in order to expand capital intensive, high technology industry. Taiwan has received no new loans from the World Bank or the Asian Development Bank since 1971, but its development has not suffered from the lack of such loans, as plenty of funds were available from other sources.

A new trend in Taiwan's foreign economic relations is investment abroad by Taiwan firms, as a means of securing access to raw materials or access to foreign markets. For example, Formosa Plastics has entered into a joint venture with the Louisiana Chemical and Plastics Corporation. The plant, under construction at Point Comfort, Texas, will produce petrochemical intermediates, part to be shipped to Taiwan, part to be sold elsewhere. Sixty per cent of the machinery for the plant is being manufactured in Taiwan. Tatung Electric Company has a factory in Long Beach, California producing TV sets and electric fans. The Sampo Company has a TV plant under construction in Atlanta. The Taiwan Fertilizer Corporation has entered into a joint venture to build a $357 million fertilizer plant in Saudi Arabia and four Taiwan paper companies are building an integrated pulp mill in Australia together with the Australian Paper Manufacturers Ltd. 11

Taiwan is well served by international shipping companies and airlines. At least ten airlines and a variety of shipping lines provide service to Taiwan. Since early 1980 East European ships have begun to make calls in Taiwan, including Polish, Hungarian and Yugoslav freighters. Kaohsiung ship breakers bought two East German ships for scrap.

Visitors to Taiwan from abroad more than doubled between 1971 and 1979, increasing from 540,000 to 1,340,000, despite the dampening effect of rising air fares on tourist travel throughout East Asia. The trend has continued upward, reaching an estimated 1,600,000 in 1980. 17,000 students from Taiwan were studying at American universities, the largest group from any foreign country except Iran. 12

Construction companies from Taiwan have participated in the construction boom in the Middle East. By 1978 some 2000 Chinese from Taiwan were in Saudi Arabia building roads, power and water systems, fertilizer and sugar plants, and running agricultural demonstration projects. Jordan, despite having shifted its diplomatic

12. Figure attributed to Institute of International Education, Parade, December 21, 1980.
relations from Taipei to Peking early in 1977, awarded a highway construction project to Taiwan's Ret-Ser (retired servicemen) Engineering Agency later in the same year.\footnote{13. Far Eastern Economic Review, January 6, 1978, p. 49.}

Washington's termination of the mutual defense treaty with the ROC at the end of 1979 caused President Chiang Ching-kuo and his associates to doubt whether the United States would continue to supply the arms needed for the defense of the island against a possible attack by the PRC. Although the United States delivered about $800 million in military equipment to Taiwan during calendar year 1979 and approved sales of nearly $600 million during fiscal year 1980,\footnote{14. Department of State, Review of Relations with Taiwan, Current Policy No. 190, June 11, 1980, p. 2; figure for FY80 provided by Department of State.} the PRC's public opposition to such sales fed fears that the U.S. government might at some future time yield to PRC pressures. Consequently, Taipei began to explore the possibility of buying arms from other countries. In November 1980 Taiwan's arms buyers succeeded in striking a deal with the Netherlands for the purchase of two submarines as part of a package arrangement that included equipment for a power station. Peking loudly protested the deal and declared that relations with the Netherlands would be downgraded to the charge d'affaires level if the Dutch went through with it. The sale amounted to some $500 million, an attractive offer at a time of recession and unemployment in the Dutch shipbuilding industry. Consequently, despite vocal opposition in the parliament, the Dutch government approved the sale.\footnote{15. Washington Post, January 17 and February 28, 1981.} The Dutch ambassador left Peking early in March, leaving the mission in the hands of a chargé. The PRC's strong reaction to the Dutch sale of weapons to Taiwan probably was intended as a warning to other countries not to follow the Dutch example.

Unorthodox Substitutes for Diplomatic Relations

Taiwan's success in expanding relations of all kinds with countries throughout the world assured its survival as an independent political entity, despite the loss of diplomatic relations with all but a handful of nations. To replace lost diplomatic relations, Taiwan and its partners devised unorthodox methods of dealing with each other, without precedent in international law. The most elaborate of these mechanisms was that established by Taiwan and the United States, the most important of Taiwan's supporters.
The relationship between the United States and the Republic of China differed from the others in three respects: the United States had an obligation to help defend Taiwan; certain treaties and agreements between the two governments were important to Taiwan’s survival; legislation was necessary to permit essential relations between the United States and Taiwan to continue on an unofficial basis.

The Taiwan Relations Act, passed by the Congress in March 1979, dealt with these three matters. The Act declared that any effort to determine the future of Taiwan by other than peaceful means would be considered a threat to peace and security in the Western Pacific and of grave concern to the United States. The United States would provide Taiwan with defensive arms, the Act stated, and would maintain a capacity to resist any form of coercion that would jeopardize security or the social and economic system of the people of Taiwan. The Act provided that all treaties or agreements between the United States and the ROC that existed prior to January 1, 1979 would continue in force unless expressly terminated. It also stipulated that the laws of the United States would continue to be applied to Taiwan in the same manner that they were applied before the severance of diplomatic relations.

The Taiwan Relations Act authorized agencies of the U.S. government to conduct relations with Taiwan through the American Institute in Taiwan (AIT), a nonprofit corporation incorporated in the District of Columbia. The Institute’s offices in Washington and Taipei are headed by retired senior Foreign Service Officers with long experience in Chinese affairs and staffed largely with members of the U.S. Foreign Service temporarily separated from government service. The government in Taiwan established a counterpart organization, the Coordination Council for North American Affairs (CCNAA), with offices in Taipei, Washington, and eight other American cities. It has an experienced staff comparable to that of the American Institute in Taiwan. An agreement reached in 1980 spells out the privileges and immunities accorded to the offices and personnel of the two organizations to enable them to perform their duties effectively. While cumbersome in some respects compared to normal government-to-government relations, these unofficial offices have effectively carried on the diplomatic and consular business that would normally be handled by diplomatic missions and consulates. It has been business

---

16. For the text of the Taiwan Relations Act, see Hungdah Chiu, ed., China and the Taiwan Issue (New York: Praeger, 1979) pp. 266-75.
as usual between the United States and Taiwan in substance if not in form.

Next to its relations with the United States, Taiwan's relations with Japan are most important. Japan severed diplomatic relations with Taiwan in 1972 and negotiated an unofficial arrangement to take their place. The Japanese set up an unofficial Interchange Association to take care of their interests in Taiwan with an office in Tokyo headed by the vice president of the Keidanren (Federation of Economic Organizations) and an office in Taipei headed by former Japanese ambassador. Both offices were staffed by officials on leave from their government agencies, most of them from the Foreign Ministry. Taiwan's interests in Japan are looked after by an East Asia Relations Association with a head office in Taipei and offices in Tokyo, Yokohama, Osaka, and Fukuoka. Like the Interchange Association, it is staffed principally by foreign service personnel assigned in a private capacity. While these unofficial offices maintained by Japan and Taiwan and their personnel do not receive the full range of privileges and immunities accorded foreign diplomats, they enjoy sufficiently special treatment to enable them to perform effectively the functions of surrogate embassies. This pattern of unofficial offices provided the pattern later copied by the United States.

Unlike the United States, Japan had taken no responsibility for Taiwan's security. None of the government-to-government agreements between Japan and the Republic of China was vital to Taiwan's survival nor was special legislation required to permit substantive relations between Japan and Taiwan to continue with little change. Japan has no Taiwan Relations Act; it was able to ensure continuation of the relationship through changes in administrative regulations.

The shift from formal diplomatic relations to unofficial relations resulted in one serious problem between Tokyo and Taipei: the suspension of flights by their national airlines between the two countries for more than a year in 1974–75. Slighting references by Foreign Minister Ohira to the national flag of the Republic of China made in announcing the conclusion of an aviation agreement with the PRC were regarded by the government in Taiwan as an affront to national dignity performed by the Japanese official in response to PRC pressures. Taipei immediately ordered all flights between Japan and Taiwan by the two airlines suspended. Long drawn-out negotiations between the Interchange Association and the East Asia Relations Association eventually brought about resumption of flights.
by China Airlines and a Japan Air Lines subsidiary, Japan Asia Airways.

Aside from the aviation contretemps, caused by miscalculation by politicians and officials of both countries, relations between Taiwan and Japan have proceeded smoothly in their new unofficial mode. Trade, travel and investment all have grown at a brisk pace. 17

No other country has established a substitute for a diplomatic mission in Taiwan as large or elaborate as those maintained by the United States and Japan. But 15 countries have unofficial offices in Taipei and the number is increasing year by year. (For a current list, see Annex.) Such offices promote trade, further cultural exchange, and facilitate the issuance of visas to travellers from Taiwan. For example, the Taipei offices of the Anglo-Taiwan Trade Committee and the Netherlands Council for Trade Promotion concentrate on promoting trade, while the Cervantes Association and the German Cultural Center concern themselves with cultural exchange. These unofficial offices have devised a variety of ways to provide visas to applicants in Taiwan. The Japanese Interchange Association receives visa applications and three days later provides visas bearing the stamp of the Japanese Consulate General in Hong Kong. The Belgian Trade Association telexes visa applications to the Ministry of Justice in Brussels and usually receives a return telex within two days. On arrival in Belgium, the traveller presents a copy of the telex and receives his visa. The Greek trade office follows a similar practice. 18

Malaysian Airlines and Thai International Airways provide visas to travellers wishing to visit those countries. Experienced officials acting in a private capacity often head the unofficial offices in Taipei. For example, the Austrian trade office, opened in January 1981, is headed by an Austrian trade official formerly stationed in Singapore.

Taiwan has opened a large number of offices abroad to perform the functions formerly handled by diplomatic and consular offices. The principal network consists of the overseas offices of the China External Trade Development Council (CETDC), a non-profit, private organization supported by both business and government. Its 48 offices go by a variety of names: the Oficina Comercial de Taiwan (Buenos Aires), the CETDC Correspondent in Sydney (Sydney, Australia), the Far East Trade Service, Inc. (Brussels), the Taiwan Trade Service (Duesseldorf). In addition to providing services to individual businesses, the CETDC presents exhibits of Taiwan

---

products at its exhibition hall in Taipei, organizes overseas trade missions, and participates in international trade fairs.

The Central News Agency (CNA), originally a KMT publicity organ but reorganized as a private corporation in 1973, maintains a worldwide network of correspondents. Through these overseas offices and news exchange agreements with thirteen foreign news agencies Taiwan gathers and disseminates information throughout the news circulation system of the non-communist world. Efforts by the PRC to limit the activities of the CNA have had little success.

Taiwan also maintains a number of information and cultural centers throughout the world, such as the Sun Yat-sen Center in Madrid. Through invitations extended by the Pacific Cultural Foundation, the Institute of International Relations, and other nongovernmental organizations, Taiwan invites large numbers of influential persons from many countries to visit the island. Organizations abroad, such as the Australia-Free China Society or the Friends of Free China in the United States strengthen the links between Taiwan and friendly countries. The USA-ROC Economic Council, to which many leading American companies belong, promotes trade and investment between the United States and Taiwan.

Lack of diplomatic and consular relations with most countries of the world does handicap Taiwan in certain ways. Its officials must travel on ordinary passports; their travel is sometimes delayed because they fail to receive the treatment that would be accorded to holders of official or diplomatic passports. They lack the ready access to foreign officials that they would receive if officially recognized. They have to put up with affronts to national dignity. Agreements on aviation rights or quotas on exports to certain countries cannot take the usual form of government-to-government agreements, but must be negotiated between non-governmental organizations. It is remarkable how effectively Taiwan has learned to expand the scope of its international relations despite these handicaps.

While the PRC has persistently sought to prevent the ROC from maintaining official relations with other countries and tried to exclude it from intergovernmental organizations, it has not since 1979 mounted a campaign to interfere with Taiwan's substantive bilateral relations with other countries or with its unofficial mechanisms for promoting those relations. It is quick to protest, however, any action that seems to raise those mechanisms closer to an official status, such as the agreement between the AIT and the CCNAA on privileges and immunities.
Non-governmental Organizations

Since the time it was admitted to the United Nations, replacing the ROC, the PRC has not only pressed for the exclusion of the ROC from intergovernmental organizations, but has also demanded the expulsion of private organizations in Taiwan from international organizations. It has concentrated particularly on the three hundred or more international nongovernmental organizations affiliated with UNESCO. At the eighteenth general conference of UNESCO in Paris in 1974 the PRC prevailed upon the delegates to pass a resolution urging all these organizations to exclude immediately, and break off all relations with "bodies or elements linked with Chiang Kai-shek." Some organizations complied, but others did not and Peking found it necessary to have similar resolutions passed at the subsequent biennial UNESCO conferences. The resolution passed by the twentieth general conference in 1978 "noted with satisfaction that certain nongovernmental international organizations, in accordance with UNESCO's resolutions concerned, have expelled the branches, sections, or elements having ties with the Chiang clique". However, the conference also noted "with preoccupation that the branches, sections, or elements having ties with the Chiang clique and usurping the name of China or employing all other names are committing illegal activities within certain nongovernmental international organizations maintaining relations with UNESCO." The resolution again called on the organizations concerned to expel such Taiwan groups. The PRC representative declared, however, that "we are not against the participation in various non-governmental international scientific and technical and academic conferences by scientists of Taiwan province in the capacity of individuals."19

The International Council of Scientific Unions (ICSU) has been particularly resistant to PRC pressures to expel the Taiwan member organization in order to make a place for one from the PRC. Many scientists took the view that since science was a nonpolitical activity, any bona fide scientific organization should be entitled to belong, wherever it came from. The ICSU in May 1980 adopted a resolution agreeing to accept separate organizations from Taiwan and the PRC as full members representing Chinese scientists. The PRC declined to participate in the September 1980 meeting on the ground that it could not regard Taiwan as a full voting member of the organization.20

The PRC has also worked hard to squeeze organizations from Taiwan out of international sports bodies. The hardest-fought and lengthiest battle was over the Olympic Games. Until the summer of 1976 teams from Taiwan competed and PRC teams stayed away. At the Olympic Games in Montreal in 1976, however, because the Canadian Government ruled that the Taiwan team could not compete under the name of Republic of China, it withdrew. The struggle continued within the International Olympic Committee (IOC), in which Taiwan was represented, but the PRC was not. Finally, as the result of a postal ballot of all members, the IOC announced in November 1979 a decision to recognize the Chinese Olympic Committee in Peking as the national committee of China. Taiwan would be allowed to compete also in the games provided it did so under the name "Chinese Taipei Olympic Committee" and used a new flag and anthem rather than the flag and anthem of the ROC. After an unsuccessful attempt to fight the IOC decision in a Swiss court, the Olympic committee in Taiwan agreed in March 1981 to accept its new status. The Chinese Taipei Olympic Committee will enjoy all rights accorded to other national Olympic committees. With the help of the IOC, athletic groups in Taiwan will seek reinstatement in sports federations affiliated with the IOC, using the IOC-approved nomenclature. The way appears to have been opened for sports teams from the PRC and Taiwan to compete against each other in international meets.

