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TAIWAN'S STATUS IN A CHANGING WORLD: UNITED NATIONS REPRESENTATION AND MEMBERSHIP FOR TAIWAN

ERIC TING-LUN HUANG*

I. INTRODUCTION

In 1945, countries from around the world came together to form the United Nations (hereinafter UN) so as to give all members a voice on international issues and help in cases of conflicts.¹ The founders hoped that the United Nations would live up to its promise, but attaining that goal has not been easy.²

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1. See Major Joseph P. Bialke, *United Nations Peace Operations: Applicable Norms and the Application of the Law of Armed Conflict*, 50 A.F.L. REV. 1, 6 (2001). Noting that following World War II, the drafters of the UN Charter presumed the victors, acting perhaps out of enlightened self-interest, would continue to cooperate with each other, in light of their recent successful joint effort. See Kimberly D. Barnes, *International Law, the United Nations, and Intervention in Civil Conflicts*, 19 SUFFOLK TRANSNAT'L L. REV. 117, 128 (1995). Noting that because the Charter's drafters were concerned with war as they knew it--namely international war -- the United Nations primary purposes, stated in the Preamble and Article 1, focus on international, rather than intra-national, peace and security.

2. See THOMAS G. WEISS, DAVID P. FORSYTHE & ROGER A. COATE, *THE UNITED NATIONS AND CHANGING WORLD POLITICS* 46-63 (1997). Noting that for a brief time after World War II, an

A. THE IDEAL OF ESTABLISHING THE UN

Among the most important contributions of the UN to world problems and needs, are the provisions of channels for seeking consultation and the development of common interests. With many states achieving formal independence as a result of the rapid de-colonization that commenced in the 1950's, leading to a significant increase in membership of the UN, demands for effective international management has arisen as a major issue in UN programs. Moreover, the collapse of the Soviet Union has deprived the world community of a counterbalancing force that was present for many decades. Hence, the changing world underscores the necessity for cooperative action among the UN member states in attacking the common problems of humanity, which are often issues of economic and social needs. In response to this environment, the UN must adapt to the needs of its growing modern role. This requires changes in approach and a new balance between the authority of states and the authority of the international society.

Greater international dialogue and economic cooperation have become major trends of the new world order. In response to this, what is evident is an increasing number of issues including environmental protection, terrorism prevention, human rights, the well-being of mankind, financial cooperation, economic development and the various aspects of democracy, which require worldwide cooperating and planning, especially, the participation of every member of the United Nations. The complexity of the above issues is much more evident in a developing economy. At this point, Taiwan's current economic prosperity coupled with its full fledged democracy can play a critical role in helping the UN to fulfill its modern function.

Following World War II, several countries were divided. Germany was divided into the democratic West and the communist East; Korea was divided into the democratic South and the communist North; and also China was split into the Republic of China (hereinafter ROC) and the People's Republic of China (hereinafter PRC).³ How to admit applicants

improved international order seemed feasible. The Soviet Union's establishment of a Communist bloc in Eastern Europe quickly ended the big-power cooperation. With its members polarized into two camps, the UN was unable to maintain the peace and prevent conflict as was originally intended. Superpower support in any given case meant that UN conflict management was problematic because either the U.S. or the Soviet Union would block effective UN involvement.

3. As a result of civil war in 1949, the Republic of China was divided into two governments: the ROC on Taiwan and the People's Republic of China located in the Chinese mainland. *See* Su Wei, *Some Reflections on the One China Principle*, 23 *FORDHAM INT'L L. J.* 1169, 1170 (2000). Noting that in October 1949, the Chinese people won their New Democratic Revolution and established a new central government called the People's Republic of China; *see also* Tzu-wen Lee,

from divided countries into the UN presented a great challenge to the foundations of the world organization and the legal concept of sovereignty. As a matter of fact, the question of representation for divided countries is one of the most difficult issues facing the UN. In view of the need for all people in the world to be free from exclusion and discrimination, and for all to be represented in the United Nations system, the issue of state sovereignty arose regarding the question of representation. This was the case with the Chinese seat at the UN. The issue of representation for divided countries and who is entitled to sit at the UN turned out to be a difficult task.

B. THE QUESTION OF REPRESENTATION FOR DIVIDED COUNTRIES

Distinct from the problem of admitting new members is that of determining the representation of states that are already members. The decision of the UN to deny the right of a delegation to represent a state may have the same practical consequences as a decision not to admit a state to membership.⁴ Even now, this issue has not been resolved completely since Taiwan is still outside the UN.

The Republic of China was one of the founding members of the United Nations.⁵ For over twenty years the ROC served as a permanent member of the UN Security Council.⁶ After the ROC lost its seat in the UN in 1971, it consequently failed to retain its seats in numerous other international organizations. Although the ROC has been out of the UN since 1971, it did not simply disappear. On the contrary, the government of Taiwan has been a very active member of the international community and maintains close ties and friendly relations with more than 140

The International Legal Status of Taiwan: The International Legal Status of the Republic of China on Taiwan, 1 UCLA J. INT'L L. & FOR. AFF. 351, 353 (1996). Discusses that the forces of the Republic of China finally retreated to Taiwan on December 8, 1949, leaving Mao Zedong and the People's Republic in control of the mainland; see also Jianming Shen, *Sovereignty, Statehood, Self-Determination and the Issue of Taiwan*, 15 AM. U. INT'L L. REV. 1101, 1117 (2001) (discussing the civil war and how it caused the regime of the Republic of China to be overthrown by the People's Republic of China).

4. See LELAND M. GOODRICH, *THE UNITED NATIONS* 99-102 (1959). Noting that the problem of representation did not arise in the UN until Nov., 1949 when in a cablegram to the President of the General Assembly the Foreign Minister of the Government of the PRC, the Communist regime which had succeeded in driving the Nationalist Government from the mainland, stated that his government repudiated the legal status of delegation headed by T. F. Tsiang, appointed by the National Government seated on Taiwan, and held that it could not represent China and had no right to speak on behalf of the Chinese people in the United Nations.

5. Delegates from the ROC government signed the UN Charter on June 26, 1945 in San Francisco.

6. From 1950 to 1971, the UN attempted to resolve the dispute over a UN seat for China, which since 1949 had been divided into two antagonistic political entities, the ROC on Taiwan and the PRC on mainland, each having its own territory, people, and government.

nations.⁷ Currently the ROC on Taiwan only maintains membership in very few intergovernmental organizations, such as the Asian Development Bank (ADB),⁸ the Asia-Pacific Economic Cooperation Forum (APEC),⁹ and the World Trade Organization (WTO).¹⁰ Through membership in international organizations that do not require statehood, the ROC on Taiwan can best exercise its independent authority.¹¹

1. Taiwan's bid for UN membership

The ROC on Taiwan has sought admission to the United Nations and proposals to that effect have been made consistently in the past ten years. Taiwan's move has attracted worldwide attention to the principle of

7. See, *Foreign Relations*, THE REPUBLIC OF CHINA YEARBOOK - TAIWAN 2002, (Government Information Office 2002), available at <http://www.gio.gov.tw> (last visited Feb. 17, 2003), noting that The Republic of China maintains its own national defense and conducts its own independent foreign policy, including full diplomatic relations with nearly 30 countries and substantive ties with more than 140 others.

8. See Peter J. Illig, *The Role of Non-Government Organizations in the Development of Environmental Policy at the Asian Development Bank*, 1 BUFF. J. INT'L L. 47, at 47 (1994). The Asian Development Bank (ADB) was founded in 1966 to meet the urgent needs of more than 700 million people living in poverty in the Asia-Pacific region. The ADB is charged with designing and providing a source of funding for regional economic development projects. These projects are structured to alleviate poverty and stimulate economic growth, while at the same time ensuring the viability of the region's ecosystem.

9. Asia Pacific Economic Cooperation (APEC) forum had its origins in a 1989 proposal by Australian Prime Minister R.J. Hawke. APEC is the result of a clear recognition of the importance of economic cooperation and consultation in the region to sustain its dynamic economic development. See Kenneth W. Abbott & Gregory W. Bowman, *Economic Integration for the Asian Century: An Early Look at New Approaches*, 4 TRANSNAT'L L. & CONTEMP. PROBS. 187, 213-5 (1994). Commenting that APEC's leaders reached an uneasy compromise in 1993 regarding the structure of APEC itself and its relations with other Asia-Pacific organizations as follows: (1) APEC will remain an informal organization, without any formal treaty or other constitutional document; (2) APEC will remain institutionally decentralized and non-hierarchical; (3) APEC will not supersede other organizations within the Asia-Pacific region, such as PECC, ASEAN, and the EAEC).

10. In 1944, at Bretton Woods, New Hampshire, a comprehensive economic and financial plan was proposed for post-World War II reconstruction and development. It was the formation of three international economic and financial institutions. Two of them, the World Bank and the International Monetary Fund, were created to address development and monetary issues. The International Trade Organization rounded out the institutional triad and GATT was first concluded in 1947 to serve as an interim agreement until the most important of the Uruguay Round agreements were concluded. The Uruguay Round agreements is the Agreement Establishing the World Trade Organization under which the institutional functions of GATT are replaced by the World Trade Organization. The function of the GATT-WTO system is to open international markets for goods, services, and capital. See General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. (5) (6), 55 U.N.T.S. 194; Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, Dec. 15, 1993, 33 I.L.M. 1 (1994); see also generally Kevin C. Kennedy, *The GATT-WTO System at Fifty*, 16 WIS. INT'L L.J. 421, 443-4 (1998). Membership in these organizations is not based on statehood; otherwise, the PRC would oppose Taiwan's membership.

11. This is because the PRC regards the ROC (or Taiwan) as a renegade province, not a state, and does not allow countries to have any official contacts with Taiwan. At this point, the PRC also pressures those countries with whom it is in relations to exclude Taiwan from any international organization in which statehood is required. Taiwan's acceptance of international obligations as if it were a state, through participation in international organizations that require statehood, will create a growing impression of independence.

representation and the principle of membership universality.¹² However, the government of Taiwan continues to be excluded from membership of the UN because of strong opposition from the PRC.¹³ The PRC even successfully blocked the UN from accepting humanitarian financial aid from Taiwan,¹⁴ which was offered to help Rwandan refugees and the Turkish Kurds in the aftermath of the Iraqi invasion.¹⁵ The PRC argued that such involvement from Taiwan in UN activities would grant *de facto* recognition to the ROC.

The language of Article 4 of the UN Charter suggests that the procedure concerning the admission of new members to the United Nations include, not only that a state wishing to become a member of the UN should be a peace-loving State, accept the obligations contained in the UN Charter and be able and willing to carry out these obligations, but also, that a decision of the General Assembly should be upon “the recommendation of the Security Council.”¹⁶

As mentioned above, without the recommendation of the UN Security Council, an applicant such as the ROC cannot qualify to become a member state of the United Nations. This is because any attempt at linking the implementing of Taiwan’s UN membership bid would invite antagonism and pressure from the PRC. As a permanent member of the

12. For the past few years, Taiwan has continually sought to enter the United Nations. Usually Taiwan’s small number of allies sponsor a proposition to put Taiwan’s status in the UN up for discussion at the UN General Assembly. For example, in 1999 one of Taiwan’s allies, the Solomon Islands, spoke at the UN General Assembly general debate session to reiterate its country’s support for Taiwan’s membership in the UN. Citing the fact that Taiwan has long provided assistance in terms of skills training and technology transfers to Solomon Islands and many other developing countries, it was indicated that Taiwan’s brilliant economic achievement would allow it to play a positive role in promoting international trade and annihilating poverty. For details, see CHINA TIMES, Oct. 2, 1999.

