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THE INTERNATIONAL LEGAL STATUS
OF THE REPUBLIC OF CHINA

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Chinese Yearbook of International Law and Affairs,
THE INTERNATIONAL LEGAL STATUS OF
THE REPUBLIC OF CHINA*

HUNGDAH CHIU

I. INTRODUCTION

The Republic of China (ROC) on Taiwan is in effective control of an area of 35,981 square kilometers (14,000 square miles), which is approximately the combined size of Maryland, Delaware and Rhode Island of the United States. It has a population of approximately 20 million, with a per capita income of more than U.S. $6,000.00 in 1988. In terms of foreign trade, it is the thirteenth leading trading nation of the world and the sixth leading trading partner of the United States. The armed forces number about half a million, with reserves of more than 2 million troops.1 Looking at these indicators alone, there is no doubt that the ROC should be recognized as a state in the international community and should be represented in all major international organizations. Unfortunately, the reality is just the reverse: the ROC is not recognized by most countries of the world and is not represented in the United Nations and its affiliated agencies.2 Only a few international organizations accept the ROC as one of their members. Even then, the ROC's membership status is always in an unstable condition.3 Why is that? This is because the

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3. The ROC now maintains its membership status only in nine organizations: the Inter-
international law of recognition does not necessarily reflect the reality of international politics. This paper deals with the international legal status of the ROC in the context of the international law of recognition and the problem the ROC faces in maintaining its foreign relations through unorthodox channels in international law.

II. THE POLITICAL NATURE OF THE INTERNATIONAL LAW OF RECOGNITION

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


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

The Restatement represents the consensus of American lawyers.

scribed 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.

There is also a controversy in international law as to whether a government of a recognized state can represent that state in the international community. Some consider that the decisive criterion should be whether a government has effective control over its population and territory, while others would 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 through the system of recognition. State practice, however, also indicates that states base their decisions primarily on policy considerations rather than legal principles.

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

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

lawyer:

It is generally admitted that an unrecognized state cannot be completely ignored. Its territory cannot be considered to be no-man's-land; there is no right to overfly without permission; ships flying its flag cannot be considered stateless, and so on.\(^{11}\)

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

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

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

In certain cases, a state has found it necessary in practice to deny

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

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

Sec. 4(b). . .

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

. . .

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

. . .

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

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

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

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tween 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...\footnote{15}

Official contacts between two countries or governments not recognizing each other sometimes have also become necessary in international relations. For example, between 1955 and 1971, the United States and the People's Republic of China (PRC) had engaged in more than one hundred ambassadorial talks between them despite the fact that they did not recognize each other until January 1, 1979.\footnote{16} Similarly, between 1973 and 1978, the United States and the PRC maintained official liaison offices in each other's capital, despite the absence of mutual recognition.\footnote{17}

\section*{III. THE INTERNATIONAL STATUS OF THE REPUBLIC OF CHINA AS VIEWED BY CERTAIN SCHOLARS}

The application of the international law of recognition to the Chinese case is a challenging question, because the Chinese case is unique in several respects. First, there has never been any doubt that China is a state under international law. The issue is which government of China—the ROC government or the PRC government—is the legal government of China. Until 1971, China was represented by the ROC government in the United Nations and in almost all international organizations, and more countries recognized the ROC government than the PRC government. Since then, the situation has changed completely. Second, the PRC government has made it clear that force will be used against Taiwan if the ROC government declares Taiwan a separate state.\footnote{18} Third, no country has so far been able to recognize and establish diplomatic


\footnote{18} E.g., Chinese leader Teng Hsiao-p'ing said on October 11, 1984, that if Taiwan declared independence, the PRC would institute a blockade against Taiwan. "Deng [Teng] Warns of 'Eruption' in U.S.-China Ties Over Taiwan," \textit{The New York Times}, October 12, 1984, p. A8. Recently, the PRC issued several stern warnings through its officially-controlled media against the Taiwan independent movement, e.g., see "Liaowang [The Outlook] Specu-
relations with the PRC government without de-recognizing and severing diplomatic relations with the ROC government. Therefore, the status of the ROC is unprecedented in international law.