Conclusion

Nearly ten years after the expulsion of the ROC from the United Nations and more than two years after the severance of diplomatic relations between the United States and the ROC, Taiwan forges vigorously ahead as a separate political entity, even though it lacks a clearly defined status in international law and a predictable future. Over the coming ten to twenty years, three outcomes are conceivable: integration, independence, or a continuation of Taiwan's present ambiguous status.

Integration by agreement between the two governments seems extremely unlikely, even though both continue to hold to the one-China principle and proclaim integration as their long-term objective. The authorities in Taiwan and the majority of people in Taiwan are fearful of placing the island even nominally under PRC sovereignty. They distrust Peking's promises to leave undisturbed the social and economic systems and the military forces of Taiwan, suspecting that the concession in principle on sovereignty would be
followed by a whittling away of Taiwan's freedom of action aimed at ultimate absorption of the people of Taiwan in the Communist system. Moreover, given Deng Xiaoping's advanced age and the history of struggles for power among the leaders in Peking, there is no assurance that Deng's successors would abide by any promises he might make. Consequently, so long as the China mainland is under a Communist system, Peking's proposals for peaceful reunification of Taiwan with the mainland probably will attract little support among the people of the island.

Any attempt to subjugate Taiwan by force during the next two decades also seems unlikely, unless a radical and improbable improvement should occur in relations between Peking and Moscow, accompanied by a severe deterioration in Peking's relations with Washington. Even in such circumstances — constituting a revival to some degree of the 1950s confrontation between the United States and the Sino-Soviet bloc — subjugation of Taiwan by force would be unlikely, for the strategic importance of the island to the United States would be greatly enhanced and the probability of U.S. military intervention to prevent its conquest would be high. In the more probable circumstance that the United States and the PRC continue to have a common interest over the next two decades in opposing Soviet expansionism, the two countries will probably succeed in continuing to treat the Taiwan problem as a secondary issue between them and the PRC will see its interests best served by refraining from the use of force against the island.

Long-term trends seem to be pushing Taiwan more in the direction of formal independence from China than integration with it. By the time another twenty years have passed, Taiwan will have existed as a separate political entity for half a century, possessing all the attributes of an independent sovereign nation and more highly developed economically than most countries of the world. The gap between the standard of living on the China mainland and in Taiwan probably will have widened substantially. The older generation of those who came from the mainland after 1945 will have passed from the scene, including the members of the Legislative Yuan, the Control Yuan, and the National Assembly elected on the mainland in the 1940s. Natives of Taiwan, together with some mainlanders who grew up in Taiwan, will occupy the principal positions of power in the government and the domestic political rationale for clinging to the one-China principle will have disappeared. The appeal of self-determination for Taiwan will be strong; people will become more and more restive at having to live in diplomatic limbo without a recognized and respected position of equality among nations.
However, the odds are heavily against the PRC's agreeing to a formal declaration of independence by Taiwan. Rulers in Peking seem no more likely to go along willingly with Taiwanese independence than George III was to tolerate the independence of the American colonies or Abraham Lincoln was to acquiesce in the independence of the Confederacy. The probability is great that they would resort to force to prevent it. There is a third choice, neither integration nor independence, but the continuance of Taiwan's present ambiguous status. The Taiwan authorities have demonstrated that the island can develop and prosper and expand its relations throughout the world without formal recognition as a state or government. Taiwan and its partners are steadily refining and improving their techniques for dealing with each other in the absence of formal diplomatic relations. While this state of affairs is not entirely satisfactory to either Peking or Taipei, the government in Peking may for a long time prefer it to the costs and risks of resorting to force and the government in Taipei may prefer it to running the risk of having to fight for its independence.

The PRC could, of course, drop its conciliatory policy toward Taiwan in favor of pressure tactics short of the use of force. It might, for example, try to interfere with Taiwan's economic relations with its partners. Such tactics, however, have a number of disadvantages. The PRC's capacity to pressure Taiwan's trading partners is not great; it might lose more than it would gain by such tactics. Moreover, the more pressure Peking exerts on Taipei, the more it risks pushing the people of Taiwan to abandon the one-China principle and opt for independence, having concluded from Peking's hard-line posture that they have little to lose. A conciliatory PRC policy, on the other hand, would be more likely to encourage retention of the one-China principle by Taiwan and allow communication between the two groups of Chinese people to develop.

The undefined state of peaceful coexistence that now exists between the China mainland and Taiwan could continue indefinitely if the leaders on both sides accepted the view that it was more in their interest than facing the risks and uncertainties of trying to change it. Under the umbrella of a one-China principle proclaimed by both, Taiwan could go its own way, enjoying most, though not all, of the advantages of a separate, fully-recognized sovereign state. Scholars versed in international law might chafe at their inability to fit Taiwan into a neat pigeonhold, but ambiguity may be preferable to attempts to impose order on unruly circumstances when those attempts intensify tension and conflict.
ANNEX

Offices Maintained in Taiwan by Countries Which Do Not Have Diplomatic Relations with the Republic of China.

American Institute in Taiwan
Interchange Association (Japan)
Anglo-Taiwan Trade Committee
Asian Exchange Center, Inc. (Philippines)
Indonesian Chamber of Commerce to Taipei
Belgian Trade Association
France-Asia Trade Promotion Association
Hellenic Organization for Exports in Taiwan (Greece)
Jordanian Commercial Office
Netherlands Council for Trade Promotion
Office of Singapore Trade Representative
Office of Austrian Trade Representative
Administrative Office, Thai Airways International
Cervantes Center (Spain)
German Cultural Center
Chapter 8

DIVIDED NATIONS AND INTERNATIONAL LAW:
THE CASE OF TAIWAN

Aleth Manin

Introduction

The title of this symposium is somewhat daring: at first glance, it seems rash to examine the relation between divided nations and international law, because international law is supposed to consider States to the exclusion of anything else. International law is in fact based upon a theoretical point of view which considers the State as the organized form of a nation.

The concept of "nation," consequently, is relegated to a secondary level in classic international law. It is of interest only in regard to relatively minor institutions such as national minority rights or the recognition of the nation as opposed to the recognition of the State.

But at the present time, that is, since the Second World War, international law cannot ignore a situation which is faced by several peoples in their search for their national identity. It is therefore an exercise in realism to examine how the general rules apply to divided nations and how such nations themselves apply those rules.

In short, it is this double question which we will discuss today.

This discussion may prove to be somewhat fragmentary; first, because the legal point of view is but one facet of reality, it cannot elucidate the whole. More importantly, it is fragmentary because it deals with present realities since we are examining the situation in 1981. The present status of these nations is still changing. In fact, the very essence of divided states lies in the hope of reunification. We must therefore endeavor to avoid betraying that hope, while examining the present situation.

Introductory Comments on the Chinese Case

Clearly, the Chinese nation is split by the same ideological affliction as other divided nations. There is a distinction, however. If we take Korea and Germany, the two camps that claim to speak in the name of the whole are relatively equal in magnitude. However, the disproportion between the territory, population and strategic importance of the two Chinese camps is startling. This disproportion is naturally the starting point for the position taken by third States
in their choice of one group or the other. Independently of any other justification, it is strategic, economic, social and similar considerations which determine the actions of third States with respect to divided nations as well as the significance they attach to their desire for reunification.

The disparity between the two Chinese communities explains in large part the current status of Taiwan and the peculiarities of its external relations.

The Status of Taiwan

Because the international community is dominated by the concept of statehood, divided nations concentrate their efforts toward entering fully into the world of States.

It is well known that, strictly speaking, there is no objective legal criterion for the existence of a "State" in international law. One considers constituent elements only — territory, population, government — from which third parties draw, at their sole discretion, all consequences with a view to establishing or not establishing State-to-State relations with the chosen entity by virtue of the act of recognition.

The institution of diplomatic recognition tends to favor — or disfavor — divided nations as much as it does any non-divided nation. However, it plays a further role in the dynamics peculiar to divided nations, placing in the hands of the recognized entity the ability to cite that recognition by third States as a legitimization of their claim to overall authority. This explains the harshness of the means taken to avoid giving support to the claims of "the other," whether those means be the well-known Hallstein doctrine in the Federal Republic of Germany or the same unqualified intransigence which one sees in the two Chinese communities.

In this general scheme, the status of Taiwan presents two notable peculiarities. The first arises from the mere act of counting: the number of states which recognize the Republic of China, after having diminished to an alarming degree, has stabilized despite the fears aroused by the establishment of diplomatic relations between the United States and the People's Republic of China. In 1981, twenty-three States maintain official relations with the authorities in Taipei.

The second peculiarity results from the historical circumstances of the war. Two great powers, the United States and Great Britain, had the right under international law to oppose the People's Republic of China's claim to the territory of Taiwan.
Since 1978, the doctrine of these two has been somewhat "neutralized." After President Nixon's 1972 visit to mainland China, Great Britain took a further step beyond its act of recognition in 1950: the British government acknowledged "the position of the Chinese government according to which Taiwan is a province of the People's Republic of China."

After long hesitation while it sought in vain for a formula that would satisfy its new partner without threatening the security of Taiwan, the United States on December 16, 1978, affirmed in turn the principle that Taiwan by law formed a part of the People's Republic of China. (Among the States historically interested in resolving the issue of Taiwan, only Japan has sealed its relations with the People's Republic without accepting the principle of the unity of China. But Japan was hardly in a position to decide the question of Taiwan.) As a result of American recognition, no State presently has legal standing to contest the PRC's principle according to which Taiwan is a territory of the People's Republic of China. They may, however, naturally observe that the People's Republic has not taken effective de facto control over Taiwan but these recent events are meant to bring change to the juridical status of Taiwan.

It is indeed rather unusual for a State to be called upon to confirm the territorial claims of the State with which it is establishing diplomatic relations during the process of recognition. The Peking authorities insisted on obtaining, particulary from Great Britain and the United States, recognition of the principle of the unity of China, in order to lend to the process of reunification the appearance of internal order. Clearly, no measures of reunification are actually being undertaken on this ground. Rather, in this case, the law is being used, so to speak, to precede the fact.

Communist China does not conceal its ambition, in this context, which is to grant Taiwan the status of an autonomous region. The clear statements of the communist authorities indicate that, if reunified with the People's Republic, Taiwan would retain its autonomy — that is, in concrete terms, its monetary system, its commercial relations, and its armed forces and governmental structures. All the same, it is noteworthy that on the international scene the Peking authorities are acting as if the situation they describe already existed. The American government has already discovered this to their cost, when Peking protested on several occasions that the United States had violated its commitments to consider Taiwan as part of China. It is also well known that in the recent confrontation between the People's Republic and the Netherlands, the latter was accused of failing to respect the view of the People's Republic that Taiwan is a province of China. (See, Le Monde, January 16, 1981.)
In any case, the legal capacity of Taiwan is already somewhat restricted.

The area in which the activity of the People's Republic has already achieved immediate results is naturally security, which is even more essential for divided States than for any other national group.

The observations below are governed by the hypothesis that reunification of China cannot be achieved by peaceful means.

The acts of recognition have a clear goal: to deprive Taiwan of the right of recourse to the international system of collective security. This deprivation operates on two levels. First there is the serious question of whether the system of collective security, namely the Charter of the United Nations and more specifically the Security Council, would intervene and oppose forceful measures taken by the People's Republic against Taiwan. Clearly, communist diplomacy has sought to undermine in advance any attempt in this direction. Recall that in 1971 the UN General Assembly "reestablished" China's rights and passed a resolution confirming its claim to represent the Chinese nation. Without being overly pessimistic, it is extremely unlikely that the General Assembly — or a fortiori, the Security Council, in which China has a permanent seat — would intervene in a show of force. Moreover, the practice of the United Nations tends to demonstrate that without being recognized as a national liberation movement, separatist provinces may expect little aid from the world organization.

Secondly, collective security exists also through the system of military alliances. Such alliances are obviously precluded between Taiwan and those States that have established diplomatic relations with the People's Republic. The abrogation of the 1954 mutual defense treaty with the United States is the clearest example of this. This does not prohibit any State or group of States from manifesting political interest in a peaceful resolution to the question, but at this point one is no longer dealing with legal aspects. Rather, one is dealing with political aspects.