13. See *Taiwan’s U.N. Bid Block*, N.Y. TIMES, (Sep. 12, 2002). Envoys from nearly 90 of the 190 member nations, most of them opposed to Taiwan’s membership, spoke on the matter during several hours of committee debate. Taiwan has tried to join the United Nations since 1993, but China and its supporters have kept it off the agenda.

14. Geographically, the term “Taiwan” refers to the islands of Taiwan area, including a group of islands consisting of Formosa (Taiwan) and three outlying islands, Pescadores, Kinmen, and Matsu. The word “Taiwan” in political terms may refer to “the Republic of China;” “the Republic of China on Taiwan;” or “the ROC on Taiwan,” which is used to refer to the political entity existing on the islands of the Taiwan area.

15. See Mark S. Zaid, *Taiwan: It Looks Like It, It Acts Like It, but is It a State? The Ability to Achieve a Dream through Membership in International Organizations*, 32 N. ENG. L.R. 805, 814 (1998).

16. U.N. CHARTER art. 4, which states that: (1) membership in the UN is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations; (2) the admission of any such state to membership in the UN will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

UN Security Council with its double veto power,¹⁷ the PRC's impeding of Taiwan's entry into the UN has significantly aroused many questions: "how can Taiwan become a member state in the United Nations? Is it possible?" "What happens if there is a dramatic change in the Taiwan Strait that leads to an armed conflict affecting or threatening international peace? When will the UN make the decision to enforce the peace?" These are the types of questions facing the United Nations.

Before answering such questions, absolute priority should be given to supporting the notion that membership issues must not be a substitute for objective standards. Such objective standards (like peace-making and peace-keeping) are influenced not only by the political issue between China and Taiwan, but also by the obvious problem relating to the status of Taiwan itself and the possibility of an armed conflict with China. That is to say, Taiwan's bid to improve its position in the UN should not just be deemed as a zero-sum game in which "the PRC won and the ROC lost," or "the ROC won and the PRC lost." Rather, it should be viewed as a mission to prevent the situation from triggering a serious armed conflict on a massive scale.¹⁸

In an effort to provide adequate and optimistic views in regard to Taiwan's UN membership issue, no attempt will be made to isolate the related subjects discussed in this paper from the political and legal realities to which they are inextricably related. This is because legal concerns and political activities in the UN sometimes cannot be distinguished completely.

This paper starts with an overview of basic conceptual issues about the UN and its modern function. The focus on this part will be the concepts of representation and universality membership. Once we have properly identified and understood these concepts, some discussion will follow, deal mainly with such issues as; the ROC's exclusion from the UN as inconsistent with the universal principle of representation, Taiwan's

17. What procedure to follow in deciding the preliminary question which is based on whether a given proposal is a matter of procedure requiring a simple majority of seven members, or a matter of substance requiring a qualified majority of seven members, including the votes of the five permanent members. If it is decided that the preliminary question is governed by the principle of unanimity of the five permanent members, then any permanent member may establish the non-procedural character of a given proposal by use of the veto and then may veto the proposal itself. This has come to be called, in and out of the Security Council, the double veto. For related issues regarding the double veto, see generally Leo Gross, *The Double Veto and the Four Powers Statement on Voting in the Security Council*, 67 HARV. L. REV. 251, 251-80 (1953).

18. The threat of force by China has brought the Taiwan issue into the lime-light. It is listed with the North Korean and Kashmiri issues as the three destabilizing factors that might suddenly burst into full fledged crises in Asia. See Robert Adam, *Here Comes the Asian Century*, CHINA POST (Taipei), (Dec. 29, 1999).

efforts to join the UN, the increasing importance to improve Taiwan's status in the UN, and, the UN's considerable benefits to access Taiwan's UN entry bid.

In addition to the issue of reexamining the significant UN Resolution 2758, the most complicated part of this chapter is that Taiwan's position in the UN is obviously influenced by Taiwan's relations with China. However, in spite of the obstacles and limitations from the PRC, there is substantial room for improvement with regard to the membership issue. In a spirit of compromise, it is from the viewpoint of the whole world's best interest to see Taiwan breaking out from the current international isolation and playing a valuable role in the United Nations. Such a situation will be highly meaningful in the enhancement of the legal status of Taiwan and regional security. Accordingly, this paper is organized into seven parts, which are: part one – introduction; part two – role of the United Nations in a changing world; part three – the membership issue in the United Nations; part four – the United Nations Resolution 2758 and the question of representation; part five—commentary on the United Nations Resolution 2758; part six – Taiwan's case for the United Nations membership; and part seven – conclusion.

II. ROLE OF THE UNITED NATIONS IN A CHANGING WORLD

Just as World War I led to the formation of the League of Nations,¹⁹ World War II was the catalyst for the establishment of the United Nations.²⁰ The UN was organized in 1945 based on the UN Charter

19. An initial attempt to unify nation-states into an international organization to maintain world peace was attempted at the end of World War I. The Treaty of Versailles, signed in 1919, included a provision for a "League of Nations," an international organization created by thirty-two nations. The League, as the first definitive and statutory organ of international co-operation, attempted to substitute arbitration, mediation, and judicial settlement for war. Despite its efforts, the League failed to maintain international peace and security and could not prevent the course of events that ultimately led to the start of World War II. See Brian M. Spaid, *Collective Security v. Constitutional Sovereignty: Can the President Commit U.S. Troops under the Sanction of the United Nations Security Council without Congressional Approval?*, 17 U. DAYTON L. REV. 1055, 1060-63 (1992).

20. On October 30, 1943, the foreign ministers of the USSR and the United Kingdom, U.S. Secretary of State Hull, and the Chinese ambassador to the Soviet Union issued a declaration in Moscow that, for the first time, clearly pledged their efforts for the establishment of a general international organization. One month after the Moscow Declaration, President Roosevelt, Premier Stalin, and Prime Minister Churchill, meeting in Teheran, announced in their final communiqué: "We recognize fully the supreme responsibility resting upon us and all the United Nations to make a peace which will command the goodwill of the overwhelming masses of the peoples of the world and banish the scourge and terror of war for many generations ... We shall seek the cooperation and active participation of all nations large and small ... [for] the elimination of tyranny and slavery, oppression and intolerance. We will welcome them, as they may choose to come, into a world family of Democratic Nations." A. LEROY BENNETT, *INTERNATIONAL ORGANIZATIONS: PRINCIPLES AND ISSUES* 47-48 (1995).

which was a form of multilateral treaty that was regarded as the constitution of the world body. At the time of its founding, the UN had a membership of 51 states.²¹ Since then, the number has grown year by year and currently the total number of member states is 190, including all the world's independent nations. Only Taiwan and a few mini-states are not UN members yet.

The UN Charter outlines all the UN's subsequent relations and programs. As a written constitution, the Charter provides for the UN's organizational structure, function, principles and purposes along with a set of standards. The Charter itself is a multilateral treaty establishing the pattern of agreements among and obligations of its members. It is subject to interpretation by the member states and by each organ of the UN on new meanings with widely accepted interpretation and resulting practice. Hence, it is an important addition to international law.²²

A. THE UN'S BASIC PRINCIPLE AND POSITION

The world body was founded on the principles of universality, equal rights, democracy, freedom, and self-determination²³ and thus, its ultimate goal is to serve all mankind in the world. The UN system has made positive contributions to the use of international channels for conflict resolution. The relevance behind the use of UN channels may be a result from the desires of the member states to fulfill the above ultimate goal. The preamble to the UN Charter contains an affirmation by the signatories' lofty ideals:

we the peoples of the United Nations ... reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.

21. The United Nations Conference on International Organization (UNCIO) was held in San Francisco on April 25, 1945. All forty-six states that adhered to the United Nations Declaration and declared war on one or more Axis powers accepted invitations to participate and, by agreement of the participants, Argentina, Byelorussia, the Ukraine, and Denmark were added to the roster. The Soviet Union urged the inclusion of the provisional government of Poland, but that recommendation was rejected, although Poland was subsequently allowed to sign the Charter as an original member. BENNETT, *supra* note 20, at 51.

22. As a multilateral treaty that prescribes principles for the member states and that is subscribed to by most national governments, the UN is a part of the developing body of international law. International law may emerge from many sources within the United Nations. Not only do agencies such as the ICJ and Int'l Law Commission play a major role in developing law, but some of the decisions of other organs gradually acquire the status of law as well.

23. Regarding the concept of self-determination, *see generally*, Eric Ting-lun Huang, *The Evolution of the Concept of Self-Determination and the Right of the People of Taiwan to Self-Determination*, 14 N.Y. INT'L L. REV. 167 (2001).

The nation is recognized as the agency through which the international community would be understood to have transferred rights to individuals. That is, without representation in the United Nations, those rights are threatened.

B. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

The UN Charter²⁴ lays down principles that aim to accomplish certain common desires,²⁵ the most significant of which is the promise of all members to maintain international peace and security. Undoubtedly, this is because the United Nations was created near the end of the greatest world war and thus, the multifunctional organization was defined as an instrument for eliminating armed conflict and for strengthening means for conflict control and resolution. Whether achievable or not, these common desires point to a direction of action and give shape to the program of the world body through the development of friendly relations among nations; the achievement of international cooperation in solving international problems of economic, social, cultural and humanitarian character;²⁶ and the promotion of human rights and fundamental freedoms for all human beings without discrimination.²⁷ The means for achieving the common desire include peaceful settlement of disputes and collective measures for the prevention and removal of threats to peace or acts of aggression.²⁸

24. UN CHARTER art. 1.

25. Article 55 of the UN Charter, with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the UN highlights the common desire as follows: (1) to promote higher standards of living, full employment, and conditions of economic and social progress and development; (2) to promote solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (3) to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

26. The social goals of the UN are best summarized in the phrase from the preamble of the Charter "to promote social progress and better standard of life in larger freedom."

27. Conventions on economic and social rights have been developed by the UN and its affiliate institutions, such as the International Labour Organization [hereinafter ILO]. Besides, there are numerous UN treaties addressing economic and social rights, which can be distinguished as: (1) social rights referring to the adequate standard of living; and (2) economic rights referring to the right to property. *See generally* Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., arts. 17, 25 & 23, U.N. Doc. A/810 (1948) [hereinafter UDHR].

28. Closely related to the primary goal of the United Nations to maintain international peace and security are the twin principles that all members states (1) shall refrain from the threat or use of force in any manner inconsistent with United Nations purposes, and (2) shall settle their international disputes by peaceful means.