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

(1) United States

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

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

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

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

there.” This formula has the benefit of not offending the PRC, for it does not formally recognize the ROC in Taiwan. On the other hand, it takes official cognizance of the objective existence of the ROC in Taiwan and states [that] the United States will deal with Taiwan on that basis.\textsuperscript{20}

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

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

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

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

(2) The United Kingdom

Professor Ian Brownlie includes Taiwan and the State of the Vatican City in the category of entities \textit{sui generis} as subjects of international law. He writes:

[T]he case of territory the title to which is undetermined, and which is inhabited and has an independent ad-

\textsuperscript{20} Ibid., p. 820. Both Li and Chiu’s testimony are excerpted in \textit{International Law Perspective}, Vol. 5, No. 2 (February 1979), pp. 2-3 (Li) and 4 (Chiu).

\textsuperscript{21} Henkin et al., \textit{International Law}, supra note 8, 1st ed., 1980, p. 207.

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

ministration, creates problems. On the analogy of belligerent communities and special regimes not dependent on the existence of the sovereignty of a particular state (for example, international-ized territories and trust territories), communities existing on territory with such a status may be treated as having a modified personality, approximating to that of a state. On one view of the facts this is the situation of Taiwan (Formosa). Until March 1972, the United Kingdom, which regarded the island as territory the title to which was undetermined, had certain legal relations involving acceptance of passports with the authorities there and maintained a consulate.24 Clearly it is undesirable that the population of such areas should be regarded as "stateless" in law.25

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

The conclusion must be that Taiwan is not a State, because it does not claim to be[,]26 and is not recognized as such: its status is that of a consolidated local de facto government in a civil war situation. The Republic of China may even be precluded, by its actions since 1949, from attempting to assert separate sovereignty over the island, although the finally effective secession of part of a State may never be excluded in practice. But this is not to say that Formosa has no status whatever in international law. It is a party to various conventions binding its own territory. Courts faced with specific issues concerning its status may treat it on a de facto basis as a "well defined geographical, social, and political entity [with] . . . a Government which has undisputed control of the island." Conflicts between its limited status in international law and the policies of particular statutes or contracts may be reconciled or avoided, especially in a municipal forum, by interpretation. Internationally the Government of Formosa is a well established de facto government, capable of committing the State to at least certain classes of transaction. It has also been argued that the principle of self-determination applies, so that Taiwan may not be transferred to the


26. Dr. Crawford does not seem to understand that the PRC has made it clear that force will be used against Taiwan if the latter declares independence. See supra note 18.
control of the People's Republic without the consent of the people. In any case, attempts to solve the problem of Taiwan otherwise than by peaceful means must now constitute a situation "likely to endanger the maintenance of international peace and security" under Article 33 of the Charter: this view is held, as we have seen, by both the British and United States governments. To this extent, while there is no strict "juridical boundary" between the parties, there does appear to be a frontier for the purposes of the use of force.27

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

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

(3) France

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


28. Mr. Shaw is wrong on this point: the ROC on Taiwan is still recognized by 23 (now 26) countries in the world at the time Mr. Shaw expressed his view.


(4) Federal Republic of Germany

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

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

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

According to a categorization drawn up by John H. Herz in 1974, three categories may be distinguished in terms of recognition between the contending power centers [in a state]: (1) mutual non-recognition, (2) unilateral recognition, and (3) mutual recognition. The Chinese case is clearly an example of the first category. Suggestions have been made that the law should be applied in such a way as to rhyme with the facts of the multi-system situation, but none of these suggestions seem to have offered adequate solutions as yet. Dealing with “how the norms of bipolarity should have developed”, Morton Kaplan [University of Chicago], has proposed “a new and appropriate standard of international law”, viz., “the existence of a single state that could be coterminous with more than a single legitimate government.” We are thus directed to think about a legal construction according to which each of two centers of governmental power are recognized as alternative legal governments of one formally, but not factually, existing state, each government exercising authority according to its de facto territorial jurisdiction. Other constructions, similar and dissimilar, could be set up and theoretically elaborated, but their feasibility remains hinged upon political inclination. Legal alternatives are, consequently, only to be seen as the legal formalizations of political alternatives. 32

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

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

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

(1) France

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

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

(2) Congo (Brazzaville)

On August 15, 1960, the French Congo became an independent state and soon established diplomatic relations with the ROC. In August 1963, the country was renamed the People's Republic of Congo and soon negoti-