The vital issue regarding Taiwan is indisputably that of military cooperation. And this is certainly the area where international rules are established with the least degree of certainty. Broadly speaking, it is prohibited to provide assistance to a separatist movement but it is lawful to aid national liberation movements. In the first case, the rules traditionally applied to the case of civil war are relied upon, while in the second one relies upon the right of national self-
determination which the instruments of the United Nations purport to recognize.

Recent events tend to prove that neither of the cases applies to Taiwan. The People's Republic intentionally maintained the fiction of separatism when it acted with respect to the Netherlands, as if Taiwan should already be regarded as a separatist province.

It is therefore logical that, for now, any assistance offered to Taiwan must be a function of the balance of power rather than of juridical considerations.

Taiwan’s External Relations

The observations on the status of Taiwan do not give a realistic appraisal of the situation.

In fact, the initiatives of the People's Republic have been largely counteracted by the dynamism of Taiwan's diplomacy which, among divided nations, shows an intense degree of activity and a great ingenuity. The most visible sign of Taiwan's presence on the international scene is its pursuit of substantive relations with most of the world's population, including that of several communist countries.

Is it possible to measure the quality and extent of these relations? The most significant communiques issued when recognition was extended to the People's Republic, namely, those of Japan and the United States, clearly referred to "people-to-people" relations with Taiwan. Do such relations have specific implications? That would presuppose that the word "people" has a precise meaning or that the Parties intended such a predetermined meaning inter se. At first glance, the word "people" means more through the hopes it conveys than because of the rights it restores. The declarations recorded in the United Nations and in the conferences of non-aligned nations used the word without having given a prior definition, and do not provide a basis for determining the status that should, in general, be attributed to a "people."

In truth, one is inclined to the opinion that the Parties directly concerned did not consider that they were determining Taiwan's external relations on any juridical basis.

The Sino-American communique is symptomatic of this dilemma. If that communique expressly aims at the maintenance of commercial and cultural relations, it is because such relations have caused fewer problems. On the other hand, in referring to other "non-official relations," the communique leaves foreseeable points of disagreement.
Actual practice does not provide much clarification. If official relations are state to state, there is no precedent which defines the specific character of non-official relations.

This vague notion of unofficial relations is used by Taiwan to fill the void caused by the lack of traditional diplomatic missions. The creation of ad hoc organizations as opposed to the usual official missions is the result of pragmatism. There is therefore no preexistent model; these organizations are entirely creations of circumstance.

To date, three types of organizations exist. The simplest consists of setting up, based on parallel and independent acts, national organizations which undertake the same activities. This is the technique employed by the Europeans.

The second type arises from concerted action. Two organizations created for this purpose conclude a nongovernmental agreement in the terms of which they define their modes of activity within the territory of the other. This is the aim of the Agreement of December 26, 1972 between the Interchange Association (ICA), the Japanese Association, and its Taiwanese counterpart, the East Asian Relations Association (EARA). This Agreement sets up the compositions of the parties' respective delegations and the areas in which they may exercise their authority. It specifies matters relating to the competence of the organizations and the means by which they are empowered to act.

The third type is that used by the United States. A private organization is charged, by the terms of a statute, to ensure relations between the people of Taiwan and the people of the United States. This is therefore a unilateral act which, at the same time, determines the functional rules and the status within American territory of that organization.

In each case, the organizations created fall within the same juridical category; they are associations or corporations under private law.

The peculiarities of their composition are well known. It is more profitable to examine their functions. In this regard, one might say that, in a very general sense, these organizations function on two different levels: they are missions of general interest and they are the sole channel for people-to-people relations.

Do these functions justify the granting of special privileges and the use of facilities? Regular and active relations no doubt require a minimum of privileged treatment, to ensure the protection of persons and of the property of the organizations. The status of special missions, as adopted in the United Nations, could provide a solid reference for situations which are still unresolved.
Chapter 9

RECOGNITION POLICY WITH RESPECT TO MULTI-SYSTEM STATES: THE CASE OF CHINA

Morton A. Kaplan

The General Problem

The problem of recognition in the cases of the so-called multi-system states is a complex matter, both legally and politically. I shall attempt to address this matter with respect to the Republic of China, but it will be useful to consider the case of China from within the context of the general problem.

Although I do not wish to spend much time on legal issues, a few preliminary remarks are in order. Neither of the principal contending theories of recognition, whether of states or of governments, is without its problems. The position taken by Lauterpacht and Kelsen that recognition is constitutive obviously overstates the case. Indeed, Lauterpacht felt compelled to modify orthodox constitutive theory by positing a legal duty to recognize a state or government that met certain prescribed factual prerequisites. On the other hand, the declaratory or evidentiary theory, according to which statehood or governmental authority exists independently of recognition by other states, implies a theory of law that in its own way rivals the abstractness of Kelsen's pure theory. How can facts determine anything in the absence of norms that make the facts relevant to the issue? A system of law is neither a self-subsistent entity that is divorced from the life and times of the political and social system within which it is implemented nor a set of disembodied factual conditions that exists abstractly in some timeless realm.

Legal theory, like philosophy in general, and despite Justice Holmes' observation that general principles do not decide particular cases, has long been governed by a search for identifiable criteria that determine decisions, whether these are the social facts of realistic theories or the norms of normative theories. If recognition were merely a matter of state discretion, that would unequivocally settle the issue. If, on the other hand, the existence of a state or government were to be determined purely by a factual set of circumstances, then we could turn the problem over to technicians. Thus, the matter is somewhat analogous to the snake that is
swallowing its own tail. A right cannot flow from facts except as prescribed by some legal system. Conversely, all legal systems refer to certain factual conditions, and these may differ with the legal systems and the conditions of the societies in which those systems are implemented.

Recognition in "Balance of Power Systems".

During the period of the "balance of power" international system, the standards of recognition tended to conform with the general needs of that system, because one of the primary requirements of that system was maintaining flexibility of alignment. Inasmuch as the independence of states was essential to that end, states attempted to maintain standards that preserved this independence and that, therefore, would not interfere with domestic arrangements.

States continued to deal with an existing government until that government had lost effective control of the situation regardless of political affinities or disaffections. A new state or government that was in control of its territory and population might not be recognized immediately. The primary purpose of withholding recognition from a new state or government, however, was to bring pressure on the new state or government to recognize its obligations under the system of international law. Before recognition, a new state or government gained some status and rights under international law, but not the privileges that were accorded under the comity of nations. Even belligerent parties that did not meet the standards for recognition and that controlled both some territory and population acquired de facto some rights and duties under international law because of the general need for order in the system.

Any other position would have resembled intervention and would have invoked the counter-interventionary activities of other states regardless of their positions. Of course, at times these norms were violated, as are the norms of any system of law, domestic or international. Additionally, there were areas of so little importance that for all practical purposes they fell outside the system. The system of norms worked by and large because the social and political international system provided the major states with incentives to maintain it.

Recognition in a Loose Bipolar System

World War II constituted a watershed in the development of international law. There was a system change and it affected the
character of the international system and of the norms that were enforceable. A loose bipolar system arose and the constraint that supported the norms against intervention were greatly weakened. Similar changes affected recognition policy. Recognition became less a matter of enforcing conformity with the system of norms and with specific obligations than of affecting the bipolar competition and the contest over the rules of the game. Thus, the evidentiary criteria that determined recognition began to lose their relatively neutral character and to gain partisan gloss.

One can note important differences from the "balance of power" situation. Even if the United States opposes Soviet military intervention in Poland, the interventionary character of Soviet pressure is resisted primarily by the strength of political opposition within Poland itself rather than by the strength of opposition from either the international political system or international law.

No firmly-established norm of international law that is generally recognized prohibits Soviet intervention, numerous General Assembly dicta to the contrary notwithstanding. Some day, further modifications in the world political framework may move the system back to the general norm of non-intervention. But those conditions do not yet exist.

There were also other types of system changes. The old colonial system collapsed and very large numbers of new nations came on the scene that dwarfed in numbers the states that had participated in the previous "balance of power" system. The character of the political contests for rule in these new nations, their fear of "neo-colonialism", and their desire to expropriate the property of the old colonial nations under justifying slogans, produced a contest over the principles governing nationalization and quickly became confused with contests involving intervention and recognition.

World War II had still another aftermath that affects the system of law. A new state such as Israel and multi-system old states such as Germany, China, Korea and (until 1975) Vietnam, became elements of the post-war settlement. Although these divisions were created by incipient bipolarity, and, except in the case of China, were sustained by it, they are also reinforced by different ideologies and power structures.

Despite the self-conscious effort of the framers of the Charter of the United Nations to divorce itself, unlike the League of Nations, from the post-war settlement and lack of success in implementing the provisions of the Charter against the use of force, such a settlement is part of the framework of post-World War II international law.
Precarious though that framework may be in certain respects, the territorial settlements and the new norms have strong material interdependencies. Their material reinforcement also minimizes the risk of a third world war. Thus, there are strong incentives in the system for the major states to maintain the framework of law.

The question is not whether the durability of the post-war settlement has been tested at times — for surely it has — but whether the system has the strength, and the major nations within it the incentive, to maintain the system and its norms against challenges. And, within limits and with exceptions, including the tragic case of Vietnam, it has and they do.

The loose bipolar system has changed from its equilibrium position, but not so much that a consonant normative structure is threatened. Although bipolarity continues to exist today primarily in its military, and to some extent in economic, form, and although the system continues to evolve in other respects, the loose bipolar framework is sufficiently valid in important respects to reinforce many of its normative features. Whereas, in its equilibrium state, national recognition was designed to reinforce bloc cohesion and to minimize the legitimacy of the disfavored government in multi-system states, this position is no longer tenable and should be modified, as I shall argue below. But first, we must discuss briefly the history of recognition with respect to China.

This normative system of which I am speaking was not self-consciously put together by legal craftsmen who understood what they were doing. Moreover, the boundaries and implications of the system are murkier than they need have been because practitioners — from intellectual confusion, political constraints, or the pursuit of immediate objectives — failed to reach decisions that would have been functional within the system.

For instance, the fact that the United States preferred for many years to recognize the Republic of China as the official China entitled to a Security Council seat in the United Nations confused two different fora. Whereas, in a "balance of power" system, the recognition decisions of individual states and of the League of Nations ought in principle to have been the same, except perhaps in some few exceptional situations, the same result need not follow in a loose bipolar system. The purposes of recognition in the two different fora and the legal criteria that determine them might very well — and, in the instant case, should — differ. For many years it could have been argued that United States recognition policy was appropriate from a bloc standpoint in a loose bipolar system. It did not follow
from this that the decisions taken in the United Nations were appropriate from the standpoint of a universal organization. The U.N. is not a participant in the bipolar competition and one of its main equilibrating functions in the system is to mediate bloc quarrels from a neutral standpoint. Although one might have argued that neither China was the appropriate successor to the seat held by China in the Security Council, for many years the Republic of China held that seat while its claim was factually indefensible. Although I would argue that the Republic of China acquired by occupation the province of Taiwan, it no longer had control of the people, or substantial support in the territory, of that which constituted the bulk of the state of China. However, the terms under which this contest was fought so confused the issue that the subsequent membership of the Republic of China in the General Assembly was unfairly and improperly prejudiced.

*How the Norms of Bipolarity Should have Developed*

Let us return now to one of our starting points. The framework of international law in the current era has among its major functions that of maintaining the postwar settlement, the norms appropriate to it and the avoidance of at least major war. Thus, the legal norms of this system tend to be, and should be, consonant with these aims. An integral part of this postwar settlement involves both the new states such as Israel and multi-system states such as China, Germany, Korea and, previously, Vietnam.

What norms are appropriate in such a situation? The General Assembly of the United Nations immediately following the first free election in Korea in 1948 took a major — but as it turned out, abortive — step toward the recognition of this new international order. It recognized the government headed by Syngman Rhee in 1948 as a freely-elected government and as the only such government in Korea. This implicitly invoked a new and appropriate standard of international law: the existence of a single state that could be coterminous with more than a single legitimate government. This was appropriate policy for the universal organization in a loose bipolar system and is becoming appropriate also for national policy in the system.

In fact, much of current practice recognizes what, from the standpoint of classical international law, can only be considered an anomaly. Although both Koreas recognize only one state and oppose the permanent existence of separate governments, each government functions independently and is recognized by a large number of
countries. Although the German Democratic Republic recently has
came close to the position of insisting upon two states, the Federal
Republic blurs the issue by mandating the existence of only one
nation and by recognizing that it has at least residual responsibility
for all Germans in foreign lands. Both the Republic of China and the
People's Republic of China recognize the existence of only one
Chinese state, and each is recognized by a number of nations.

Both Germanies are represented in the United Nations. Neither
Korea is represented because North Korea refuses to acknowledge
the validity of separate representation and because the Soviet Union
would veto an independent South Korean entry. There is little doubt,
however, that a very large majority could be mustered for South
Korean entry. The Republic of China was expelled from the General
Assembly when the People's Republic was admitted. But I would
argue that this is the consequence of the absurdly clumsy, if not
deliberately counterproductive, way in which the United States
argued the issue.