C. INTERNATIONAL CONSTITUTIONAL SUPREMACY

The UN Charter contains a supremacy clause providing that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."²⁹ Apparently, this principle, giving it a status on the international stage roughly comparable to that of a national constitution in domestic law, represent the most fundamental obligations of members of the United Nations and are the basic legal standards to which they promise adherence. In this sense, it is remarkable to note that establishing justice and respect for international law is the vague goal of the United Nations.

Since enforcement is dependent upon the actions of the individual members, without the cooperation of member states, any assurance of action by the United Nations is diminished. The tradition of state sovereignty as practiced in international conferences and treaty making requires unanimity among all parties according to the principle that no state could be bound without its own consent. For this purpose, evolving and implementing more effective international laws are important goals of the UN. Therefore, the UN Charter contains an essential and self-evident principle in Article 2(2) providing for the obligation of all members to fulfill in good faith all the obligations assumed by them in the Charter.

In general, consent is most often demonstrated either through written agreement (such as treaty, convention and so forth) or through customary practice. In other words, the primary sources of international economic and social rights are treaties, customs and general principles of international law that states have obligations to respect, protect and fulfill. As a matter of international law, this is a huge increase given by the world body that member states move to implement the achievement. As the former UN secretary-general Boutros Ghali highlighted: "The time of absolute and exclusive sovereignty has passed; its theory was never matched by reality. It is the task of leaders of states today to understand this and find a balance between the needs of good internal governance and the requirements of an ever more interdependent world."³⁰ Indeed, nowadays movements toward promoting and protecting

29. UN CHARTER art. 103.

30. Boutros Boutros-Ghali, Supplement to An Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations, para. 17, UN Doc A/50/60-S/1995/1 (Jan 3, 1995).

human rights across borders is a critical example to match Ghali's above comment that states have used their sovereignty to create international obligations that in turn have restricted their operational sovereignty.

D. SIX PRINCIPAL ORGANS

According to the UN Charter, there are six principal organs in the UN, which are the General Assembly,³¹ the Security Council,³² the Economic and Social Council,³³ the Trusteeship Council,³⁴ the International Court of Justice,³⁵ and Secretariat.³⁶ Some of these bodies have numerous

31. The General Assembly is the only UN organ in which all members have the right to be represented and to vote. The annual General Assembly sessions, which last at least three months and occasionally may be prolonged for most of the year. In light of the UN CHARTER art. 10, the General Assembly has plenary powers in the sense that it "may discuss any question or any matter within the scope of the Charter." That is, the General Assembly exercises coordinating and supervisory functions for all other agencies within the United Nations.

32. According to the UN Charter Art. 24(1), the Security Council has "primary responsibility for the maintenance of international peace and security." It consists of 15 member states, five of them permanent members which are China, France, USSR, United Kingdom, and the U.S.; the remaining members are elected to two-year terms in accordance with a formula that is designed to ensure an equitable geographic representation. The reform of the Security Council has been a much debated topic in recent years, most of the attention has been focused on permanent seats for German and Japan as well as the area of reducing the damaging potential of the veto. In fact, the voting formula in the Security Council was reached in 1945 Yalta meeting by Roosevelt, Churchill, and Stalin. Under this formula, unanimity of the big powers would be required on substantive matters, including any enforcement action in response to a breach or threat to the peace or act of aggression, but none of the permanent members could use the power of veto to block a procedural vote, and a party to a dispute was required to abstain on a decision by the Security Council to discuss the dispute.

33. The Economic and Social Council (ECOSOC) consists of 54 member states elected by the General Assembly to three-year terms. ECOSOC's responsibilities entail economic, social and humanitarian areas. To further its goals of promoting economic and social development, ECOSOC has established a large number of subsidiary organs with specialized competence in various fields. Among these are regional economic commissions and bodies, including the UN Commission on Human Rights and the UN Commission on the Status of Women.

34. In the early days of the UN, the Trusteeship Council supervised the administration of many so-called non-self-governing territories. Today all of these territories are independent states and the Trusteeship Council has become an organ with greatly diminished responsibilities.

35. The International Court of Justice (ICJ), established in 1945, is the principal judicial organ of the UN. According to the UN Charter arts. 92-94, all member states of the UN are parties to the Statute of the Court. The Statute of the Court is annexed to, and forms an integral part of, the UN Charter. States that are not UN members may adhere to the Statute under conditions that the UN has prescribed. The ICJ consists of 15 judges, no two of whom may be nationals of the same state. The judges are elected by the UN General Assembly and the Security Council; they have to receive an absolute majority of the votes in both bodies. The regular term of a judge is nine years, and reelected is possible. According to arts. 34 and 35 of the ICJ Statute, the Court's jurisdiction applies only to disputes between states which have accepted the jurisdiction of the Court. The Court lacks jurisdiction to deal with disputes involving individuals or entities that are not states. In addition to hearing cases, the ICJ is authorized to give advisory opinions on legal questions. The UN Charter provides that the General Assembly and the Security Council may request such opinions, and that the General Assembly may authorize other organs and specialized agencies to request advisory opinions on legal questions within the scope of their activities.

36. As enshrined in the UN Charter art. 97, the Secretariat shall comprise a Secretary-General and such a staff as the Organization may require. The Secretary-General is elected to a five-year term by the General Assembly upon the recommendation of the Security Council. As that

subsidiary organs. UN agencies have made major contributions to the positive accomplishments of the organization. Member states may have not more than five representatives in the General Assembly and one each in the Security Council, Economic and Social Council, and Trusteeship Council. The UN's growing importance is amply illustrated by the fact that the UN headquarters is the closest approximation to a world capital and serves as a neutral territory where negotiations can take place without loss of prestige by any party to the negotiations. At this point, the national missions of the UN are more important than embassies to individual countries.

III. THE UN'S MODERN FUNCTION: INTEGRATING GLOBAL ECONOMY AND IMPLEMENTING DEMOCRATIZATION

Since the dissolution of the former Soviet Union³⁷ and the former Yugoslavia³⁸ which led to the end of the Cold War, the UN is no longer a

recommendation is subject to the veto power, the Secretary-General can be elected only with the acquiescence of the five permanent members of the Security Council. Moreover, as the chief administrative officer of the Organization, the Secretary-General has the power under article 99 of the UN Charter to "bring to the attention of Security Council any matter which in his opinion may threaten the maintenance of international peace and security." This right of initiative is potentially a very powerful political weapon, although it has not been used to any significant extent. For details, see THOMAS BUERGENTHAL & HAROLD G. MAIER, *PUBLIC INTERNATIONAL LAW* 38-41 (1990).

37. The definitive stages of the break-up of the former Soviet Union began with the failed coup by hard-line Communists in August 1991 that sparked declarations of independence from all of the republics of the former Soviet Union except Russia and Kazakhstan. In the midst of these declarations of independence, the Soviet Government formally recognized the independence of the Baltic States of Estonia, Latvia, and Lithuania on September 6, 1991, but attempted to keep the other twelve republics together in a Union of Sovereign States with both the Union and the individual republics maintaining international personalities. As a result of a referendum, affirmed by 90% of the vote that doomed the Union Treaty at the outset, the Republics of Ukraine, Belarus, and Russia formally declared that the Soviet Union had disintegrated and announced the formation of the Commonwealth of Independent States. By December of 1991, all of the republics except Georgia had agreed to membership in the Commonwealth and the Soviet Union was considered dissolved. See generally Urs W. Saxer, *The Transformation of the Soviet Union: From a Socialist Federation to a Commonwealth of Independent States*, 14 *LOY. L.A. INT'L & COMP. L.J.* 581, 670 (1992); see also Paul R. Williams, *The Treaty Obligations of the Successor States of the Former Soviet Union, Yugoslavia, and Czechoslovakia: Do They Continue in Force?*, 23 *DENV. J. INT'L L. & POL'Y* 1, 3 (1994).

38. See Williams, *supra* note 37, 4-6. See also Svetozar Stojanovic, *The Destruction of Yugoslavia*, 19 *FORDHAM INT'L L. J.* 337, 358 (1995) discussing the Yugoslav secessions in terms of self-determination movements; see Gideon A. Moor, Note, *The Republic of Bosnia-Herzegovina and Article 51: Inherent Rights and Unmet Responsibilities*, 18 *FORDHAM INT'L L. J.* 870, 873-74 (1995) discussing the fall of communism in 1989, the changing face of Eastern Europe in the early 1990s, and the nationalist self-determination movement. See generally, John Tagliabue, *Conflict in Yugoslavia*, *N.Y. TIMES*, July 3, 1991, at A6, describing political successors in Yugoslavia as former communists who evoke old national aspirations as a way of casting off that which originally gave rise to communism.

place for confrontation, but has been transformed into a forum for reaching real decisions that matter to the real world.³⁹

A. AFTERMATH OF THE COLD WAR

Following the Cold War, of noted importance is that national political leaders continue to cling stubbornly to national sovereignty and independence in a world in which traditional approaches are inadequate to the needs of humankind. Contrary to earlier practice in the UN, in fact, going beyond the traditional peacemaking and peacekeeping techniques that have been applied both to disputes between states and to internal conflicts, there is a growing realization that, for these to be effective, integrating the global economy and implementing democracy is an idea whose time has come.

Although a large proportion of the world population still suffers from severe deprivation of human welfare including widespread poverty, illiteracy, hunger, and disease, the rapid growth of multinational cooperation has contributed to development of common economic policies among the member states. In this respect, the UN is a useful step toward the world's new economic order in spite of the fact that there is no guarantee of rapid progress in economic development. Significantly, the mapping out of advance strategies for the promotion of common interests often lead to the application of efficient methods for maximum progress. In reality, the majority of the world has always shared a common interest in focusing on economic issues. The international community may be willing to seek accommodation through the UN for the strengthening of international means for assuring this common interest in order to satisfy this crucial need which is a process of arrangements for global cooperation between national and international economies. Under the circumstances, in such an increasingly interdependent world, those UN member states with strong economic power must provide their efforts to assist the UN regarding these modern issues.

B. IMPROVING THE WELL-BEING OF MANKIND

In response to the concerns mentioned above, the UN, as a multifunctional organization, must focus its particular attention on the basic needs of its member states so that the progress of national implementation of this common interest can therefore assure minimum

39. Christoph Schreuer, *The Changing Structure of International Organization*, 11 *TRANSNAT'L LAW*, 419, 421-22 (1998).

levels of basic rights to the citizens of each member state. Accordingly, this involves cooperation and coordination within the UN system. For this purpose, the UN clearly has a primary role in creating conditions whereby the integration of the global economy becomes achievable with every member state being able to take appropriate measures to improve the well-being of its citizens by implementing the UN approved projects or policies.

Since the economic rights of every human being should be treated equally under the concept of equality of international law,⁴⁰ and an entity with “economic sovereignty” is the key actor for the economic globalization in international organization,⁴¹ a legal approach to guaranteeing these basic rights generally encounters a substantial overlap between economic rights and political rights. It is impossible to separate completely economic issues from political matters. Hence, besides the function of the international global economy which is to guarantee the economic right of every member state, the enhancing of the UN’s mediating function to implement democratization in its member states is also part of the expanded role of the UN in the modern world. After all, the UN and its agencies are organized around both economic and political concerns.