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33. E.g., Dr. Lin-cheng Chang of National Taiwan University expressed her view at a meeting of the Foreign Affairs Committee of the Legislative Yuan, April 13, 1988. See Li-fa Yuan kung-pao (Gazette of the Legislative Yuan), Vol. 77, No. 90 (November 9, 1988), p. 177.
34. See supra note 7 and accompanying text.
ated with the PRC for establishing diplomatic relations. According to a PRC source, the Congo and the PRC orally agreed that, on the date of the establishment of diplomatic relations, “the representative of Taiwan authorities in Congo will lose its status as diplomatic representative.” On February 22, 1964, the PRC and the People’s Republic of Congo announced their decision to establish diplomatic relations. The ROC’s embassy remained until April 17, 1964, when it was forced to close.

(3) Benin (formerly Dahomey)

When Dahomey declared its independence on August 1, 1960, the ROC extended its recognition and sent a special envoy to attend the independence celebration. But the PRC also extended recognition to Dahomey. On January 19, 1964, Dahomey and the ROC decided to establish diplomatic relations, and an embassy of the ROC was set up in Cotonou. On November 12, 1964, however, Dahomey and the PRC decided to establish diplomatic relations. Shortly thereafter, the PRC sent a chargé d’affaires ad interim to head its mission in Cotonou, and it appointed an ambassador in February 1965. Two months later, the ROC severed diplomatic relations with Dahomey and closed its embassy. The PRC’s ambassador presented his credentials to President Sourou Migau of Dahomey on June 19, 1965. On January 3, 1966, Dahomey announced that it was severing diplomatic relations with the PRC. On April 21, 1966, the ROC resumed diplomatic relations with Dahomey.38 Finally, on January 10, 1973, Dahomey announced the resumption of diplomatic relations with the PRC and the ROC declared the suspension of its diplomatic relations on January 17, 1973.

The above cases clearly indicate that it is not politically possible to have a “dual recognition” approach to the Chinese case. Since the Dahomey case, no country that has decided to recognize the PRC has ever tried to take a “dual recognition” approach to the Chinese case.

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

(1) Grenada

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

37. See Diplomacy of Contemporary China, supra note 16, pp. 136-137.
38. Cohen and Chiu, People’s China and International Law, supra note 24, pp. 257-258.
relations with Grenada.  

(2) Liberia

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

(3) Belize

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

(4) Lesotho

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

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

47. Ibid., October 24, 1989, p. 1.
49. See supra note 17 and accompanying text. In 1956, the PRC established a Commercial Representative Office in Lebanon, despite the fact that Lebanon then maintained diplomatic
New Guinea, Tunisia, United Arab Emirates, and Vanuatu. The ROC also maintains an official presence in Singapore, which recognizes neither the ROC nor the PRC.

The ROC's second approach has been to maintain semi-official relations with some countries that have recognized the PRC. This practice was initiated by Japan in 1972 when it recognized the PRC and severed diplomatic relations with the ROC. Japan has extensive economic, trade and cultural relations with the ROC on Taiwan; therefore, it is essential to maintain all substantive relations between them. To do so, a nominally private organ, the Interchange Association, was established in Tokyo with an office in Taipei. Though funded by the Japanese government and staffed with government officials, it operates as a private entity, although it is in fact an embassy except in name. The Association's office in Kaohsiung is in fact a consulate-general. The ROC established the nominally private Association of East Asian Relations in Taipei with an office in Tokyo to replace its former embassy. It also has offices in Yokohama, Osaka and Fukuoka, which are consulate-generals except in name. The Association of East Asian Relations and all its offices are funded by the ROC Government and all staff members are government officials. Both the Interchange Association and the Association of East Asian Relations and their staffs enjoy a certain degree of diplomatic privileges and immunities. This Japanese arrangement for maintaining substantive relations with the ROC on Taiwan, after Japan's derecognition of and severance of diplomatic relations with the ROC, was later referred to as the "Japanese formula." In 1975, when the Philippines established diplomatic relations with the PRC, it adopted the Japanese formula to maintain its relations with the ROC. It established an Asian Exchange Center to replace its Taipei embassy, while the ROC established a Pacific Economic and Cultural Center in Manila.