The Case of the Republic of China

It would be unrealistic to deny that the specific history of events
has had some impact upon the legal structure of the system.
However, that impact may not be entirely preclusive. To date, in the
United States, the China issue has been made an appendage of
current, and often misguided, policy. The condemnation of the
People's Republic of China as an aggressor in Korea, when it had an
inherent right to protect its own security, undermined both relations
with the People's Republic and the stature of the United Nations by
forcing the United Nations into a compromise armistice with a nation
that it had labelled as an aggressor. Rather than allowing the
People's Republic into the United Nations while the United States
had a firm majority in that organization, thus permitting the People's
Republic to play its legitimate role in that organization, the United
States in effect supported the implicit Soviet objective of keeping
Communist China out of the United Nations. Later, when the depth
of the split between China and the Soviet Union was recognized and
when President Nixon was able to move toward initiating formal
relations with China, the United States overestimated China's
military and economic potential and acted in disregard of normative
considerations appropriate to the circumstances. As this policy was
conducted further by the Carter administration, in its effort inadvis-
ably to play the China card against the Soviet Union, the United
States bargained away the position of its ally, the Republic of China,
as it previously had that of Vietnam, without anything substantial to show for the venture in terms of immediate gains, long term interests, or normative values.

The very least the United States should have done was to resist normalization until a decent modus vivendi had been arranged between the People's Republic and the Republic of China. Had it not been for Congressional passage of the Taiwan Relations Act, the right of the United States to engage in commerce with the Republic of China, to supply it with weapons, and so forth, except on terms acceptable to the People's Republic, could have been challenged at some future date on the basis of the agreement between the two governments. Even though the United States did not formally acknowledge the right of the People's Republic to control Taiwan, it did "not challenge" that control; therefore, unnecessary damage was done to the legal position of the Republic of China.

A General Recommendation for Normative Policy

Although each one of the multi-system states is significantly different in one or more respects, the United States eventually should move toward a relatively principled position with respect to multi-system states. The first aspect of this position should be to recognize that each government in the divided state legitimately exercises the sovereignty of the state within its area of competence. It, therefore, is entitled to security with respect to its physical arrangements, its commerce, its social life, its political arrangements and all the other requisites of organized activity. The use of force to change this status quo is forbidden by the U.N. Charter. But it should be understood that these divisions are not permanent and that someday they will be overcome voluntarily. In the meantime, the state entity includes the territory and populations of the contending governments.

The second step should be to distinguish between that government within the state that comes closer to being the successor government and that which does not. In the case of China, the vast breadth of the People's Republic clearly establishes the fact that if any government in China is entitled to the permanent seat in the Security Council, it is.

Although the issues are not as overwhelmingly clear in the cases of Germany and Korea, both the Republic of Korea and the Federal Republic have larger populations, more territory, and more secure and voluntary support from their respective populations. They also have shown more willingness to accept their responsibilities under international law than their rival governments. For instance, the
Federal Republic has paid reparations for the criminal activities of the Nazi regime while the German Democratic Republic, which inherits many of the repressive features of the old Nazi regime, has not shown the slightest sense of international obligation in this respect.

To the extent then that there are differences in legitimacy and inasmuch these differences should affect elections to the Security Council, only the Republic of Korea and the Federal Republic of Germany should be considered for those positions. In an organization which includes among its members the Ukraine, the Byelorussian Republic, and such states as Oman, it seems reprehensible that the Republic of China is not a member of the General Assembly and of other appropriate international organizations. I would argue strongly that it is entitled to that status under international law. It is an international entity that exercises sovereign powers, even though both Chinas regard their anomalous condition as impermanent. Surely, in the last analysis the People's Republic of China will not wish to seem even less generous than the Soviet Union in this respect.

A Specific Recommendation for Normative Policy

With respect to the issue of American recognition of the Republic of China, the United States cannot entirely and quickly wipe clean the slate. It has agreed to break diplomatic relations of a formal nature with the Republic of China. There is no reason, however, why its relations with the Republic of China should not be upgraded to at least the status of its relations with the People's Republic before normalization. Moreover, as more states recognize the Republic of China and as the People's Republic finds it commercially and politically impossible to break relations with these states, given the conditions on its border with the Soviet Union and its other economic and political needs, the American position eventually may be upgraded even further.

My suggestion is that eventually the United States should have embassies in the People's Republic, the Federal Republic of Germany, and the Republic of Korea; but only legations in the Republic of China, the German Democratic Republic, and, after a peace treaty is signed on the Korean peninsula, in North Korea. This would recognize the relative differences in status between governments within the same state.

The strategic arguments against this position, in my opinion, are weak. In the first place, the People's Republic has no offensive
military capability to speak of and will not have for the next generation at least. Its value in the American strategic option lies primarily in its existence, not as a counterforce to the Soviet Union. Moreover, the less the United States satisfies the People's Republic, the more the latter's potentially closer relationship with the Soviet Union would forfeit possible concessions from the United States.

In the final analysis, it is not in the American interest for relations between the People's Republic and the Soviet Union to be as hostile as they are now. However, they are unlikely, given the potential conflicts between the two countries, to ever become parallel unless the United States and its allies become so weak that China aligns itself to a stronger Soviet Union out of fear.

The People's Republic is probably aware, in the unlikely event that the Soviet Union attacks it, that the United States is likely to do very little effectively to aid it. It likely would protect itself mainly by guerrilla, rather than by conventional, warfare. However, if the United States has been such an unfaithful ally in the case of the Republic of China, why should the People's Republic expect effective assistance from it if any risk is involved? Thus, even considerations of political prudence support the more principled line of behavior.

Practical Contraindications

There are short-term political expectations that make rapid movement to the position herein outlined unwise. I certainly would not advocate that a high official of the American government state such a position now in explicit form or that there be an explicit strategy of moving toward it in a short period of time. Rather, the ideas contained in this paper should be regarded as background information that is relevant to more particular future decisions that will be made partly on the basis of other considerations.

I have stated merely what I regard as a consistent and principled position on the subject of multi-system states in general, and that of China in particular. I have suggested some of the strategic as well as some of the normative factors that would support an eventual movement to a position of this kind. The history of events and the promises that have been made, as well as immediate political concerns, work against explicit adoption of this program now. Nonetheless, if policy is conducted without reference to the considerations expressed in this paper, we may continue to make the same kinds of tragic mistakes that we have made in the past.

The United States should promote responsible dialogue between the two Chinese states that responds to the rights and equitites of
each party in the current set of circumstances. True friendship for the Chinese people supports such a policy; and in the long run it is the policy most consonant with American interests and values.

With respect to the eventual unification of China the issue of Puerto Rico and the United States has interesting similarities and differences. If the United States were to demand that Puerto Rico choose between independence and statehood now, I have little doubt that it would opt for statehood even though I believe that most Puerto Ricans in their hearts want eventual independence. I believe that most Chinese both on Taiwan and on the mainland want eventual unity. However, if the Chinese on Taiwan are forced in the near future to choose between a two-China policy and autonomy under mainland sovereignty, I believe they will opt for separate statehood. In that circumstance, the United States will feel bound by reasons of honor, friendship and reputation for reliability to support that choice. No one's interests will be served by attempting to force a premature choice.

Some day, changes in the characters of the multi-system national systems and transformations of the international system may permit the healing of the festering wounds in multi-system nations. Whether this healing will take place within the confines of classical national state systems or within a more complex set of national, regional and international arrangements cannot now be forecast. But that some day these wounds will be healed seems to me as close to a foreordained conclusion as is possible in an uncertain world, provided that we proceed now with intelligence and compassion.
Chapter 10

OVERALL EVALUATION

Robert Sutter, Yung Wei, Stephen Guest and Swan-sik Ko

Robert Sutter

I want to speak on the contradictions present in American foreign policy, as seen notably in the trade-off between U.S. support for moral and legal principles and the need to deal with realities in foreign affairs. Historically, American foreign policy has dealt with these contradictions between practical tough-mindedness and morality, idealism and legalism in international affairs. The China/Taiwan case is an interesting example of how these two types of factors have confronted each other in U.S. foreign policy.

In recent years, U.S. concern for ideals and law in regard to Taiwan has been overshadowed by the practical concerns of developing relations with a former enemy, namely, China. It seems clear that we should try to restore more balance in our China policy and move back toward principles and legality in our relations with Taiwan and China, as Professor Kaplan spoke of today. However, this will likely prove to be a difficult task because of the strong realpolitik factors that continue to drive the United States and China closer together, usually at the expense of U.S.-Taiwan ties.

Seeking to withdraw from Vietnam, to gain leverage against the Soviet Union and to gain a more stable balance-of-power in East Asia, the United States viewed its new relationship with China as a practical tool, particularly useful in stabilizing the East Asian area in the 1970s. The question was asked as to why U.S. officials did not insist at that time that the PRC renounce the use of force vis-a-vis Taiwan. Is it not fair to ask, could the United States have done this and still developed the new Asian balance-of-power that it sought to achieve? Could the United States have attempted to use the China relationship to ease withdrawal from Vietnam or could it still have achieved some sort of leverage over the Soviet Union? To have stood by principles such as the renunciation of force vis-a-vis Taiwan at that time would have been extremely difficult, if not foolish, and not in the best interests of the United States.

I noted that the United States government has tried to cover over the contradiction between principle and practicality in its China/Taiwan policy with ambiguous public pronouncements. Thus, for
example, while the U.S.-PRC normalization communique assumes that Taiwan will be reunited some day with the mainland, the Taiwan Relations Act assumes that Taiwan will remain separate from the mainland for the foreseeable future and that the United States will do what is needed to sustain that situation. The U.S. government — ambiguously — says that it supports both documents.

I added, in regard to the demand that the United States require China to renounce the use of force against Taiwan, that such a stand would not be popular in China nor in most of the rest of the Third World. It would be seen as an effort by a satisfied, status quo power (the United States) imposing its "imperialist logic" on the poorer countries of the world.

I also referred to the issue of self determination which was raised this morning in defense of the interests of the current Taipei administration. I warned that using such a principle is probably not wise in the United States because there is a large group of people with the opinion that if there were true self determination in Taiwan, the current Chinese Nationalist leaders would be turned out of office and Taiwan would declare itself an independent state.

In conclusion, I applauded Dr. Kaplan's call for more ideals and more consistency in principle in U.S. foreign policy toward Taiwan. Although noting the difficulty of overcoming those U.S. leaders who will argue in favor of "practicality" in U.S. foreign policy toward China and Taiwan, I added that the Taiwan administration can assist the process by continuing to show itself as a model of favorable economic development, by further liberalizing political restrictions on the island, and by showing itself as less intransigent vis-a-vis the mainland, notably by no longer referring to the government there as "illegitimate" and by renouncing any interest in the use of force to overthrow the mainland government.

Yung Wei

Speaking on the need for conceptual framework, I wish to assert that while concepts, such as the multi-system nation, may be vague and not totally applicable, they provide some level of satisfaction and in this way concepts serve a purpose. In the development of concepts in human knowledge, concepts are often a result of trying to interpret reality, or they are developed to create a reality. In the case of the "multi-system nation," the term is a calling for concept to describe and to prescribe a reality, and this is done to 'soothe the nerve of those who have to live with the reality.'
The task of the scholar, in turn, is to find out how concepts can be developed to explain the reality; with the new concepts such as the "multi-system nation." New rules can be advanced to regulate the relationship between the different parts of the multi-system nation on the one hand and the rest of the world on the other. Conventional 19th century laws of recognition provide for only three entities: the state, belligerents, and insurgents. Movements between these three entities were usually rapid. Since the multi-system nation is now almost a permanent feature of the international system, this 19th century law has become obsolete. Nevertheless, some governments still apply it. The Non-communist side of the multi-system nations had played the zero-sum game by applying the 19th century law and eventually became the victims of a policy which they originally advocated.

Despite the fact that most likely the multi-system nations will continue to exist that neither side wishes the division to be permanent, and that there are many legal complexities involved in their interactions with other nations, governments and scholars have failed to develop rules of international law to handle the multi-system nations on legal basis. In trying to accommodate on one-by-one basis, many problems have arisen. There is a need, therefore, for deep-thinking and communication on the part of political scientists, and legal scholars, and policy-makers.

Without legal meaning, substantive relationships are useful, practical, but unstable, thus the more powerful side of the multi-system nations access to pressurizing the other side and thus achieving purposes which they could not achieve short of the use of force. The communist side is playing this game in the case of China. In short, these states are using the obsolete 19th century law of recognition as an instrument to achieve aims which otherwise could not be achieved without using arms. Similarly, to play down the importance of legal recognition is to overlook the fact that nationals of a system which is not recognized sometimes receive less protections and privilege than stateless persons in the international societies.

The key point here is to separate the problem of recognition of multi-system nations from that of unification. Other nations should recognize all parts of a multi-system nations, neither recognizing nor denying their respective sovereignty chains. The problem of unification should left to the various parts of multi-system nations themselves.

The Republic of China will rely upon the teachings of Dr. Sun Yat-Sen as a major means of reunifying China. The Republic of
China is willing to improve its relations with the countries of the world, so long as any of the following points are not required as pre-conditions:

- renunciation of Republic of China's claim to mainland China;
- request of the Republic of China declare independence of Taiwan; and
- forced negotiation with the mainland.

**Stephen Guest**

A number of diversifications of interests and interpretations have arisen during the course of this Conference. It must, however, be possible for there to be some sort of conceptual apparatus upon which most of us can agree and for which we must seek in order to solve the general problem.

Principles for such a framework can be extrapolated from the situation that arose in Rhodesia when it attempted to depart from certain principles of the United Kingdom constitutional law in 1965. After the Ian Smith government declared itself no longer constrained by the principles of the United Kingdom 1961 Constitution originally in force, the U.K. government held the actions of the Smith government to be void. The case is similar to the situation of Taiwan and mainland China in that a state declares that there is no existing law in a territorial entity purportedly part of that state but claiming its own constitutional sovereignty.