In fact, the concept of “implementing democratization” rests on the assumption that every state is entitled to protect the full and equal enjoyment of political rights both on the domestic and international planes, which should be respected and recognized by other states since there is a primary interest in maintaining peace and a fundamental value of human rights guaranteed under international law. That is to say, the scope of the international guarantee of human rights should be seen as a contribution to the maintenance of peace among nations.⁴² In this sense,

40. International law is deficient in several of the attributes that contribute to the effectiveness of national legal systems. Traditionally, only states have been considered the subjects of international law although, in recent years, a trend toward the applicability of international law to individuals has been emerging, particularly in such areas as human rights.

41. Eleanor D. Kinney, *The Emerging Field of International Administrative Law: Its Content and Potential*, 54 ADMIN. L. REV. 415, 417 (2002). Noting that the development and existence of public international organizations to regulate aspects of the global economy or environment is a relatively recent phenomenon. See also John W. Head, *Throwing Eggs at Windows: Legal and Institutional Globalization in the 21st-Century Economy*, 50 U. KAN. L. REV. 731, 732 (2002). Noting the numerous definitions of globalization and the overwhelming proliferation of books, articles, symposia, and hand-wringing over various aspects of it; however, Head recognizes that the most important aspect of globalization is economic in character, largely because it is in the economic sphere where we see globalization having the most profound legal and institutional ramifications.

42. See, for example, *Respect for Human Rights in Armed Conflicts: Report of the Secretary-General*, 24 U.N. GAOR Annex (Agenda Item 61) at 10, U.N. Doc. A/7720 (1969). Noting that the Second World War gave conclusive proof of the close relationship which exists between outrageous

regardless of the difference between *de facto* and *de jure* government,⁴³ all the member states must agree in advance that the legal equality of rights refers to the enjoyment of economic and political rights which is without distinction of any kind.

C. ACCOMMODATING OF STATES WITH POPULAR SOVEREIGNTY TO JOIN THE UN AND ITS SPECIALIZED AGENCIES

Popular participation and cross-cultural dialogue is essential for the implementation of global integration economically and politically. Accordingly, the UN must open up its participatory procedure in order to accommodate any *de facto* or *de jure* government with popular sovereignty to join the UN and its specialized agencies.⁴⁴ This would help the UN in fulfilling its modern function. In the sense that the effectiveness of the Organization would be increased by the achievement of universality, one possible approach is to develop an international right to popular sovereignty of individual states that can act as a standard and be applied to each situation in attempting to promote universality membership. That is, one efficient way of implementing democratization and economic globalization at the individual country level is for the UN to proceed with its membership admission process with justice and fairness so that all mankind can be substantively served by the world body. Only when the UN system achieves this, can the goal of establishing a truly democratic and prosperous society be realized.

behavior of a Government towards its own citizens and aggression against other nations, thus between respect for human rights and the maintenance of peace.

43. A *de facto* government is one in actual control of the governmental machinery of the State and exercising its authority without substantial opposition. P.K. MENON, *THE LAW OF RECOGNITION IN INTERNATIONAL LAW*, 83, 92 (1994). In response to a question with regard to the principles of recognition, British Foreign Secretary, H. Morrison indicated in the House of Commons: "The conditions under international law for the recognition of a new regime as the *de facto* Government of a State are that the new regime has in fact effective control over most of the State's territory and that this control seems likely to continue. The conditions for the recognition of a new regime as the *de jure* Government of a State are that the new regime should not merely have effective control over most of the State's territory, but that it should, in fact, be firmly established." (Hansard, House of Commons, Vol., 485, March 21, 1951). In fact, there are few meaningful distinctions between a *de facto* and a *de jure* recognition. MALCOLM N. SHAW, *INTERNATIONAL LAW* 249-57 (1991).

44. BUERGENTHAL, *supra* note 36, at 45-46. Stating that despite their names, the so called specialized agencies of the UN are neither organs nor subsidiary organs of the UN. They are autonomous international organizations having an institutional affiliation with the UN....[M]ore than a dozen international organizations have obtained specialized agency status by concluding the necessary agreements with the UN. Some of these organizations predate the UN itself, among them the International Telecommunications Union (ITU), the Universal Postal Union (UPU), and the International Labor Organization (ILO). Other well known specialized agencies are the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Civil Aviation Organization (ICAO), the World Health Organization (WHO), and the Food and Agriculture Organization (FAO). The two major international financial institutions: the World Bank and the International Monetary (IMF), also have specialized agency status.

IV. THE MEMBERSHIP ISSUE IN THE UNITED NATIONS

The United Nations is an universal organization.⁴⁵ The universality principle means that all states and all persons should be properly represented in the world body. Article 4 of the UN Charter states that the UN membership is "open to all the peace-loving states who are willing to accept the obligations in the Charter." Evidently, UN membership presupposes statehood.⁴⁶ In an Advisory Opinion of the International Court of Justice (hereinafter ICJ) on Conditions of Admission of a State to membership in the United Nations, the Court pointed out that additional considerations, over and above that of statehood, apply when membership of the UN is at stake. In terms of article 4(1) of the UN Charter, the aspiring member must:⁴⁷

(1) *be a state*;⁴⁸ (2) be peace loving; (3) accept the obligations of the Charter; (4) be able to carry out those obligation, and willing to do so.

At the earlier stages of the UN, regardless of the fact that the applicants could meet the standards for admission, many unsuccessful candidates were the victims of a Cold War political contest in which the United States and the Soviet Union each managed to block the candidates favored by the other through voting requirements in the Security Council. This deadlock in membership applications led to a request from the General Assembly to ask the ICJ for an advisory opinion. The request raised two major questions: one was with regard to whether a member state is juridically entitled to make its consent to the admission of a new member dependent on conditions not expressly provided by Article 4 of

45. See J.A. Lindgren Alves, *The United Nations, Postmodernity, and Human Rights*, 32 U.S.F. L. REV. 479, 486-7 (1998). Noting that the United Nations is still the only existing universal body for dealing with the problems of the contemporary scene on a global scale.

46. See Van der Vyver, *Statehood in International Law*, 5 EMORY. INT'L L. REV. 9, 26-7 (1991). Noting that the view that UN membership presupposes statehood is shared by, among others, Frowein: "[I]t is clear that the quality of State of a UN member cannot be denied." H. KELSEN, *THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS* 946-48 (1951); Philip Jessup agreed that the criteria of statehood were included in those of UN membership, but the opposite, is not the case. PHILIP JESSUP, *A MODERN LAW OF NATIONS: AN INTRODUCTION* 47 (1968).

47. See *Admission of a State to the United Nations*, Advisory Opinion, 1948 I.C.J. 57, 61 (May 28).

48. Non-self-governing political units or autonomous states are sometimes considered as the units eligible for membership in the UN, despite the fact that the principle of sovereignty is one of the cornerstones upon which the United Nations is constructed. For instance, the UN granted exceptions to the requirement of statehood in its list of original members. The Soviet Union claimed a right of separate membership for each of its sixteen union republics. The concession to include the Ukraine and Byelorussia as original members did not meet generally accepted standards of statehood. India and the Philippines were also accorded the status of original member prior to the transfer of sovereignty. See BENNETT, *supra* note 20, at 59.

the UN Charter. The other one was whether a member can make its consent subject to the condition that other states be admitted at the same time.

In response to these substantive issues raised by the General Assembly in 1948, the Court advised that the conditions for admission of members specified in Article 4 of the Charter were exhaustive and that members were not justified in adding other conditions. Following this conclusion, the Court continued to indicate that the admission of one member cannot be made contingent upon the admission of another, and that each member's admission should be based solely on its own qualifications. Another attempt to clarify the issues behind the admission process was the request made by the General Assembly in 1949 regarding the question as to whether the General Assembly could admit a state to membership in the absence of a positive recommendation by the Security Council. The Court replied that such a procedure would violate the clear intent of the Charter.

In general, the principle of universality may be achieved if three conditions are present: (1) if the procedures for admission are not too difficult or rigid; (2) if the existing members are cooperative and committed to achieving universality, and (3) if nonmembers are willing to seek membership.⁴⁹ In this respect, the principle of universality can reinforce legality in two types of cases. One is the admission of Monaco, whose statehood had for long been doubted by scholars and who once filed but then withdrew an application for admission to the League of Nations. Membership for Monaco, an entity that was already a member of a number of international organizations and generally recognized by other states, became more understandable in the light of the principle of universality. The other one is the case of the admission of the Congo, illustrating the admissions decisions rendered without regard to the traditional definition but in accordance with the principle of self-determination. In fact, the principle of self-determination has been frequently mentioned in the UN by member states in favor of those admissions.⁵⁰ Both types of cases mentioned above presents strong evidence that the United Nations is becoming almost universal. Obviously, the principle of universality could provide flexible reinforcement for exceeding the proper limits of the traditional conditions for application to UN membership.

49. See BENNETT, *supra* note 20, at 78.

50. See generally Frederick Tse-Shyang Chen, *The Meaning of "States" in the Membership Provisions of the United Nations Charter*, 12 IND. INT'L & COMP. L. REV. 25 (2001).

When states are presented in the United Nations, they are equally represented. No state possesses a higher status than another state. The sovereign equality of the members refers to legal status rather than to size, power, or wealth. However, there are millions of people in the world who are trying to be represented in the UN, e.g., the people of Taiwan. But this universal organization cannot be of benefit to these people due to the gap of membership. There is the need for the UN to seek solutions to these problems.

A. ADMISSION TO MEMBERSHIP

As mentioned above, membership in the UN is open to all "peace-loving" states. To declare a nation "peace-loving," it is necessary to prove that it is ready and able to accept and fulfill the obligations of the UN Charter. Moreover, the elements of statehood comprise one of the basic conditions for membership. Traditionally, a valid claim to statehood requires the satisfaction of four criteria: a permanent population; a defined territory; a self-government, and the capacity to enter into formal relations with other states.⁵¹ However, the principle of admission membership can possibly be subject to political considerations.⁵² At this point, before examining the legal conditions of membership, it is important to understand that the issue of the admission of members to the UN is based on partly legal and partly political considerations as noted above. Hence, which political entities constitute "state" and which ones are "peace-loving" or deemed "able and willing to carry out international obligation" are sometimes highly based on political decisions. In particular, during the period of the Cold War, politics often overpowered legalities.⁵³

In order to break the deadlock in membership applications, the Australian representative proposed that: when the Security Council initially considered its procedure in dealing with membership questions, the applications should be first considered by the General Assembly, that the Security Council should only consider and make recommendations

51. See *Montevideo Convention on Rights and Duties of States*, Dec. 26, 1933, art. 1, 49 Stat. 3097, 165 L.N.T.S. 19 (entered into force Dec. 26, 1934) [hereinafter *Montevideo Convention*].