After the United States recognized the PRC on January 1, 1979, it continued its relations with the ROC on Taiwan in a way similar to that of Japan. However, U.S. relations with the ROC are much closer than those of Japan. Besides economic, trade and cultural relations, the United States has political and security interests on Taiwan. In April

relations with the ROC. That Office, however, was withdrawn in 1958. See Survey of Chinese Diplomacy 1987, supra note 39, p. 112.

1979, the United States enacted the Taiwan Relations Act,\textsuperscript{51} which set up the American Institute in Taiwan (AIT) with offices in Taipei and Kaohsiung as a substitute for its former embassy and Kaohsiung consulate-general in Taiwan. The Institute is funded by Congressional appropriation and staffed with government officials nominally on leave from different government agencies. The ROC replaced its embassy and consulate-generals in the United States with the Coordination Council for North American Affairs (CCNAA), which has offices in Washington, D.C. and a number of U.S. cities, and is funded by the ROC government and staffed with officials from different government agencies. These organs function like embassies or consulates, except in name. Their offices and staffs enjoy privileges and immunities similar to those of international public organizations such as the United Nations.\textsuperscript{52}

The status of organs set up by the ROC in other countries without diplomatic relations and their counterparts in the ROC varies. But all of them, in fact, enjoy some diplomatic privileges and immunities.

Two other problems in the foreign relations of the ROC with countries that do not recognize it are the conclusion of international agreements and participation in international public organizations. Some countries, such as Japan and the United States, have concluded nominally "unofficial" agreements with the ROC. In the United States, pursuant to Section 12(a) of the Taiwan Relations Act, agreements concluded between the AIT and the CCNAA are required to be transmitted to the Congress, just as other international agreements concluded by the United States and countries with which it has diplomatic relations. Moreover, pursuant to sections 6 and 10(a) of this Act, such agreements have full force and effect under the law of the United States.\textsuperscript{53} However, some countries, especially those in Western Europe, are still reluctant to conclude unofficial agreements with the ROC, though recently a few countries have begun to change their policy,\textsuperscript{54} in view of increased economic and trade relations with the ROC.

The most difficult part of the ROC's foreign relations is its inability to participate in multilateral international conventions concluded under

\textsuperscript{51} See supra note 14.


the auspices of the United Nations and its affiliated agencies. For instance, the ROC is the thirteenth leading trading country of the world, but it is unable to become a contracting party to the United Nations Convention on Contracts for the International Sale of Goods,55 done on April 11, 1980, at Vienna and entered into force on January 1, 1988. In a few cases, the ROC has concluded agreements with countries having diplomatic relations with the PRC or unofficial agreements with countries with which it has no diplomatic relations to adopt an international convention in their bilateral relations.56 This, of course, is not a satisfactory solution and this formula can be used only in a limited scope.

Similarly, because of the PRC's boycott, the ROC is unable to participate in many international public organizations. In 1983, Teng Hsiao-p'ing appeared to be willing to reconsider this policy of isolating Taiwan from international public organizations when he told Professor Winston L.Y. Yang of Seton Hall University that after the admission of the PRC to the Asian Development Bank (ADB), Taiwan could retain its seat under “Taipei, China.”57 In March 1986, the PRC was admitted to the ADB without ousting the ROC, though the latter was required to change its name to “Taipei, China.”58 The ROC, then under the late President Chiang Ching-kuo, protested this change of its name, but did not withdraw from the ADB. In May 1989, when the ADB held its annual meeting in Beijing, the ROC's new President, Lee Teng-hui, approved the participation of the ROC delegation59 to the meeting, though still protesting the change of ROC's name. However, the ADB case appears to be an isolated one as the PRC issued a statement on December 19, 1988 indicating its intent to exclude the ROC from participation in all international public organizations affiliated with the United


V. CONCLUSION

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

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

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


Back in 1971, the United Nations General Assembly adopted a resolution which restored the legitimate seat of the People's Republic of China in this world body. Accordingly, the United Nations has expelled Taiwan from all its organizations, and the offices of organizations of the UN system must not have any dealings with Taiwan. This principle also applies to other intergovernmental, international organizations. As for individual intergovernmental, international organizations, for instance, the Asian Development Bank, the Taiwan authorities are allowed to join it in the name of "Taipei, China", subject to agreement reached through consultations between the Chinese Government and the international organization concerned. This is only a kind of special arrangement and cannot be regarded as a model universally applicable to other intergovernmental, international organizations.

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