After a series of important test cases, it was finally decided by Rhodesian judges appointed by the U.K. sovereign that the Smith government was the *de jure* government. The principles or doctrines used in arriving at this decision were three in number.

The first principle was what could be called the historical doctrine (or, the "nothing succeeds like success" doctrine). This doctrine was based upon the fact that historically, *de facto* governments do "ripen" into *de jure* governments. An established government, effective in the executive and legislative spheres, is a government which should justifiably be recognized.

The second principle was the necessity doctrine. This doctrine states that even though a revolutionary government is revolutionary, recognition should be granted because that government exercises power over a territorially integral population, thereby preventing chaos or civil war.

The third principle is the international doctrine. Simply stated, this asserts that the government and the territorial entity over which it exercises its control should be accorded recognition if there is a
government in effective control of a state as defined by the international legal criteria of statehood.

The first doctrine can be countered by the argument that merely because a government succeeds does not necessarily indicate the justice of its success or the merit of its claims. To put it another way, the might of the government does not make it right. Such a doctrine could encourage revolutionaries to take power with the knowledge that validity would be accorded to their acts.

The third doctrine was untenable for a number of reasons, not the least being that no one would recognize Rhodesia as a state. It is my view that the second is the important one and the one most relevant to Taiwan.

The second argument enabled the judges to fill the "vacuum" created by the position of the United Kingdom legislature. This vacuum supposedly arose at least in spurious legal theory from the simple denial that law existed over a sizeable and a territorially integral population.

From these cases a general principle of jurisprudence may be proposed. Except in war, a principle of civil necessity may justify a means of acting towards effective but politically unrecognized governments. One could in some respects politically ignore a country (to use an ideologically neutral term), but allow certain if not most of its government's acts to be accorded some measure of recognition.

Finally, the major problem of this proposal for a dual system of recognition of countries such as Taiwan must be stated. How should we distinguish between those acts which we may recognize in the dual recognition context and those which we may not? For example, should it be commercial, economic, civil and administrative acts that are given pre- eminent recognition as opposed to governmental acts of a purely political nature?

Ko Swan Sik

I will offer some remarks on how far the facts as they are known fit into the framework of present international law, and to what extent new legal constructions would be needed.

We must examine the framework of international law as it applies to multi-system nations in terms of recognition and non-recognition. Since World War II, the role of the institution of recognition has decreased and eroded very much. Is it possible, then, to continue relations between non-recognized entities and third states on an ad hoc basis rather than in accordance with traditional rules?
Any innovation in international law in this respect is found in the Taiwan Relations Act. The Act serves to undo the consequences of de-recognition while striving to bring about preferable consequences.

In addressing the application of the German model to the China case, one should ask how far the German model can be applied. The important thing is the desire for re-unification. If there is a will for re-unification then traditional legal structures will not be very important.

During the course of the Conference reference was made to article 2, paragraph 4 of the U.N. Charter. Could not the prohibition of force referred to in article 2, paragraph 4 be combined with some type of guarantee by an international organization? Such a guarantee would eliminate the danger of the use of force between the ROC and the PRC, thereby allowing the development of peaceful relations between both parties — relations which could lead to future re-unification.

The issue of self-determination can only be understood in terms of international law within a specific stage of development. Self-determination was recognized after World War II in the framework of decolonization. It has not been recognized until now for secessionist movements or minority independence movements. Therefore, it is doubtful that the principle of self-determination could be applied to Taiwan. At any rate, we cannot speak of self-determination for Taiwan as long as it does not want to be a separate state of international law.

It has been stated at this Conference that reunification is not necessarily a solution and that normalization need not be synonymous with unification. This is a reasonable position, for to maintain the contrary would be to encourage us to strive for something which may not be possible in the foreseeable future.

The application of traditional legal institutions has proven to be only partially significant to cover reality. We have not come far enough to say what new legal institutions have been developed and should be applied.
APPENDICES

1. DIVIDED NATIONS AND INTERNATIONAL LAW:
Political Reality and Legal Practice

Yung Wei*

The purpose of this brief essay is to review the current status of various divided states under international law in the light of a world-wide appraisal of Institutions for the realization of human dignity. It consists of three parts; the first part deals with the existence of divided nations, or multi-state nations, as one of the constant features of the international relations today. The second part examines the problem concerning the recognition and representation of divided nations in their interactions with other states. Finally, in the last part of the paper, an agenda for systematic development of codes of behavior to be adopted by the states of the world to deal with the complex problems of the legal states of the divided nations is proposed.

The views expressed here in this paper represent those of the author as an independent scholar, not the institutions he associates with.

I.

One of the major legacies of the Second World War was the creation of the divided nation: East and West Germany, North and South Korea, North and South Vietnam, and mainland China and the Republic of China on Taiwan. With the exception of the two Vietnams, which were unified after the Indochina War, other divided nations continue to be competing political systems within a territorial and cultural sphere which is considered by all parties involved as being a single "nation".

There are, however, different patterns in the relations between the different parts of divided nations and between members of a particular set of divided nations and other states. The two Germanys have somewhat "resolved" their problems, or to put it more accurately, reduced their mutual hostilities, which has led to: (1) the exchanges of representatives between Berlin and Bonn; (2) dual recognition of the two Germanys by other states; (3) dual repre-

* Delivered at the Panel on "The Legal Status of Divided States," Annual Convention of International Studies Association, St. Louis, Missouri, USA. March 16-20, 1977. The contents of the paper represents the opinions of the author as a scholar of international relations, not of the institutions that he is associated with.
sentation of both Germanys in the diplomatic corps of other states; and, (4) membership for both East and West Germany in the United Nations.

The situation between mainland China and the Republic of China (ROC) represents the opposite end of the German arrangements. Here we find that there is virtually no interaction between two systems. Both political systems claim to be the sole legitimate government of China, and insisted that they oppose the division of China into two legal entities. In October, 1971 the Republic of China withdrew from the United Nations after the "important issue" resolution was defeated in the U.N. General Assembly. Since then mainland China has been the sole delegation representing China in the United Nations. In addition to their victory in the U.N., the Chinese Communists also made substantive advances in their efforts to replace the Chinese Nationalists as the only recognized government of China in the capitals of more than one hundred nations of the world, leaving the ROC recognized by only 23 nations.

The case of the two Koreas falls in between the two Germanys and two Chinas. Thus far, North and South Korea have not formally recognized each other. But a North-South dialogue has been maintained since July 1972. The "detente" between the two Koreas has not reduced significantly the hostility between the two Korean political systems. It did, however, lead to dual recognition and dual representation of the two Korean governments in a number of countries. Today, the leaders of both North and South Korea are still talking about national unification of the Korean nation, but short of a war, the future trend clearly points to co-existence of two political systems in the Korea peninsula.

II.

The continuing existence of divided nations creates unique problem for international law. According to conventional international law, there are three types of international personalities: states, belligerents and insurgents. Judging by the criteria specified in international law, political systems in the divided nations fall between a "state" and a "belligerent". In terms of the qualifications of a state — such as a government, a territory under effective control by that government, and the ability of that government to carry out international obligations — almost all the systems within the divided nations qualify for the status of that of a state. Yet confrontation between various parts of divided nations in political, economic and sometimes military arenas, plus the impact of East-West bloc politics,
have prevented a full recognition of all parts of a divided nation by other states.

Other than mutual hostility and cold war situation, another element which has prevented multiple recognition and multiple representation of the divided nations, or multi-state nations, has been the problem of overlapping claims over sovereignty and territorial control. By "overlapping claims", it is meant that various systems of a divided nation make claims that they represent not only the people and the territories which are under their effective control, but also the part of a divided state which they do not control. Consequently, diplomatic recognition and representation for the divided nation have become a "zero-sum game" in which other states are compelled to choose one of the political systems of a divided nation as the only legitimate government of all the territory of that nation despite the fact that it controls only a part of it.

The German solution actually amounts to the creation of two separate states. The Korean situation seems to be moving toward the German model. Before mainland China's entrance into the United Nations in 1971, the ROC had been the beneficiary of the "zero-sum game," with the majority of states recognizing only the government in Taipei. Since 1971, however, Peking has fully utilized conventional international law to gain diplomatic recognition at the expense of Taipei.

The lack of diplomatic recognition has definitely generated various kinds of difficulties and inconvenience for the government and the people of the ROC. For instance, the absence of diplomatic ties between the ROC and other nations often has prevented, or made it quite inconvenient for, the nationals of the ROC to travel to other nations. A notable example was the failure of the ROC athletes to compete in the 1976 Olympic games in Canada.

Clearly, the Chinese Communist leaders in Peking are trying their best to bring about total diplomatic isolation for Taipei. Lacking the ability to take Taiwan militarily, the Chinese Communists endeavor to subdue Taiwan through diplomatic maneuvers, hoping that increasing isolation of the ROC in the world community will produce enough discouragement and defeatism in Taiwan so that they can take the Island without the use of force. Thus far, Peking's strategy has not worked. The government and people of the ROC demonstrated extraordinary tenacity and resilience in resisting the Chinese Communist threat and in preventing complete isolation. Many innovative arrangements have been made by the ROC with or without the explicit endorsement of foreign governments, including
para-diplomatic representation in foreign capitals to facilitate trade and travel. Nevertheless, the lack of formal ties with other countries bothers the people of the ROC. The possibility that the United States may recognize mainland China at the expense of the ROC, without question, is a primary concern for the people of the ROC. Both the government and the people of the ROC are trying their best to prevent a breaking of ties between the United States and the ROC.

III.

The foregoing analysis reveals the complexity of the problems of the status of the divided nations under international law. Clearly, it is a situation that calls for innovative ideas and practical remedies. We should realize that the problem of recognition and representation of the divided nations can be very dangerous and disruptive to the maintenance of peace in the international system. First of all, there is a disproportionately large number of armed forces in the divided nations. Second, one part of a divided nation, mainland China, already has nuclear weapons; and three other divided states, West Germany, the ROC and South Korea, all have considerable nuclear capability. A hot war resulting from fierce diplomatic competition between the divided states could easily involve the big powers and lead to a global conflict. In order to prevent this from happening, I would like to suggest that we add a chapter or at least a paragraph in international law which would include the following points:

1. International law should be a stabilizing, not a disstabilizing, factor in international relations.

2. International law should not be used as an instrument to achieve purposes which cannot be achieved short of the use of force.

3. Recognition and representation of the divided states should not be a zero-sum game, i.e., other states should not be forced to recognize only one of the systems in a divided nation and accept its claim over all the territories of a nation, including those which it does not control.

4. The third state should recognize all systems in a divided nation without recognizing their claims beyond the territories under effective control yet without denying those claims either.

5. All third states should not take a position on the question of unification of the divided nations, neither forcing nor preventing the unification of the different parts of a divided nation into one single state.
6. The principle of multiple recognition of the divided states should also extend to multiple representation of the divided states in the United Nations and in all international organizations.

One may challenge the above-mentioned proposals by arguing that they are impractical because it does not correspond with the "realpolitik" of international relations. The fact is that even for highly mutually hostile systems, accommodations have been made to ensure certain extent of representation of the divided states which are not formally recognized by a third state. For instance, Taipei has an Embassy in Washington, D.C., whereas Peking has a liaison office there. In the case of Japan, the situation is reversed, with Peking having an embassy and Taipei having an office similar to that of the liaison office of Peking in Washington.

This is not to say that the divided states have accepted multiple recognition. The key word here is tolerance, not acceptance! For example, the Chinese Communists may not like the idea of a Chinese Nationalist Embassy in the U.S.A. while it only has a liaison office in Washington D.C. By the same token, Chinese Nationalists have not accepted the Chinese Communist liaison office in Washington, D.C. But for apparent practical reasons, they nevertheless tolerated the diplomatic representation of the other side.

Consequently, what we have today in regard to the recognition of the divided states is a series of creative accommodations to political reality, though without legal meaning. This naturally cannot be a satisfactory arrangement. For it leads to constant juggling of positions between the divided states in regard to recognition by the third states — a situation which is not stable and therefore can be the source of future conflicts. In sum, the current practice and norms concerning the status of the divided states is clearly inadequate. This is a problem which awaits a solution so that international law will be able to cope with existing reality and will function as an instrument for peaceful transition, and not a factor which may contribute to violent change.
### 2. BASIC FACTS CONCERNING TWO CHINAS, TWO KOREAS AND TWO GERMANYS

<table>
<thead>
<tr>
<th></th>
<th>People's Republic of China (PRC-Mainland)</th>
<th>Republic of China (ROC-Taiwan)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>1 billion</td>
<td>18 million</td>
</tr>
<tr>
<td>Density</td>
<td>270 per sq. mile</td>
<td>1212 per sq. mile</td>
</tr>
<tr>
<td>Area</td>
<td>3,691,502 sq. miles (not including Taiwan)</td>
<td>14,000 sq. miles</td>
</tr>
<tr>
<td>Education</td>
<td>5 years compulsory education</td>
<td>9 years compulsory education</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0.1% of population are college students</td>
</tr>
<tr>
<td>Literacy</td>
<td>over 50%</td>
<td>89%</td>
</tr>
<tr>
<td>Work Force</td>
<td>560 million</td>
<td>7.6 million</td>
</tr>
<tr>
<td></td>
<td>Agriculture 85%</td>
<td>Agriculture 34%</td>
</tr>
<tr>
<td></td>
<td>Industrial &amp; Service 15%</td>
<td>Industry &amp; Service 37%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Transportation &amp; Commerce 29%</td>
</tr>
<tr>
<td>GNP</td>
<td>581 billion (1980)</td>
<td>40.3 billion (1980)</td>
</tr>
<tr>
<td>Per Capita GNP</td>
<td>$234.50 (1980)</td>
<td>$2200 (adjusted for 1980)</td>
</tr>
<tr>
<td>Growth rate</td>
<td>(1957-78) 6.5% (1980) 4.5%</td>
<td>(1970-78) 9.1% (1980) 6.7%</td>
</tr>
<tr>
<td>Trade</td>
<td>(1980) 19.3 billion export</td>
<td>(1979) 19.80 billion export</td>
</tr>
<tr>
<td></td>
<td>20.1 billion import</td>
<td>19.78 billion import</td>
</tr>
<tr>
<td>Budget</td>
<td>72.8 billion (based on <em>Beijing Review</em>, September 29, 1980, pp. 11-12. In 1979 PRC's Revenue was 110.33 billion yuan (68.96 billion U.S.) and Expenditure was 127.39 billion yuan (79.62 billion U.S.) with about 17.03 billion yuan deficit (10.66 billion U.S.)</td>
<td>5.94 billion</td>
</tr>
</tbody>
</table>
BASIC FACTS

People’s Republic of China
(ROC-Mainland)

Republic of China
(ROC-Taiwan)

Defense
8.5% GNP (1978 estimate)
9.2 of GNP (1978 estimate)

Living Standard
Calories per day
1800
2845

Protein per day
35 gram
79 gram

Living Space
39.24 square foot per person
184.68 square foot per person

Electricity
Television
292.3 unit
31 per 10000
2192.8 unit
1858 per 10000

Sources: Based primarily upon
2. July 1980 State Department Background Notes on Taiwan.
3. Living standard based on various official sources released by the PRC and the ROC.