52. Igor Janev, *Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System*, 93 AM. J. INT'L L. 155, (1999). Noting that the conditions for the admission of states were the subject of exhaustive political and legal deliberations at the United Nations during the 1940s when many states were applying for membership; See Ibrahim J. Gassama, *World Order in the Post-Cold War Era: The Relevance and Role of the United Nations after Fifty Years*, 20 BROOK. J. INT'L L. 255, n.150 (1994). Noting that UN practice generally has been to treat the issue of membership in purely political terms with little attention paid to the character of the national government or to its treatment of its citizens.

53. See FREDERIC L. KIRGIS, JR., *INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING: DOCUMENTS, COMMENTS AND QUESTIONS* 138 (1993).

with respect to matters relating to peace and security, and that decisions on membership should be taken by the Assembly alone. However, this view did not gain support from other members of the Council as being consistent with Charter Provisions.⁵⁴

B. PROCEDURES FOR GRANTING UN MEMBERSHIP

Under the UN Charter, as discussed earlier, states can only be granted UN membership with a decision of the General Assembly, reached by a two-thirds majority upon the recommendation of the Security Council, where five states hold veto powers on nonprocedural matters.⁵⁵ Therefore, any one of the five "great powers" can single-handedly block any aspiring state from joining the United Nations.⁵⁶ In fact, it did happen in the early history of the United Nations. During the time of the Cold War, the admission of members to the UN became a battleground issue between the Soviet Union and the West. It is noted that all pro-Communist (pro Soviet Union) candidates were blocked by the Western states under the U.S. leadership, and all non-Communist (pro United States) applications were vetoed by the Soviet Union.⁵⁷ Charter criteria for admission were robbed of significant meaning by consent for political power in the United Nations. Since the admissions problem was basically political rather than procedural, compromise of competing interests had to be the final solution in the form of a "package deal."

54. U.N. SCOR, Official Records, 50th mtg. at 47-60, (Aug. 28, 1946). See also LELAND M. GOODRICH, *THE UNITED NATIONS* 91 (1959).

55. The specific procedures for application are as follows: In accordance with rules 58-60 of the Provisional Rules of Procedure of the Security Council, a State desiring U.N. membership must submit its application to the Secretary General, who places the application upon the Security Council's provisional agenda. Unless the Council decides otherwise, the application is submitted to the Committee on the Admission of New Members, comprised of a representative of each Council member, for its report. After considering the Committee's report, the Council votes on whether to recommend the applicant for membership. Votes on admitting new members are subject to veto. In evaluating the applicant, the Council may consider "any factor which it is possible reasonably and in good faith to connect with the conditions laid down" in the advisory opinion of the ICJ on *Conditions of a State to Admission in the United Nations*. If the Council recommends membership, it forwards its recommendation to the General Assembly. Article 18(2) of the Charter requires that admission decisions be made by a two-thirds majority of the General Assembly members present and voting. See generally Michael P. Scharf, *Musical Chairs: The Dissolution of States and Membership in the United Nations*, 28 CORNELL INT'L L. J. 29, 69 (1995).

56. In recent years, due to an increase in large numbers of the UN members, it has become more difficult than before for any great power to manipulate the General Assembly. In this respect, resulting from the realization of a common interest, the General Assembly has started making efforts to influence the Security Council to eliminate certain categories of questions from the exercise of the veto power. The admission of members is one of the certain categories.

57. As like other big powers, the Soviet Union used its veto right to protect the vital interests. During the earlier years of the UN, the Soviet Union's vital interests were frequently threatened because of western control of the issues in the Security Council and because of the minority position of the Soviet Union. Since 1970, the U.S. increasingly resorted to the veto, while the Soviet Union seldom needed recourse to this device.

Notwithstanding that Article 5 and 6 of the UN Charter provide for suspension and expulsion of members from the UN,⁵⁸ there is no provision made in the Charter regarding the issue of withdrawal from membership. In all of UN's history, only one state, Indonesia, has ever announced its withdrawal due to the election of Malaysia to a Security Council Seat, but after an absence of twenty months, it returned to full participation. Regarding the issue of Indonesia's returning to the UN, no readmission process was deemed necessary. This is because the withdrawal of Indonesia from the UN was only a statement of intent but no official acceptance of this withdrawal had been issued by the United Nations.

1. Observer Status and the Palestine Liberation Organization

Observer status does not appear in the UN Charter, but the UN General Assembly has granted it to some nonmember states and to an international organization. In 1990 the UN General Assembly accorded observer status to the International Committee of the Red Cross, a non-governmental organization. A number of UN specialized agencies have also adopted the practice of granting observer status to some entities that do not qualify for full membership.

On October 14, 1974, the UN General Assembly invited the Palestine Liberation Organization (hereinafter PLO)⁵⁹ to participate "in the debate relative to the Palestine question."⁶⁰ Later, in November 22 of the same year, the UN accorded to the PLO the status of an observer by adopting General Assembly Resolution 3237 which invited the PLO to "participate in the sessions and the work of the General Assembly in that capacity." Since then, the PLO has continued to enjoy its observer status without interruption and has maintained its Mission to the UN without trammel. In 1975, the UN General Assembly established a Committee on

58. According to Articles 5 and 6 of the Charter, the General Assembly may suspend or expel a member by a two-thirds vote upon the recommendation of the Security Council. So far, no action has ever been taken under this principle.

59. The creation of the PLO in 1964 was authorized at an Arab summit conference pursuant to a previous Arab League council decision to affirm a Palestinian entity and place the cause of liberation in the hands of the Palestinians themselves. In the same year, the PLO was defined by a Palestine National Congress as a responsible organization for the direction of the Palestinian people in their struggle for the liberation of their homeland, in all liberational, political, and financial fields and also for whatever measures may be required by the Palestine case on the inter-Arab and international level. The Congress immediately notified the UN that the PLO would be "the only legitimate spokesman for all matters concerning the Palestine people." Today, the PLO retains the support of the Arab League.

60. See Beth DeBernardi, *Congressional Intent and Conflicting Treaty Obligations: United States v. Palestine Liberation Organization*, 23 CORNELL INT'L L. J. 83, 89 (1990).

the Exercise of the Inalienable Rights of the Palestinian People to help with the settlement of the Palestine problem.⁶¹

However, due to the U.S.'s declaring that the PLO is a terrorist organization,⁶² the right of the PLO's participation in the UN turned to be a huge challenge to UN practices. For instance, in 1987, the U.S. Congress enacted the Anti-Terrorism Act (hereinafter "ATA")⁶³ to force the PLO mission to close within the jurisdiction of the United States. This prompted the UN General Assembly to take the position overwhelmingly that the U.S. would be violating the 1947 Headquarters Agreement and therefore, requested a legal opinion from the ICJ.

2. The 1987 Anti-Terrorism Act & the 1947 Headquarters Agreement

The Court unanimously issued an opinion that the U.S. legislation was in violation of the Headquarters Agreement and under an obligation to enter into arbitration for the settlement of the dispute between itself and the UN.⁶⁴ This position was also sustained in a New York federal district court case.⁶⁵ Again, in December 1988, despite the fact that the UN invited Mr. Yasir Arafat, the Chairman of the PLO, to address the UN General Assembly in NY, the U.S. denied a visa to Mr. Arafat to prevent him from entering the United States in order to safeguard its own security.⁶⁶ In response, the General Assembly reconvened its session in Geneva to hear Mr. Arafat's address. This consequently made the U.S. open the negotiations with the PLO on the basis that Mr. Arafat had

61. G.A. Res. 3376, U.N. GAOR, Supp. No. 34, at 3, U.N. Doc. A/10034 (1976). In 1976, the Committee recommended that the UN Security Council establish a timetable for Israeli evacuation of the occupied territories, and that "[t]he evacuated territories, with all property and services intact, should be taken over by the United Nations, which with the co-operation of the League of Arab States, will subsequently hand over these evacuated areas to the Palestine Liberation Organization as the representative of the Palestinian people."

62. According to § 5201(b) of the U.S. Anti-Terrorism Act, the PLO was stated to be "a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States."

63. 22 U.S.C. §§ 5201-5203 (1987).

64. Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, 1988 I.C.J. 12 (Apr. 26).

65. Despite the State Department's concession and the UN General Assembly support for the right of PLO mission to remain, the U.S. Department of Justice brought an action in federal district court in New York to evict the PLO. After the New York district court dismissed the action, a conflict developed within the U.S. government over whether or not to appeal. The Justice Department wanted to appeal, but the State Department did not. President Regan had to resolve the conflict. He decided that no appeal would be undertaken.

66. The U.S. Government presented evidence declaring that PLO elements engaged in terrorism against Americans and others. This evidence includes a series of operations undertaken by the Force 17 and the Hawari organizations since the PLO claimed to forswear the use of terrorism in the Cairo declaration of November 1985. As Chairman of the PLO, Mr. Arafat is responsible for actions of these organizations which are units of Fatah, an element of the PLO of which he also is chairman and which is under his control. For details, see KIRGIS, *supra* note 53, at 114.

modified and clarified his positions on terrorism and Israel's right to exist, the grounds for denial of the visa. As mentioned above, to sum up, it is particularly significant that the language of the 1947 Headquarter Agreement⁶⁷ restrains the U.S. from interference with the PLO Observer Mission in the discharge of its functions at the United Nations. Therefore, the PLO has continued to enjoy the opportunity to make its positions known to the membership of the UN.

Regardless of the fact that the PLO did not qualify for full membership, the PLO asked to be allowed to participate in the general debate that gave rise to a controversial issue in the UN as to whether or not only representatives of Member states are qualified to participate in the general debate. The question of PLO's participation has also come up in the UN Security Council. In fact, the request for the participation of the PLO was faced with the situation that there is an inherent difference between the PLO and a sovereign State, to the extent that the PLO lacks statehood but is a body which has been granted an official status within the UN, namely, the status of permanent observer, as the sole legitimate representative of the Palestinian people. After very careful examination of the Charter, the rules of procedure of the UN General Assembly⁶⁸ and the Security Council⁶⁹ as well as the spirit of this Organization, theoretically, it would be inappropriate to accord an observer(PLO) the right of reply to any member in the general debate because the right to speak in the general debate is enjoyed by member states. In the case of the Security Council, an observer(PLO) would be granted permission to speak only if the request complies with Rule 39 of the Security Council's provisional rules of procedure.

67. For example, Section 11 of the Headquarters Agreement reads, in part, "The federal, state or local authorities of the U.S. shall not impose any impediments to transit to or from the headquarters district of: (1) representatives of Members [...] (5) other persons invited to the headquarters district by the United Nations [...] on official business." KIRGIS, *supra* note 53, at 110.

68. Articles 3 and 4 of the UN Charter highlight that only states can be Members of the Organization. Moreover, the language of Rule 73 in the General Assembly rules of procedure provides the right of reply in the plenary Assembly available to Members.

69. Rule 37 and 39 of the Security Council's provisional rules of procedure provides: Any Member of the United Nations which is not a member of the Security Council may be invited, as the result of a decision of the Security Council, to participate, without vote, in the discussion of any question brought before the Security Council when the Security considers that the interests of that Member are specially affected, or when a Member brings a matter to the attention of the Security Council in accordance with Article 35(1) of the Charter (Rule 37). The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence (Rule 39).