North Korea
South Korea

Population
19,627,000 (1980)
38,197,000 (1980)

Density
142 per sq. k. (1978)
376 per sq. k. (1978)

Area
47,000 sq. m.
38,400 sq. m.

Education
11 years compulsory
6 years compulsory

Literacy
90%
90%

Life Expectancy
M: 58.80, F: 62.50
M: 63, F: 67

Work force
6.1 million (1980)
14.5 million (1980)

GNP
$14.1 billion (1979)
$60.1 Billion (1979)

Per Capita GNP
$750 (1979)
$1600 (1979)

Growth rate
7.2% (1978 est.)
10% (1979 est.)

Defense
estimate of defense budget ending 12/79 is $2.9 billion or 15.2% of total budget.
Defense budget ending 12/81 is $4.4 billion or 37% of total budget.
<table>
<thead>
<tr>
<th></th>
<th>North Korea</th>
<th>South Korea</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trade</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1979</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E: $1,320 million</td>
<td>15.1 billion :E</td>
<td></td>
</tr>
<tr>
<td>I: $1,300 million</td>
<td>20.3 billion :I</td>
<td></td>
</tr>
<tr>
<td><strong>Budget</strong></td>
<td>$8.10 billion (1979)</td>
<td>$10.524 billion (1980)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>East Germany: GDR</th>
<th>West Germany: FRG</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Density</strong></td>
<td>(1978) 155 per square kilometer</td>
<td>(1978) 247 per square kilometer</td>
</tr>
<tr>
<td><strong>Area</strong></td>
<td>41,601 s.m.</td>
<td>95,975 s.m.</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td>10 grades compulsory</td>
<td>9–10 grades compulsory</td>
</tr>
<tr>
<td><strong>Literacy</strong></td>
<td>99%</td>
<td>99%</td>
</tr>
<tr>
<td><strong>Life Expectancy</strong></td>
<td>M: 68.5 F: 74.19</td>
<td>M: 67.2 F: 73.4</td>
</tr>
<tr>
<td><strong>Work force</strong></td>
<td>(1981) 8.9 million</td>
<td>27 million</td>
</tr>
<tr>
<td>Agriculture</td>
<td>11.9%</td>
<td>Industry &amp; Commerce 48%</td>
</tr>
<tr>
<td>Industry &amp; Commerce</td>
<td>42.5%</td>
<td>Agriculture 6%</td>
</tr>
<tr>
<td>Service</td>
<td>16.8%</td>
<td>Service 25%</td>
</tr>
<tr>
<td><strong>Per Capita Income</strong></td>
<td>$5,310</td>
<td>$12,500</td>
</tr>
<tr>
<td><strong>Growth rate</strong></td>
<td>(1979) 2.3%</td>
<td>(1978) 3.4%</td>
</tr>
<tr>
<td><strong>Trade</strong></td>
<td>E: $17.3 billion</td>
<td>E: $172 billion</td>
</tr>
<tr>
<td></td>
<td>I: $19.2 billion</td>
<td>I: $160 billion</td>
</tr>
<tr>
<td><strong>Budget</strong></td>
<td>(1979) in million DDR M</td>
<td>(1980) in M DM</td>
</tr>
<tr>
<td>R: 140,633</td>
<td>R: 189,773</td>
<td></td>
</tr>
<tr>
<td>E: 148,223</td>
<td>E: 214,480</td>
<td></td>
</tr>
<tr>
<td><strong>Defense</strong></td>
<td>8.9% of total GMP (1978) or $3.8 billion</td>
<td>3% of GNP (1979 est.)</td>
</tr>
<tr>
<td><strong>Living Standard</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calories per day:</td>
<td>3,000 per capita</td>
<td>2,980 per capita</td>
</tr>
<tr>
<td>Electricity produced:</td>
<td>5,780 per capita kWh</td>
<td>6,100 per capita kWh</td>
</tr>
<tr>
<td>Protein per day:</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Living space</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Televisions</td>
<td>(1979) 5,634,000</td>
<td>(1979) 19,421,539</td>
</tr>
<tr>
<td><strong>GNP</strong></td>
<td>$89.1 billion (1979) ($)</td>
<td>$766.1 billion (1979) ($)</td>
</tr>
</tbody>
</table>
3. PROGRAM OF THE CONFERENCE AND
LIST OF PARTICIPANTS

MULTI-SYSTEM NATIONS AND INTERNATIONAL LAW
THE INTERNATIONAL STATUS OF GERMANY,
KOREA, AND CHINA

Georgetown University Center for Strategic and
International Studies
University of Maryland School of Law
East Asian Legal Studies

June 23, 1981

The International Club Building
1800 K Street, N.W.
Washington, D.C.

This Conference on "Multi-System Nations and International
Law: The International Status of Germany, Korea, and China," is
jointly sponsored by the Georgetown Center for Strategic and
International Studies and the East Asian Legal Studies of the
University of Maryland School of Law, and is a regional conference of
the American Society of International Law.

Conference Panelists will compare and contrast the different
experiences of the multi-system nations in the global community,
including foreign trade opportunities, diplomatic recognition prac-
tices, and membership eligibility in international organizations.

An effort will be made to identify the legal, political and
conceptual distinctions among the three separate cases, which result
in different policy treatment of the nations in question. Discussion
will also focus on potential development of consistent and predictable
methods for dealing with multi-system nations.

Conference Co-Chairmen:

Ray S. Cline, Senior Associate, CSIS, Georgetown University.
Hungdah Chiu, Professor of International Law, School of Law,
University of Maryland.

Conference Preparation Committee:

Director:
Robert L. Downen, Director of Pacific Basin Studies, CSIS,
Georgetown University.

Staff:
John Pauley, Research Assistant, CSIS, Georgetown University.
Stephanie Clipper, Secretary, CSIS, Georgetown University.
Lu Ann Young, Secretary, University of Maryland School of Law.
David Salem, President, Maryland International Law Society.
PROGRAM

Tuesday, June 23, 1981

9:00 a.m.  Registration, Wadsworth Room, B-1 Level, International Club Building, 1800 K Street, N.W., Washington, D.C.

9:15-10:30 a.m.  TOPIC I: International Law and Multi-System Nations
Chairperson:  Professor John N. Moore, University of Virginia Law School
Speakers:  Professor Ray Edward Johnston, Wayne State University
           Professor Hungdah Chiu, University of Maryland School of Law

10:30-11:45 a.m.  TOPIC II: The German Case
Chairperson:  Professor Michael Kau, Brown University
Speakers:  Professor Gottfried-Karl Kindermann, Seminar of Internationale Politik, Federal Republic of Germany
           Professor Jurgen Domes, Universitat des Saarlandes, Federal Republic of Germany

11:45-12:45 p.m.  TOPIC III: The Korean Case
Chairperson:  Robert L. Downen, Director of Pacific Basin Studies, CSIS, Georgetown University
Speakers:  Professor N.Y. Chai, Columbus College, Columbus, Georgia
           Dr. Seung Hwan Kim, CSIS, Georgetown University

12:45-1:45 p.m.  LUNCH
1:45-2:00 p.m.  FREE TIME
2:00-3:30 p.m.  TOPIC IV: The Chinese Case
Chairperson:  Professor Hungdah Chiu, University of Maryland School of Law
PROGRAM OF THE CONFERENCE

Speakers: Mr. Ralph N. Clough, The Asia Society
Professor Morton Kaplan, University of Chicago
Professor Aleth Manin, University of Paris (Pantheon-Sorbonne)

3:30-5:00 p.m. TOPIC V: Overall Evaluation
Chairperson: Dr. Ray S. Cline, CSIS, Georgetown University
Speakers: Dr. Robert Sutter, Congressional Research Service, Library of Congress
Dr. Ko Swan Sik, Interuniversity Institute for International Law, The Netherlands
Professor Yung Wei, National Taiwan University
Mr. Stephen Guest, Faculty of Law, University College, London
Dr. Se Jin Kim, Institute for Foreign Affairs and National Security (Seoul)

5:30-6:30 p.m. Cocktails at House of Hunan Restaurant, 1900 K Street, N.W., Washington, D.C.

6:30-8:30 p.m. Dinner at Restaurant

CONFERENCE PARTICIPANTS — JUNE 23, 1981

Jong-ik Ahn
Chosun-Ilbo (Korea Daily)

Dora Alves
CSIS

William Barnds
House Foreign Affairs Subcommittee on Asian and Pacific Affairs

John Boatman
CSIS

William Breer
U.S. Department of State

Leslie Burgess
Fluor Corporation

N.Y. Chai
Columbus College

King-yuh Chang
Institute of International Relations, ROC

Barry Y. Chen

Han-ping Chiu
Legislative Yuan, ROC

Mrs. Chiu

Hungdah Chiu
University of Maryland Law School
Iris Chou
CCNAA
Ralph N. Clough
The Asia Society
Ray S. Cline
CSIS
Mrs. Majorie Cline
CSIS, NISC
Stephanie Clipper
CSIS
Angelo Codevilla
Senate Select Committee on Intelligence
Spencer Davis
Senate Select Committee on Intelligence
David Dean
American Institute in Taiwan
Phil Dion
Consultant
Robert Divine
Office of Senator Howard Baker
Michael Dolphin
CSIS
Jurgen Domes
Universitat des Saarlandes
Federal Republic of Germany
Robert L. Downen
CSIS
Terry Emerson
Office of Senator Barry Goldwater
Erwin Franzen
Free Press International
Norman C.C. Fu
China Times
Michael Gibson
CIA
Gerrit Gong
CSIS
Stephen Guest
Faculty of Law, University
College, London
Barry I. Grossman
CSIS
Judith Hall
American Society of International Law
William Hall
University of Maryland Law School
Penelope-Hartland Thunberg
CSIS
Doug Heller
Robert Hsu
CCNAA
Ray Edward Johnston
Wayne State University
Morton Kaplan
University of Chicago
Michael Kau
Brown University
Hyun-wook Kim
National Assembly, Korea
Dr. Jip Kim
National Assembly, Korea
Se Jin Kim
Institute for Foreign Affairs and National Security (Seoul)
Mrs. Se Jin Kim
Seung Hwan Kim
CSIS
Gottfried-Karl Kindermann
Seminar of International Politik, Federal Republic of Germany
Swan Sik Ko
Interuniversity Institute for
International Law,
The Netherlands

Herbert Lee
ICA

Ho-jin Lee
Embassy of Korea

Hyung Kyun Lee
MBC

David Tawei Lee
University of Virginia

Carroll Leggett
The Hannaford Co.

Rock J. Leng
Central News Agency

Todd Leventhal
CSIS

Michael Lindsay
American University

Ying-jeou Ma

Aleth Manin
University of Paris
(Panthéon-Sorbonne)

Thomas Melia
Office of Senator Daniel
Patrick Moynihan

John N. Moore
University of Virginia
Law School

Cherie Neville
CSIS

Christopher Nieh

Jay-Hee Oh
Embassy of Korea

Mary Park
CSIS

John N. Parker
Mobil Oil Co.

John Pauley
CSIS

Huei-en Peng
China Time Weekly

Moti Pinkasoviz
Foreign Broadcast
Information Service

Du-wnan Pong
National Assembly, Korea

Michael Privitera
Washington Legal Foundation

Lori Michelle Ragosa
CSIS, NISC

H. S. Sabatier
Northrop Aircraft

David Salem
Maryland International
Law Society

Lyu-shun Shen
Foreign Policy Research
Institute, Philadelphia

Comet K.M. Shih
United Daily News

Benedict Shih
Far East Times

Gaston J. Sigur
George Washington
University

David Simon
Bregman, Abell & Kay

Jang-nai Sohn
Minister, Embassy of Korea

Chi Su

Robert Sutter
Congressional Research
Service Library
of Congress
George Tong
    C.Y. Tung Group
Wei-ping Tsai
    CCNAA
Brice Wang
    Central Daily News
Sang-eun Wang
    National Assembly, Korea

Yung Wei
    National Taiwan University
Jurgen Weiss
    Gregory Winn
    ICA
Ho-yi Wu
    Jason C. Yuan
    CCNAA
BIOGRAPHICAL NOTES ON CONTRIBUTORS

Ray S. Cline, Former Deputy Director for Intelligence in the Central Intelligence Agency and Director of the Bureau of Intelligence and Research in the Department of State, is currently Senior Associate and Director of World Power Studies at CSIS, Georgetown University.