3. Granting of PLO's Participation in the General Debate and the Security Council

However, in the UN existing practice, the PLO, as a UN observer, has been granted permission to speak both in the General Assembly and in the Security Council.⁷⁰ The PLO's UN position should not be taken as a change in the observer status of the PLO at the UN or the recognition of any State of Palestine,⁷¹ although some commentators have argued that Palestine is a state for meeting all the four traditional criteria for statehood.⁷²

Since the UN General Assembly's grant of observer status to the PLO in 1974, the PLO, as the sole, legitimate representative of the Palestinian people, has increasingly been allowed to act on the international plane as the exclusive agent of the Palestinian people. It has been accepted as an observer member of the organization of non-aligned countries, and has been invited to participate in numerous international conferences. This is because the UN General Assembly Resolution 3236⁷³ identified the PLO as "the representative of the Palestinian people," reaffirmed "the inalienable rights of the Palestinian people in Palestine, including: (a) the right to self-determination without external interference; (b) the right to national independence and sovereignty," and recognized "the right of the Palestinian people to regain its rights by all means in accordance with the purposes and principles of the Charter of the United Nations."

70. In the case of the participation of the Security Council, a proposal indicating that "there should be accorded an invitation to the PLO to participate in this debate, and that invitation will confer upon it the same rights of participation as are conferred when a Member State is invited to participate under rule 37" was adopted to resolve the conflict.

71. See Frederic L. Kirgis, Jr., *Admission of "Palestine" as a Member of a Specialized Agency and Withholding the Payment of Assessments in Response*, 84 AM J. INT'L L. 218, 219-20 (1990). Noting that even though the Palestine National Council has declared "the establishment of the State of Palestine," and even though many governments have apparently recognized such a state, several other governments have withheld recognition on the ground that "Palestine" does not meet the conditions required to be a state. When the United Nations General Assembly adopted its resolution on the "Question of Palestine" in December 1988, it did not recognize a Palestinian state; nor did it call the PLO a provisional government. Instead, it acknowledged that the Palestine National Council had proclaimed the State of Palestine, affirmed the need to enable the Palestinian people to exercise sovereignty over the occupied territories, and changed the PLO's designation to "Palestine" in the UN system.

72. See KIRGIS, *supra* note 53, at 380. Noting that (a) the territory does not have to be determinate, as shown by the fact that Israel is recognized as a state despite its lack of fixed territorial boundaries (except with Egypt); (b) the Palestinian people constitute the population, and have for centuries; (c) the PLO serves as the provisional government of Palestine, effectively controlling substantial sections of the territory and providing public services to Palestinians in Palestine and abroad; and (d) Palestine's capacity to enter into international relations is shown by the fact that more than 100 states had recognized it as a state within two years of the Proclamation of Independence, and by the General Assembly resolutions.

73. G.A. Res. 3236, U.N. GAOR, Supp. No. 31, at 4, U.N. Doc. A/9631 (1974).

In 1989, the UN General Assembly adopted its Resolution 43/177⁷⁴ to acknowledge the proclamation of the State of Palestine by the Palestine National Council on November 15, 1988, and decided that the designation "Palestine" should be used in place of the designation "Palestine Liberation Organization" in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organization within the United Nations system.

As discussed above, except the right to vote in official UN sessions, there is no doubt that representatives of observer missions have access to UN facilities in the headquarters district and to all open sessions of the UN General Assembly. On certain occasions, they are even entitled to speak in official UN sessions.

V. UNITED NATIONS RESOLUTION 2758 AND THE QUESTION OF REPRESENTATION

At the inception of the United Nations in San Francisco in 1945, the Republic of China was a founding member and one of the five permanent members of the UN Security Council.⁷⁵ Consistent with the basic principle of the sovereignty of members, the UN Charter does not specify any qualifications for representation. The question of representation came up in the United Nations when the Soviet Union proposed a Security Council resolution that would have rejected the credentials of the Republic of China representative in 1950. From then on the Soviet Union argued that the ROC did not have the right to represent the seat of China in the United Nations. This is because, in 1949, after the ROC lost the civil war, the ROC also lost control over mainland China.

A. BACKGROUND

After the Chinese civil war resulting in the emergence of two governments in the Chinese nation, the issue of who should sit in the United Nations to represent China - whether the ROC or the PRC - came up and became disputable. In January 1950, a draft resolution that would have denied the credential of the ROC representatives was first raised by the Soviet Union in the Security Council. Without support by the majority of members, the draft resolution was defeated. That led to the boycott of the UN Security Council by the Soviet Union for a few

74. G.A. Res. 43/177, U.N. GAOR, Supp. No. 49 at 62, U.N. Doc. A/43/49 (1989).

75. In Article 23 of the UN Charter, the Republic of China was named among the five permanent members of the UN Security Council.

months in 1950 as a way of protesting the continued sitting of the ROC representatives.⁷⁶

Coincidentally, the Korean armed conflict broke out at the same time.⁷⁷ Hence, without the presence of the Soviet Union, a series of UN resolutions⁷⁸ relating to the Korean crisis (including the offer of necessary assistance to the Republic of Korea to repel the armed attack by North Korea, as well as the recommendation that all Members provide military forces to a unified command under the United States to restore international peace and security in the area due to the increase of intervention by the Chinese Communist military units in Korea) were adopted in the Security Council.⁷⁹ During the Soviet absence, a unified UN command was established. In reality, this command deputized the United States to lead the defense of South Korea in the name of the United Nations.⁸⁰

B. THE QUESTION OF REPRESENTATION

As a matter of fact, the question of Chinese representation was regarded as a unique case in the history of the United Nations since it involved a revolutionary change of government and the first time the two rival governments coexisted. In 1950, the UN Secretary-General Trygve Lie made public a memorandum, entitled "Legal Aspects of Problems of Representation in the United Nations,"⁸¹ which mentioned that the question of representation was linked to the question of the recognition by Member States; the Chinese case is unique in the history of the UN, not because it involved a revolutionary change of government, but

76. *U.N. Annual Report: 1 July 1949 - 30 June 1950*, 5th Sess. Supp. 1, at 31-33, UN Doc. A/1287.

77. World War II left Korea divided with Soviet forces occupying the North and U.S. forces, the South. A UN call for withdrawal of foreign troops and elections throughout a unified Korea was opposed by the Communist government, leading to elections only in the South and the withdrawal of most U.S. troops. In June 1950, force from North Korea (the Democratic Republic of Korea) attacked South Korea (the Republic of Korea). The Soviet Union, the PRC and the rest of the Communist world supported the North.

78. See the 1950 UN Security Council Resolutions 82, 83, 84, and 85. RESOLUTIONS AND STATEMENTS OF THE UNITED NATIONS SECURITY COUNCIL, 1946-1992, at 323-327 (Karel C. Wellens ed., 1993) [hereinafter RESOLUTIONS OF THE UN SECURITY COUNCIL].

79. Only the accident of Soviet absence, piqued over the Chinese-representation issue, allowed the Security Council, in 1950, to authorize collective action in Korea. The return of the Soviet representative to the Council table on August 1, 1950, precluded any further agreement on the basic issues in Korea.

80. WEISS ET AL., *supra* note 2, at 47-48. Noting that the defense of South Korea was not a classic example of collective security.

81. KIRGIS, *supra* note 53, at 177-178.

because it was the first time in which two rival governments existed.⁸² In the same year, a subcommittee of the General Assembly's Ad Hoc Political Committee worked out a draft resolution related to the representation as follows:⁸³

(a) That whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations, and this question becomes the subject of controversy in the United Nations, it should be considered in the light of the purposes and principles of the Charter and the circumstances of each case;

(b) That the following should be among the factors to be taken into consideration in determining any such question:

(i) The extent to which the new authority exercises effective control over the territory of the Member State concerned and is generally accepted by the population;

(ii) The willingness of that authority to accept responsibility for the carrying out by the Member State of its obligations under the Charter;

(iii) The extent to which that authority has been established through internal processes in the Member State.

Before 1960, for ten years, the proposal sponsored by Albania and twenty other member states, calling for the seating of the PRC as the only legitimate representatives of China and the expulsion of the representatives of the ROC, was avoided in the UN General Assembly agenda by adopting a resolution to postpone considering the matter in the UN General Assembly. After 1960, due to the expansion of UN membership by the admission of newly independent states, the Western powers no longer dominated the UN as before. Thus, more and more member states began to contemplate the Chinese representation question.

82. In his memorandum, Mr. Trygve Lie also pointed out that it is quite possible that such a situation will occur again in the future and it is highly desirable to see what principle can be followed in choosing between the rival. For details, see U.N. Doc. S/1466 (1950).

83. This resolution adopted by the UN General Assembly included paragraph (a) as its first operative paragraph but did not contain any other standards by which to determine such questions.

In 1961, for the first time, the issue was put before the UN General Assembly. In the meantime, a draft resolution, sponsored by the U.S., that declared the expulsion of the ROC was an “important question” (meaning it should be made by a two-thirds majority for approval)⁸⁴ was adopted in the UN General Assembly. From then on, the United States had successfully used such a resolution to keep the PRC out and the ROC in until 1971. This is because any attempt to change the Chinese representation would have collected a simple majority to admit the PRC, but no majority could be mustered.

Because of its commitment to the Chiang Kai-shek regime of the ROC,⁸⁵ the U.S. for more than two decades led the fight to save the ROC by using procedural tactics. However, it could not ignore the fact that the PRC was the regime effectively in control of the Chinese mainland. In this regard, it became more difficult for the U.S. to fight for the ROC on the issue of Chinese representation⁸⁶ on the grounds that more and more member states were convinced that the PRC was the government exercising effective authority within the territory of China and thus, should represent the State in the United Nations. The changing world situation made it unfeasible for the ROC to preserve its seat in the UN, despite efforts made by the United States. As a result, in 1971, the issue of Chinese representation took an about turn and was no longer characterized as an important question under Article 18 of the UN Charter by the majority of the members present and voting in the UN General Assembly.⁸⁷ At this point, the ROC Delegation left the General Assembly Hall. Realizing the imminence of the PRC's entry to assume China's seat in the UN at the next subsequent ballot on a substantive “unimportant” question, the ROC representatives announced its gracious

84. Decisions of the General Assembly on important questions shall be made by a two-third majority of the members present and voting. Admission of a new Member to the United Nations is deemed as an important question under Article 18(2) of the UN Charter.

85. See BENNETT, *supra* note 20, at 86.

86. In order to hold a seat in the UN for Taiwan, the U.S. proposed a compromise by favoring a Security Council seat for the PRC so that both Chinas can sit at the UN at the same time. But the proposal was defeated by both Chinese regimes because of the assertion of one China policy. KIRGIS, *supra* note 53, at 180. Regarding the Chinese dual representation issue, *see generally* James Wang, *Who Lost the UN*, TAIPEI TIMES, Aug. 1, 2002. Noting that, instead of fighting for a seat for the ROC in the UN, Chiang Kai-shek was competing with the PRC for the legitimacy of representing “the whole of China.” That is, he would rather have lost the ROC's UN seat than co-exist with the PRC in the world body.