Hungdah Chiu, a specialist on Chinese affairs and international law and a recipient of a certificate of merit awarded by the American Society of International Law, is Professor of Law, University of Maryland School of Law.

N.Y. Chai is Associate Professor of Political Science at Columbus College.

Ralph N. Clough, former Deputy Chief of Mission at the U.S. Embassy in the Republic of China and a specialist in Chinese affairs, is a research scholar at the Asia Society.

Jurgen Domes, a German specialist on Chinese affairs, is Professor and Chairman of the Research Unit on Chinese and East Asian Politics, University of Saarlandes (Federal Republic of Germany).

Robert L. Downen, former Senior Foreign Policy Advisor to Senator Robert Dole, is Director of Pacific Basin Studies at CSIS, The Georgetown University.

Stephen Guest is Sub-Dean and Tutor at the Faculty of Law, University College, London.

Ray Edward Johnston, former Chairman of Divided Nations Studies of the International Studies Association and a specialist on comparative foreign policies of divided nations, is Associate Professor of Political Science, Wayne State University.

Morton Kaplan, a world renowned specialist on international politics, is Professor of International Relations, University of Chicago.

Michael Kau, a specialist on Chinese political development and foreign policy and editor of *Chinese Law and Government*, is Professor of Politics, Brown University.

Gottfried-Karl Kindermann, a German specialist on East Asian Studies, is Director of the Center for International Politics, University of Munich (Federal Republic of Germany), and Chairman, World Association for International Relations.
Se Jin Kim is associated with the Institute for Foreign Affairs and National Security (Seoul).

Seung Hwan Kim is Research Fellow, CSIS, The Georgetown University.

Swan Sik Ko is Research Fellow at the Interuniversity Institute for International Law at The Hague and Co-Editor-in-Chief of The Netherlands Yearbook of International Law.

Aleth Manin is Professor of International Law at the University of Paris/(Pantheon-Sorbonne).

John Norton Moore, former Counselor of International Law to the Department of State and Chairman of Inter-Agency Task Force on the Law of the Sea of the National Security Council, is Walter L. Brown Professor of Law and Director of the Center for National Security Studies, University of Virginia.


Yung Wei, former Professor of Political Science and Chairman of the Asian Studies Committee at Memphis State University, is Professor of Political Science, National Taiwan University.
INDEX

Albania, 2, 147
"Allied Travel Office", 91
Alpes Maritimes, 19
American Institute in Taiwan, 63, 151, 154, 159
Amsterdam, 91; District Court of, 92
Anglo-Taiwan Trade Committee, 153, 159
Antarctica, 3
Armenia, the Socialist Republic of, 28
Asian Development Bank, 149
Asian Exchange Center, Inc., 159
Atlanta, 149
Australia, 3, 149
Australia-Free China Society, 154
Australian Paper Manufacturers, Ltd., 149
Austria, 29
Bacteriological Weapons Treaty of 1972, 88, 96
Balkan (Balkanization), 16
Bangkok, 148
Bank of Communications, 148
Bank of Taiwan, 148
Belgian Trade Association, 153, 159
Belgium, 3, 81, 98
Benelux Countries, 93
Berlin, 182; East, 91, 141, see also Germany; East, West, 91, 141, see also Germany, West
Berlin Crisis, 59
Berne Copyright Convention, 88
Berne, Eric, 35
Bolivia, 54
Bot, B. R., 84
Boulding, Kenneth, 24
Bulgaria, 147
Byelo-Russia, 77, 174
Cairo Declaration, 122
Cambodia, 27
Canada, 17
Canton, 21; history of status, 22-23
Carolingian Empire, 17
Carter Administration, 63, 144, 146, 172
Central News Agency (CNA), 154
Cervantes Association, 153, 159
Chamber for Foreign Trade of the GDR, 89
Chen, Yi, 143
Ch'ên Yung-hua, 37
Cheng, Ch'eng-kung (Koxinga), 36
Cheng, Ching, 37
Chiang Ching-kuo, 150
Chiang, Kai-shek, 21, 31, 155
Chicago, 121, 148
Chile, 3
China, 8, 9, 10, 18, 20, 23, 26, 44, 45, 49, 59, 61, 65, 66, 73, 77, 82, 85, 115, 117, 119, 132, 136, 139, 141, 161, 169, 171, see also China, People's Republic of (PRC) and Republic of (ROC); record of unification and division, 74
China Airlines, 153
China External Trade Development Council (CETDC), 153
China, mainland, see China, People's Republic of
China, People's Republic of (PRC): U.S. policy toward 24-26, 44, 46, 49, 62, 176-177; policy toward Taiwan, 50-52, 55-57, 64-65, 69-70, 145-146, 154-156, 157-158, 185-186; policy toward Tibet, 51; Netherlands' relations with, 94-97; reaction to Dutch submarine deal with Taiwan, 101, 150
China, Republic of (ROC): relations with U.S., 25-26, 42-43, 46-47, 111, 143-144, 174-176, 177-178; foreign relations in general, 49-50, 54, 64-65, 141-142, 151-154, 165-166; reject dialogue with PRC, 69-70, 145-146, 180; relations with Japan, 79, 152-153; relations with the Netherlands, 98-100; Dutch submarine deal with, 100-110, 150; foreign trade, 147-148; foreign financial relations, 148-149; see also Taiwan
Chinese Communist Party (CCP), 25, 27, 28, 71, 187; difference from the Chinese Nationalists, 68-69; see also China, People's Republic of
Chinese Nationalists, 68, 178, 187; difference from the Chinese Communists, 68-69
Chinese Olympic Committee, 156
Chinese Taipei Olympic Committee, 156
Chun, Too-huan, 139
Clough, Ralph, 77
Cohen, Maxwell, 135
Congo, Republic of (Brazzaville), 126
Control Yuan, 157
Coordination Council for North Amer-
ican Affairs, 63, 151, 154
Costa Rica, 54, 65
Cyprus, 2
Czechoslovakia, 29, 147

Dalai Lama, 51
Deng Xiaoping (Teng Hsiao-ping) 27,
55, 145, 157
Deutsch, Karl, 30, 60
Domes, Jurgen, 18
Dominican Republic, 54, 65
Dulles, John F., 83

East Asia Relations Association, 152,
166
El Salvador, 54
Elizar, Daniel, 7
Empire of Alexander the Great, 15
Estonia, 48
European Economic Community, 29,
80, 115; ROC ambassador to 95;
trade with ROC, 147
Export Decree for Strategic Goods of
the Netherlands, 102

Far East Trade Office (Service), 99,
153
First Commercial Bank, 148
Formosa Plastics, 149
France, 3, 81, 85, 95; French Gov­
ernment Areas of 1968, 6
France-Asia Trade Promotion Associa-
tion, 159
Friends of Free China, 154
Fukien Province, 21, 36
Fukuoka, 152

"Gang of four", 68
Geneva Convention of 1949, 128
German Cultural Center in Taiwan,
153, 159
"German Solution", 144, 185
Germany, 2, 8, 9, 10, 14, 17, 18, 19, 44,
59, 61, 64, 85, 113, 119, 128, 129,
130, 136, 141, 161, 169, 171, 172,
174, 182, see also Germany, East,
and Germany, West; intra-German
relations, 45, 49, 73, 78-79, 114-
115, 116-117
Germany, East(German Democratic
Republic), 29, 45, 46, 62, 80, 92, 95,
113, 147, 172, 174, 182; Nether-
lands' relations with, 87-92

Germany, West(Federal Republic of),
29, 45, 48, 62, 80, 92, 113, 172
Gottman, Jean, 4
Great Britain, 20, 81, 85, 162, 163
Guam, 148
Guatemala, 54

Haas, Earnest A., 60
Hackworth, Green, 85, 112
Hague Convention Respecting the
Law and Customs of War on Law of
1907, 121
Hague Marriage Convention of 1905,
92
Hague Protocol of 1955, 87
Haig, Alexander, 24
Haiti, 54
Hallstein Doctrine, 49, 78, 91, 114,
126, 162
Hawaii, 120, 121
Hellenic Organization for Exports in
Taiwan(Greece), 159
Hiss, Alger, 122
Holy see, 54
Honduras, 54
Hong Kong, 26, 27, 115
Hornback, Stanley, 122
Houston, 148
Hungary, 147

Import and Export Act (of the Nether-
lands), 101
India, 20
Indonesia, 27
Indonesian Chamber of Commerce to
Taipei, 159
Informal Composite Negotiating Text
(ICNT), 4
Institute of International Relations
(ROC), 154
Interchange Association of Japan, 152,
153, 159, 166
International Commercial Bank of
China, 148
International Commission of Jurists,
51
International Council of Scientific Un-
ions (ICSU), 155
International Disengagement and
Observer Forces in Korea (IN-
TDAOFINK), 133
International Monetary Fund, 142
International Olympic Committee
(IOC), 156
Iran, 9
Iraq, 9
Index

Ireland, 2, 28
Israel, 19, 28, 131
Ivory Coast, 54

Japan, 3, 84, 121, 122, 136, 138, 143, 144, 147; rule in Taiwan, 21; Taiwan ceded to, 38; view of Taiwan’s status, 111; Korean repatriation problem, 127-128; relations with Taiwan, 79, 152-153
Japan Airlines, 153
Japan Asia Airways, 153

Johnston, Ray E., 36, 39
Joint Conference of Representatives of North and South Korean Political Parties and Social Organizations, 78

Jordan, 150
Jordanian Commercial Office, 159

Kameroons, 19
K’ang, Yu-wei, 38
Kaohsiung, 146
Kaplan, Morton A., 177
Kasperson, Roger, 7
Keidanren (Federation of Economic Organizations), 152
Kim, Il-sung, 139
Kim, Jung-li, 139
Kinderman, Gottfried-Karl, 18, 139
Koniggratz, Battle of, 116

Korea, 2, 8, 10, 14, 15, 44, 45, 59, 61, 64, 85, 113, 117, 119, 141, 161, 169, 171; see also Korea, North (Democratic People’s Republic of) and Korea, South (Republic of); intra-Korean relations, 62-63, 73, 77-78, 138-139; history of U.S. policy toward, 121-124
Korea, North (Democratic People’s Republic of), 29, 49, 125, 132-140 passim, 172, 182, 184; Netherlands’ relations with, 93-94; foreign relations in general, 126-129
Korea, South (Republic of), 29, 49, 54, 125, 132-140 passim, 141, 147, 172, 174, 182, 184; nationality problem, 81, 93; Netherlands’ relations with, 92-94; foreign relations in general, 126-129; repatriation problem with Japan, 127-128; U.S. troops in, 132-133
Korean Provisional Government, 120-124
Korean War, 59; Armistice Agreement of, 128, 130
Koryo Confederation, 131, 132
Kristof, Ladis, 28
Kuomintang, 21, 27, 142, 146, see also Chinese Nationalists
Kurdistan, 9

Latvia, 48
Lauterpacht, H., 83, 167
League of Nations, 20, 169
Legislative Yuan, 157
Leipzig trade fair, 147
Lesotho, 54
Lincoln, Abraham, 158
Lithuania, 48
Liu, Ming-ch’uan, 37
Louisiana Chemical and Plastics Corporation, 149

Malawi, 54
Malaysia, 27, 28, 131
Malaysian Airlines, 153
Manchuria, 120
Mao Zedong (Mao Tse-tung), 27
Marxism-Leninism, 68, 69
Mauritania, 126
Mendelson, W. H., 29
Mexico, 17
Michigan’s Department of Natural Resources (DNR), 6
Minghi, Julian, 7
Montréal, 156
Multi-system nations, 44, 45, 46, 48, 49, 61-62, 64, 70, 75-77, 118, 178; relations between multi-system nations, 73
National Agriculture and Food Show in Budapest, 147
Nauru, 54
Nazism, 61
Nederlands Centrum voor Handelsbevordering (NCH), 98
Netherlands, 81, 82, 85; Republic of the United Netherlands, 85; relations with GDR, 87-92; relations with two Koreas, 92-94; relations with two Chinas, 94-100; submarines deal with Taiwan, 100-110
Netherlands Centre(Council) for Trade Promotion, 98, 153, 159
Netherlands Chamber of Commerce for Germany, 89; Foundation of, 90
Netherlands-ROK Tax Agreement, 93
New York, 148
New Zealand, 3
Nicaragua, 54
Nixon Doctrine, 137
Nixon, Richard, 172
Non-proliferation Treaty of 1968, 88
Norway, 3, 28
Nuclear Test Ban Treaty of 1963, 88, 89

Office of Austrian Trade Representative, 159
Office of Singapore Trade Representatives, 159
Oficina Comercial de Taiwan, 153
Ohira, foreign minister of Japan, 152
Olympic Games, 156, 185
Osaka, 152
Ottoman Empire, 19, 20
Outer Space Treaty of 1967, 88, 97