87. The key decision that signaled the United States' defeat came when the General Assembly voted, 59 to 55 with 15 absentees, to reject the American draft resolution. An analysis of the voting showed that the abstention of eight nations that had been thought almost to the last to be leaning toward the United States position had been fatal to the American cause. Had they voted with the United States, the American “important question” resolution would have been adopted, 63 to 59. For details, *see* N.Y. TIMES, Oct. 26, 1971 available at www.nytimes.com/library/world/asia/102671china-relations.html.

withdrawal from the United Nations. Resolution 2758⁸⁸, no longer requiring a two-thirds majority and without any recommendation from the Security Council, was adopted within minutes by a simple majority with the immediate effect to admit the PRC to take China's seat and "expel" the Chiang Kai-shek representatives from the United Nations.

Because of the resolution, the ROC, representing the people on Taiwan, has been deprived of appropriate and effective representation in the United Nations as well as the right to participate in the political, economic, cultural and social development activities within the UN system.

C. THE UN GENERAL ASSEMBLY RESOLUTION 2758

The General Assembly,

Recalling the principle of the Charter of the United Nations,

Considering that the restoration of the lawful rights of the People's Republic of China is essential both for the protection of the Charter of the United Nations and for the cause that United Nations must serve under the Charter,

Recognizing that the representatives of the Government of the People's Republic of China is the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of Security Council,

Decides to restore all its rights to the People's Republic of China and to recognize the representatives of its government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it.

88. The UN General Assembly Resolution 2758 was passed in the 26th session of the UN General Assembly to admit Beijing to replace Taipei to sit in the United Nations and its Security Council. For details about the resolution, see G.A. Res. 2758, 26 GAOR, Supp. No. 29, at 2, U.N. Doc. A/8429 (1971).

VI. COMMENTARY ON UNITED NATIONS RESOLUTION 2758

Since the UN General Assembly adopted Resolution 2758, apparently whether or not an authority can be regarded as an effective government to represent a member state in the UN should be based on two considerations: (1) to exercise effective control over the territory; and (2) to be accepted generally by the population of the territory.⁸⁹ However, many arguments were raised after the adoption of this resolution, because the resolution only resolved the representation issue for the people of mainland China but not for the people of Taiwan.⁹⁰

In short, the resolution could only affirm the right of the PRC to represent the people who were under its effective control. Admittedly, part of the rationale enabled the PRC to take over China's seat in the UN since the ROC no longer effectively controlled the Chinese mainland. Conversely, the people of Taiwan have never been under the control of the PRC for any single day but have been ruled by the ROC since 1945. *A fortiorissime*, the same rationale should equally apply to the case of Taiwan with a population of twenty-three million to be represented at the United Nations. As mentioned above, for the sake of justice and universality, it is necessary for the UN to review its Resolution 2758. Otherwise, the absence of representation of Taiwan in the UN has weakened the implementation of adopted resolutions and introduced an element of uncertainty into the fact showing that universal membership is only a vague goal but not a basic principle in the United Nations.

A. RE-EVALUATING THE UN GENERAL ASSEMBLY RESOLUTION 2758

The adoption processes of the UN General Assembly Resolution 2758 in 1971 was a product of ideological confrontation which was developed during the Cold War era. It did not constitute a complete solution to the issue of China's representation resulting from China's division in 1949,

89. See Ibrahim J. Gassama, *World Order in the Post-Cold War Era: The Relevance and Role of the United Nations after Fifty Years*, 20 BROOK. J. INT'L L. 255, 330 (1994). Noting that Secretary-General Trygve Lie's memorandum dated 8 March 1950 on the credentials issue advocated the adoption of the "effective control" standard because the United Nations is not an association limited to like-minded States and governments of similar ideological persuasion, as in the case of certain regional associations. As an organization which aspires to universality, it must of necessity include States of varying and even conflicting ideologies.

90. For instance, Dr. Frederic L. Kirgis, Jr. argued the adoption processes of Res. 2758 concerning China's admittance into the UN by saying that "if political considerations determined the outcome of the issue, why did the representatives waste their time with arguments about specific provisions of the Charter or about precedents? Does the General Assembly Resolution 2758 make any reference to Taiwan's situation? If the ROC on Taiwan were now to seek separate representation for Taiwan in the General Assembly, would it be proper to treat its request simply as a representation matter? Or would the ROC on Taiwan have to apply for membership under article 4?" KIRGIS, *supra* note 53, at 180.

but provided only for the international representation of the territory under the jurisdiction of the PRC. The issue of the Chinese seat at the UN was presented in the General Assembly as a matter of credentials and thus, it is one of representation issues rather than one of membership issues. Specifically, the present international environment and the relations between the ROC and the PRC are clearly different from those prior to 1971 because not only has the Cold War come to an end, but international dialogue and economic cooperation have become the major trends as well. Moreover, the government of Taiwan has officially made clear that its sovereignty and legitimacy are over the Taiwan area only, instead of recognizing Taiwan as a part of China and claiming that ROC's authority extends to all of China.

Resulting from the legal obligation found in human rights law,⁹¹ states are bound to respect and protect the right that all people are entitled to be represented in the UN. The UN should not deny a state such as Taiwan the right to participate in its system by respecting and accepting the credentials of that state's representation. As explained in the previous discussion of universal membership and representation issues, the revolution of the UN General Assembly Resolution 2758 is highly an unsettled issue that the world body has to respond to. With this background, we expect more specific efforts of the UN to transform theories and principles into practical programs for solving such issues. After all, the desire of every state to belong to the UN is a beginning toward further development of world order.

In fact, in view of the UN's history, there are precedents for the UN General Assembly to review its own outdated resolutions. For instance, due to the different political climate of 1950, the UN General Assembly passed Resolution 386(V) to revoke its Resolution 39⁹² which recommended that the Franco Government of Spain be debarred from membership in UN agencies and from participation in UN activities.⁹³

91. With a U.S.\$ 250 billion GNP and an annual per capita income exceeding US\$ 12,000, the ROC on Taiwan is not only a prosperous state, but also has been a leading holder of foreign exchange reserves for years.

92. G.A. Res. 39, U.N. GAOR, 1st Sess., 1st pt., U.N. Doc. A/64 (1946).

93. When the Security Council failed to act on the continuation in power of Franco's Government in Spain in 1946, the General Assembly gave comprehensive guidance to UN organs and members regarding their relationship with Franco's regime and recommended that the "Franco Government of Spain be debarred from membership in international agencies established by or brought into relationship with the United Nations." Due to the different political climate of 1950, especially after the United Nations action against aggression in Korea, the 50th session of the General Assembly reconsidered the question of relations with Spain, and adopted a resolution revoking the former recommendation. See, Louis B. Sohn, *Expulsion of Forced Withdrawal from an International Organization*, 77 HARV. L. REV. 1381, 1402-4 (1964). See also Jane D. Weaver, *The UN Charter as History*, 89 AM. SOC'Y INT'L L. PROC. 45, 48 (1995).

More recently, in 1991, in efforts to repeal UN General Assembly Resolution 3379⁹⁴ equating Zionism with racism, the General Assembly adopted Resolution 46/86 to revoke its former recommendation.⁹⁵

VII. TAIWAN'S CASE FOR UNITED NATIONS MEMBERSHIP

As the world's 14th largest trading and 16th largest economic nation,⁹⁶ the ROC on Taiwan is well known as a major economic player in the Asian-Pacific and world economies, that making it a member of the international community is something that should not be neglected. Given its solid economic strength, the ROC on Taiwan has an important role to play in the international community.⁹⁷ With such an achievement, the ROC on Taiwan has a strong desire, and sufficient capability to play a prominent and responsible role in the world body. Moreover, membership in the UN will not only provide ROC on Taiwan with a channel for formal contacts with many important countries (including the People's Republic of China), but it will also have a very positive effect in raising Taiwan's international status.

In 1991, the ROC on Taiwan recognized that the PRC controls the Chinese mainland while the ROC's jurisdiction includes only Taiwan and other small islands which are Penghu, Kinmen, and Matsu.⁹⁸ Progress toward Taiwan's independence has been furthered and expedited by this official statement. Hence, the ROC on Taiwan would no longer compete with the PRC for the right to represent China. Since 1993, Taiwan has put in a bid for UN membership annually and its allies have continually suggested that the UN should address the issue of the representation of the ROC on Taiwan in international organizations by re-examining the General Assembly Resolution 2758 and the importance

94. U.N. GAOR, 3d Comm., 30th Sess., Supp. No. 34, at 83-84, U.N. Doc. A/10034 (1975).

95. G.A. Res. 46/86, U.N. GAOR, 46th Sess., U.N. Doc. A/Res/46/86 (1991); *see also* KUMIKO MATSUURA, JOACHIM W. MULLER & KARL P. SAUVANT, 1 ANNUAL REVIEW OF UNITED NATIONS AFFAIRS 19 (1991).

96. According to a survey of the world's top 100 economic entities of 2000, released by the UN Conference on Trade and Development, Taiwan ranked 16th with a GDP of U.S.\$309 billion. *See* China Times, Taiwan, August 9, 2000.

97. With a view to promoting international cooperation, the ROC government set up the International Cooperation and Development Fund (ICDF) on July 1, 1996, under the supervision of the Ministry of Foreign Affairs. Major applications of the fund are: (1) technical cooperation, (2) loans, (3) international investments and (4) donations, including all equipment. The ICDF focuses its cooperation on countries in Central and South America, the Caribbean region and Africa with which the ROC has diplomatic relations. The ICDF also expanded its investment projects with neighboring countries in Asia in order to further enhance the substantive relations between the ROC and the countries of this area. For details, see the website of the ROC's Ministry of Foreign Affairs (www.mofa.gov.tw).

98. *See generally*, THE REPUBLIC OF CHINA YEARBOOK (Government Information Office 1995).

of Taiwan's geographical location to regional stability, security, and prosperity.⁹⁹ More importantly, the government of Taiwan made pronouncements on a new "One China Two Governments" policy to accommodate its bid to enter the UN under the divided China position.¹⁰⁰ It is pertinent to reiterate that there exists a genuine desire or a preference for the status quo – an independent Taiwan seeking a form of parallel representation as a separate country from the PRC through membership in the UN system, and promoting itself wherever possible as if it were an independent state.

A. JOINT PROPOSAL SUBMITTED BY TWELVE MEMBER STATES TO THE UNITED NATIONS¹⁰¹

Upon the instruction of our respective governments, we have the honour to request, pursuant to the rule 14 of the rules of procedure of the General Assembly, the inclusion in the agenda of the fifty-fifth session of the Assembly of a supplementary item entitled "Need to Examine the Exceptional International Situation Pertaining to the Republic of China on Taiwan, to Ensure that the Fundamental Right of its Twenty-Three Million People to Participate in the Work and Activities of the United Nations is Fully Respected." Pursuant to rule 20 of the rules of procedure of the General Assembly, we attach an explanatory memorandum and a draft resolution.

Explanatory Memorandum

1. The Republic of China is a democratic country and its democratically elected Government is the sole legitimate one that can actually represent the interests

99. See, A Joint Letter, Dated 8 August 200, to the UN Secretary General, information released by the ROC Foreign Ministry, available at <http://www.mofa.gov.tw>.