Pacific Cultural Foundation, 154
Pakistan, 2
Palestine, 20
Pan-Africanism, 1
Panama, 54, 65, 148
Panmunjom, 49
Papal Bulls, 17
Paraguay, 54
Park, Chun Hi, 130
Pearl Harbor, 121
Peking, 141, 142, 143, 146, 150-158
passim, 185, 187, see also China, People's Republic of and Chinese Communist Party
P'eng-hu(Pescadores), 36, 38, 143
People's Literature Publishing House, 145
Philippines, 27
Pieck, W., 87
Pittsburgh, 121
Poland, 15, 147
Pounds, Norman J. C., 10, 34
Protocol on German Internal Trade and Connected Problems, 80
Puerto Rico, 176
Pye, Lucian W., 60
Pyongyang, 132, 137, 138, 141, see also Korea, Democratic People's Republic of

Quemoy Crisis, 59
Reagan, Ronald, 144, 146
Rhee, Syngman, 122, 171
ROK-Japan Treaty on Basic Relations, 124
Roman Empire, 16
Romania, 147
Rotterdam, District Court of, 92
RSV Corporation, 100
Sadr, Bani, 9
Salmon, J. A., 81
Samil spirit, 123
Samoa, 2
Sampo Company, 149
San Francisco, 27
Saudi Arabia, 54, 147, 148, 149
Schattschneider, E. E., 14
Seabed Treaty of 1971, 88, 96
Seoul, 132, 141, see also Korea, Republic of
Shanghai Communiqué, 107
Shaw, Yu-min, 36
Shen, Pao-chen, 37
Shimonoseki, Treaty of, 38
Siberia, 120
Singapore, 2, 28, 148
Sino-Soviet conflict, 139
Snyder, Louis, 35
South Africa, Republic of, 3, 13, 54, 147
Soviet Union, 3, 24, 29, 46, 52, 61, 82, 124, 131, 136, 138, 139, 144, 147, 172, 174; role in U.S.-PRC relations 25-26
St. Louis, 121
St. Vincent, 54
Standing Committee of the National People's Congress (of the PRC), 144
Sullivan, Roger, 111
Sun, Yat-sen, 68, 179; his three principles of the people, 146, 179
Sun Yat-sen Center, 99, 154
Sun, Yun-suan, 65, 69, 147
Swaziland, 54
Sweden, 28
Switzerland, 29
Sydney, 153

"Tai-wan-Min-chu Kuo" (Taiwan Democratic Republic), 38
Taipei, 64, 70, 94, 98, 106, 141, 142, 143, 146, 150-158 passim, 185, see also China, Republic of, and Taiwan
<table>
<thead>
<tr>
<th>Index</th>
<th>203</th>
</tr>
</thead>
</table>
| Taiwan, 9, 10, 15, 18, 19, 23, 30-33 | passim, 77, 94, 141, 142, 143, 162-165 passim; Dutch and Spanish colonial rule, 21, 36-37; Portuguese discovery of, 21; Japanese rule in, 21; history of status, 22-23; U.S. arms sales to, 24, 150; U.S. policy toward, 25-26, 42-43, 46-47, 143-144, 174-176, 177-178; PRC policy toward, 50-52, 55-57, 64-65, 69-70, 145-146, 154-156, 157-158, 185-186; Dutch view of the status problem, 106-108, 110-111; Japanese view of the status problem, 111; status of, 162-165; see also China, Republic of
| Taiwan Fertilizer Corporation, 149 | Taiwan Relations Act (TRA), 43, 46, 57, 63, 84, 109, 144, 146, 151, 173, 178, 182 |
| Taiwan Straits, 23, 144, 145 | Taiwan Trade Service, 153 |
| Tanzania, 131 | Tatsung Electric Company, 149 |
| Thai International Airways, 153, 159 | Tibet, 28, 51 |
| "Tien-Hsia" (under the sky), 66 | Tokyo, 148, 152 |
| Tenga, 54 | Tordesillas Treaty, 17 |
| Turkey, 9 | Tuvalu, 54 |
| Ukraine, 77, 174 | United Arab Republic, 131 |
| United Kingdom (see also Great Britain), 180, 181 | United Nations, 3, 45, 49, 51, 62, 63, 93, 94, 104, 105, 106, 114, 122, 130, 141, 144, 147, 154, 164, 165, 166, 169, 185, 187; Charter of, 112, 169, 173, 182; China representation problem, 170-172, 184 |
| United Nations Education, Science and Culture Organization, 155 | United States, 15, 17, 42, 44, 46, 52, 86, 94, 136, 137, 138, 141, 162, 163, 170, 173, 176; arms sales to Taiwan, 24, 150; policy toward Taiwan, 25-26, 42-43, 46-47, 111, 143-144, 174-176, 177-178; policy toward PRC, 24-26, 44, 46, 49, 62, 176-177; role in Netherlands-Taiwan submarine deals, 100; history of the policy toward Korea, 121-124; troop presence in South Korea, 132-133 |
| United States - Republic of China Mutual Defense Treaty, 46, 63 | Universal Declaration of Human Rights, 112 |
| Uruguay, 54 | U.S. Export-Import Bank, 148 |
| USA-ROC Economic Council, 154 | Verdun, Treaty of, 18 |
| Vietnam, 2, 26, 27, 46, 70, 171, 172, 177; Vietnam War, 59 | Wang, Tieya, 56 |
| Warsaw Air Transport Convention of 1929, 87 | Wei, Yung, 7 |
| Weimar Republic, 113 | Western Academy, 38 |
| Whiteman, Marjorie, 44 | World Bank, 142, 149 |
| Wulfsohn v. Russian Socialist Federa­ted Soviet Republic, 42 | Yokohama, 152 |
| Yugoslavia, 9, 147 | "Yung-ch'ing" (Forever Ch'ing), 39 |
Occasional Papers/Reprints Series in Contemporary Asian Studies

1977 Series

No. 1 — 1977
Chinese Attitude Toward Continental Shelf and Its Implication on Delimiting Seabed in Southeast Asia (Hungdah Chiu) 32 pp. $ 1.00

No. 2 — 1977
Income Distribution in the Process of Economic Growth of the Republic of China (Yuan-Li Wu) 45 pp. $ 1.00

No. 3 — 1977
The Indonesian Maoists: Doctrines and Perspectives (Justus M. van der Kroef) 31 pp. $ 1.00

No. 4 — 1977
Taiwan's Foreign Policy in the 1970s: A Case Study of Adaptation and Viability (Thomas J. Bellows) 22 pp. $ 1.00

No. 5 — 1977
Asian Political Scientists in North America: Professional and Ethnic Problems (Edited by Chun-tu Hsueh) 148 pp. Index $ 3.00

No. 6 — 1977
The Sino-Japanese Fisheries Agreement of 1975: A Comparison with Other North Pacific Fisheries Agreements (Song Yook Hong) 80 pp. $ 2.00

No. 7 — 1977**
Foreign Trade Contracts Between West German Companies and the People's Republic of China: A Case Study (Robert Heuser) 22 pp. $ 1.00

No. 8 — 1977*
Reflections on Crime and Punishment in China, With Appended Sentencing Documents (Randle Edwards, Translation of Documents by Randle Edwards and Hungdah Chiu) 67 pp. $ 1.00

No. 9 — 1977
Chinese Arts and Literature: A Survey of Recent Trends (Edited by Wai-lim Yip) 126 pp. $ 3.00

No. 10 — 1977
Legal Aspects of U.S. Republic of China Trade and Investment — Proceedings of A Regional Conference of the American Society of International Law (Edited by Hungdah Chiu and David Simon) 217 pp. Index $ 5.00
### 1977 Series

**No. 11 — 1977**  
$1.00

**No. 12 — 1977**  
$1.00

### 1978 Series

**No. 1 — 1978 (13)**  
$1.00

**No. 2 — 1978 (14)**  
Normalizing Relations with the People's Republic of China; Problems, Analysis, and Documents (Edited by Hungdah Chiu, with contribution by G. J. Sigur, Robert A. Scalapino, King C. Chen, Eugene A. Theroux, Michael Y.M. Kau, James C. Hsiung and James W. Morley). 207 pp. Index  
$3.00

**No. 3 — 1978 (15)**  
$3.00

**No. 4 — 1978 (16)**  
The Societal Objectives of Wealth, Growth, Stability, and Equity in Taiwan (Jan S. Prybyla) 31 pp.  
$1.00

**No. 5 — 1978 (17)**  
The Role of Law in the People's Republic of China as Reflecting Mao Tse-Tung's Influence (Shao-Chuan Leng) 18 pp.  
$1.00

**No. 6 — 1978 (18)**  
Criminal Punishment in Mainland China: A Study of Some Yunnan Province Documents (Hungdah Chiu) 35 pp.  
$1.00

**No. 7 — 1978 (19)**  
$2.00
Occasional Papers/Reprints Series
in Contemporary Asian Studies

1978 Series

No. 8 — 1978 (20)
The Pueblo, EC-121, and Mayaguez Incidents: Some Continuities and Changes (Robert Simmons) 40 pp.  $ 2.00

No. 9 — 1978 (21)
Two Korea's Unification Policy and Strategy (Yong Soon Yim) 82 pp. Index  $ 2.00

1979 Series

No. 1 — 1979 (22)
Asian Immigrants and Their Status in the U.S. (Edited by Hungdah Chiu) 54 pp.  $ 2.00

No. 2 — 1979 (23)
Social Disorder In Peking After The 1976 Earthquake Revealed By A Chinese Legal Document (By Hungdah Chiu) 20 pp.  $ 2.00

No. 3 — 1979 (24)
The Dragon and the Eagle — A Study of U.S.-People's Republic of China Relations in Civil Air Transport (Jack C. Young) 65 pp.  $ 3.00

No. 4 — 1979 (25)
Chinese Women Writers Today (Edited by Wai-lim Yip and William Tay) 108 pp.  $ 3.00

No. 5 — 1979 (26)*
Certain Legal Aspects of Recognizing the People's Republic of China (Hungdah Chiu) 49 pp.  $ 2.00

No. 6 — 1979 (27)

No. 7 — 1979 (28)
U.S. Status of Force Agreement with Asian Countries: Selected Studies (Charles cochrann and Hungdah Chiu) 130 pp. Index  $ 2.50

No. 8 — 1979 (29)
China's Foreign Aid in 1978 (John F. Cooper) 45 pp.  $ 2.00
Occasional Papers/Reprint Series
in Contemporary Asian Studies

1980 Series

No. 1 — 1980 (30)
The Chinese Connection and Normalization (Edited by Hungdah Chiu) 200 pp. Index $5.00

No. 2 — 1980 (31)

No. 3 — 1980 (32)
Policy, Proliferation and the Nuclear Proliferation Treaty: U.S. Strategies and South Asian Prospects (Joanne Finegan) 61 pp. $2.50

No. 4 — 1980 (33)
A Comparative Study of Judicial Review Under Nationalist Chinese and American Constitutional Law (Jyh-pin Fa) 200 pp. Index $3.50

No. 5 — 1980 (34)*
Certain Problems in Recent Law Reform in the People's Republic of China (Hungdah Chiu) 34 pp. $1.50

No. 6 — 1980 (35)*
China's New Criminal & Criminal Procedure Codes (Hungdah Chiu) 16 pp. $1.00

No. 7 — 1980 (36)
China's Foreign Relations: Selected Studies (Edited by F. Gilbert Chan & Ka-che Yip) 115 pp. $3.00

No. 8 — 1980 (37)
Annual Review of Selected Books on Contemporary Asian Studies (1979-1980) (Edited by John F. Cooper) 45 pp. $2.00
Occasional Papers/Reprint Series in Contemporary Asian Studies

1981 Series

No. 1 — 1981 (38)
Structural Changes in the Organization and Operation of China's Criminal Justice System* (Hungdah Chiu) 31 pp. $ 1.50

No. 2 — 1981 (39)
Readjustment and Reform in the Chinese Economy (Jan S. Prybyla) 58 pp. $ 2.00

No. 3 — 1981 (40)
Symposium on the Trial of Gang of Four and Its Implication in China (Edited by James C. Hsiung) 118 pp. $ 2.50

No. 4 — 1981 (41)*
China and the Law of the Sea Conference (Hungdah Chiu) 30 pp. $ 2.00

No. 5 — 1981 (42)
China's Foreign Aid in 1979-80 (John Franklin Copper) 54 pp. $ 2.00

No. 6 — 1981 (43)
Chinese Regionalism: Yesterday and Today (Franz Michael) 27 pp. $ 2.00

Elite Conflict in the Post-Mao China (Parris H. Chang) 43 pp. $ 2.00

Multi-system Nations and International Law — The International Status of Germany, Korea and China (Proceedings of A Regional Conference of American Society of International Law) (Edited by Hungdah Chiu and Robert Downen) 203 pp. Index. $ 5.00

* Reprinted with revision (all other papers are original).
** Translated from German with revision.
ORDER FORM
To Occasional Papers/Reprints Series in Contemporary Asian Studies, University of Maryland School of Law, 500 West Baltimore Street, Baltimore, Maryland 21201, U.S.A.

Check One:
☐ Please Send:

<table>
<thead>
<tr>
<th>No.</th>
<th>Author</th>
<th>Title</th>
<th>Copies</th>
</tr>
</thead>
</table>

☐ Please start my subscription of the OPRSCAS:
Starting issue _________
Subscription price is U.S. $10.00 for 8 issues (regardless of the price of individual issues in the U.S. and Canada and $12.00 for overseas.)

My check of U.S. $___________ is enclosed ______ copy(s) of invoice/receipt required. (Institution/library may request billing before making payment) (Make check payable to OPRSCAS)

Please send book to:
Name/Corp./Library:
Address: (Please include zip code)

______________________________________________

______________________________________________

______________________________________________