100. This policy can be seen in, Heading for the 21st Century, Address by Taiwan's Premiere Lien Chan to the 85th Annual Convention of Rotary International (June 12, 1994). See also Parris Chang & Kok-Ui Lim, *Taiwan's Case for United Nations Membership*, 1 UCLA J. INT'L L. & FOREIGN AFF. 393, 424-5 (1997). The government of Taiwan proposes that Taiwan might join the UN under parallel representation alongside the PRC by arguing China is currently divided and ruled by two separate and equal political entities: the PRC on mainland, and the ROC on Taiwan.

101. The joint proposal dated 3 August 2000 from the representatives of Burkina Faso, the Gambia, Honduras, Malawi, the Marshall Islands, Nauru, Nicaragua, Saint Vincent and the Grenadines, Senegal, Solomon Islands and Swaziland to the United Nations, requesting for the inclusion of a supplementary items in the agenda of the fifty-fifth session. For related information, see the website of ROC Ministry of Foreign Affairs (www.mofa.gov.tw).

and wishes of the people of Taiwan in the United Nations.

2. The exclusion of the Republic of China from the United Nations and its related agencies has created a major and serious obstacle for both the Government and the people of the Republic of China in their pursuit of normal participation in international organizations and activities.

Draft Resolution

The General Assembly,

Considering the fact that the twenty-three million people of the Republic of China on Taiwan are the only remaining people in the world that still do not have actual and legitimate representation in the United Nations,

Recognizing that since 1949 the Government of the Republic of China has exercised effective control and jurisdiction over the Taiwan area while the Government of the People's Republic of China has exercised effective control and jurisdiction over the Chinese mainland during the same time period,

Acknowledging that the Republic of China on Taiwan is a constructive and responsible member of the international community, with a democratic system and a strong, dynamic economy,

Observing that the strategic location of Taiwan is vital to the peace and security of the East Asian and Pacific regions and the world,

Understanding that the determination of future relations between the Republic of China on Taiwan and the People's Republic of China should fully respect the free will of the people on both sides and be implemented in a peaceful way,

Mindful of the fact that the Republic of China has committed itself to peaceful resolution of differences

with the People's Republic of China and has repeatedly offered friendly and conciliatory gestures towards the leadership of the People's Republic of China,

Noting the declaration of the Government of the Republic of China on Taiwan that it accepts without condition the obligations contained in the Charter of the United Nations, that it is able and willing to carry out those obligations, and that it is fully committed to observing the principles and spirit of the Universal Declaration of Human Rights,

Affirming the significance that recognition of and respect for the fundamental rights of the twenty-three million people of the Republic of China on Taiwan would have for upholding the principles and spirit of the Charter of the United Nations,

Decides:

(a). To respect fully the choice of the people on both sides of the Taiwan Strait with regard to their future relations and to reject any unilateral arrangement or forced resolution of their difference by other than peaceful means;

(b). To express its concern about cross-strait tension and its possible impact upon regional peace, stability and prosperity, and to encourage the Republic of China on Taiwan and the People's Republic of China to resume their dialogue and communication on a peaceful basis and equal footing.

Regardless of the fact that Taiwan's participation in the UN absolutely is to fulfill its international responsibility and contribute to global peace as well as enhance the increasing integration of the global economy, without gaining acceptance in the UN General Assembly Steering Committee,¹⁰² the perennial proposal has been excluded from the UN General Assembly agenda because Beijing was able to rally its allies to

102. The committee which organizes the agenda for the session, hears speakers for and against seating Taiwan. As a result of intensive lobbying by the PRC, opponents invariably outnumber supporters of Taiwan and a decision is made, without a vote, not to inscribe the item on the agenda.

voice their opposition against Taiwan.¹⁰³ The risk of the PRC and its succession to China's seat in the UN and its systems such as the World Bank and the IMF-not to mention the near universal recognition of the PRC by foreign governments as the legitimate government of China-has made Taiwan very defensive and very cautious notwithstanding that China is a divided country, much as Germany was until a decade ago, or Korea is today.

B. TAIWAN'S POPULAR SOVEREIGNTY

As a matter of international law, there is no doubt that the ROC on Taiwan meets the requirements for the common indicators of statehood¹⁰⁴ and the inherent rights that can be enjoyed by the entire population of the land of Taiwan.¹⁰⁵ Resulting from the political process of democratization in Taiwan,¹⁰⁶ the ROC's government is an effective authority with legal capacity and rights to act on behalf of the "State" in the international system. It is enshrined in Article 21(3) of the 1948 Universal Declaration of Human Rights that "the will of the people shall be the basis of the authority of government."¹⁰⁷ With a full-fledged

103. The PRC continuously objected to Taiwan's application and blocked the application from being included on the daily agenda of the General Assembly for discussion and a possible vote. This is because Taiwan's UN membership would raise fundamental questions about national sovereignty which are profoundly against the PRC's so-called "one China" policy. Angeline G. Chen, *Taiwan's International Personality: Crossing the River by Feeling the Stones*, 20 LOY. L.A. INT'L & COMP. L.J. 223, 245-8 (1998). Regarding the issue that the UN Charter Article 4 further mandates that the Security Council must approve any membership vote by the General Assembly, Dr. Angeline has indicated that "even assuming that the General Assembly approved Taiwan's membership to the UN, the PRC could veto this vote because it retains a permanent seat on the Security Council."

104. The four-part test (a permanent population, a defined territory, a effective government with the capacity to have relations with outside world) is set out in the Montevideo Convention, which establishes objective criteria of statehood. The Montevideo Convention itself is generally accepted as reflecting the requirements of statehood at customary international law.

105. The government of Taiwan, since its break from mainland China in 1949, has existed functionally as an independent sovereign state. As enshrined in the principle of "people's sovereignty," sovereignty itself is a collective right that can only be entitled to and exercised by the entire population of the land constituting the territory of that State. Successful self-governance in Taiwan represents the concept that sovereignty of Taiwan belongs to the people of Taiwan and implies that the common will of the people of Taiwan to establish a state. For details, see Eric Ting-lun Huang, *The Modern Concept of Sovereignty, Statehood and Recognition: A Case Study of Taiwan*, in TAIWAN'S CURRENT STATUS UNDER INTERNATIONAL LAW ch. 3 (S.J.D. Dissertation 2003).

106. Thanks to the efforts of impelling political reforms, the people of Taiwan have achieved profound self-governance through the processes of democratization and Taiwanization. This continuing processes of Taiwanization and democratization created a new milestone in 1996 when the people of Taiwan directly elected their President for the first time in history. For details, Eric Ting-lun Huang, *The Evolution of the Concept of Self-Determination and the Right of the People of Taiwan to Self-Determination*, 14 N.Y. INT'L L. REV. 167, 204-12 (2001).

107. The International Bill of Rights consists of three important documents: (1) the 1948 Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, (1948); (2) the 1966 International Covenant on Civil and Political Rights, G.A. Res. 2200 A(XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966); (3) the 1966 International Covenant on

democracy, the ROC on Taiwan is an established people's sovereign state. That is, even Taiwan has a right to join the UN as a new state under the name "Taiwan."

With a population of twenty-three million, the issue of Taiwan's UN bid does not only relate to the principle of universality membership, but also relates to the humanitarian concern for those twenty-three million people of Taiwan. At this point, the UN General Assembly should establish an "Ad Hoc Committee" to consider the difficult situation imposed upon the people and to give effect to the popular sovereignty (ROC on Taiwan) by thoroughly reviewing the representation principle involved in the UN Resolution 2758. Only in this way can the principle of universality membership be really fulfilled as expected.

C. UN'S RESPONSE TO AN ARMED CONFLICT IN THE TAIWAN STRAIT

Seriously considering the importance and urgency of establishing a referendum legal system is the ROC's current policy,¹⁰⁸ and thus it would be easily accomplished in the near future. As mentioned earlier in the introduction to this chapter, the PRC has repeatedly threatened to use force against any separatist movement in the name of self-determination in Taiwan,¹⁰⁹ hence, if people of Taiwan from a pro-independence background were to use a referendum to assert Taiwan's current position as an independent state, the result could definitely provoke China into using military force against Taiwan. In a typical case where such an armed conflict is caused by a self-determination movement, an intervention by the UN in a peacekeeping operation would be conducted to deliver humanitarian assistance and to prevent a deterioration of the situation.¹¹⁰ This is because the principle of self-determination has

Economic, Social and Cultural Rights, G.A. Res. 2200 A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).

108. In a speech to the World Federation of Taiwanese Associations, Taiwan's President, Chen Shui-bian publicly called for the establishment of a referendum legislation as a policy strategy. If China were to threaten Taiwan militarily, then Taiwan's residents could choose their own future path by referendum. In other words, the referendum law will be designed to settle the matter of unification or independence. For details, see Trong Chai, *Referendum Law Could be Precious Weapon*, *TAIPEI TIMES*, Aug. 7, 2002.

109. See James R. Lilley, *Face-off over Taiwan; Uncle Sam is the Middle as the Two Chinas Escalate Their War of Words and Threats*, *THE SAN DIEGO UNION - TRIBUNE*, (Mar. 19, 2000), at G1 (comparing the ways that American and Chinese leadership view democracy, self-determination and sovereignty); see also *China Warns Taiwan Of Independence "Disaster"*, *BBC WORLDWIDE MONITORING*, Feb. 21, 2000 ("China would do its best to achieve peaceful reunification but would not rule out the use of force."); see also Stephen J. Yates, *Promoting Freedom And Security In U.S.-Taiwan Policy*, *HERITAGE FOUNDATION REPORTS*, Oct. 13, 1998; (noting China's method of imposing its will through force or intimidation).

110. See M. L. Halperin, D. J. Scheffer, & P. L. Small, *SELF-DETERMINATION IN THE NEW WORLD ORDER* 105-111 (1992) (discussing the legitimacy of claims by sub-state groups by posing alternatives to the "internal" and "external" self-determination categories); see also Stephan A.

become the very purpose for the UN to maintain international peace and security.

Accordingly, as Taiwan is recognized as having the entitlement to request the UN Security Council to take measures necessary for restoration of international peace and security, preventive deployment (meaning to deploy the UN authorized military, police or civilian personnel in conditions of crisis within an area where military conflicts has occurred with the expectation of alleviating suffering and to limit or control violence) from the UN could take place when requested by a Taiwan threatened by China's military attack. Alternatively, in a response to the request for deployment of a UN peace-keeping force from Taiwan, the UN would continue to decide what type of necessary measures would be used to deter the repression by the Chinese army and to deliver humanitarian assistance.¹¹¹ This is regardless of the fact that currently Taiwan is not a member state in the UN. As a guarantor of international peace and security, the UN must fulfill its duty to find a way to address this concern about future changes in the Taiwan Strait.

Despite the fact that the self-determination movement in Taiwan could easily trigger an aggression by China, it is anticipated that this claim by the people of Taiwan for a free choice of Taiwan's status will unavoidably continue unless the dispute of Taiwan's sovereignty is amicably and smoothly settled by both sides of the Taiwan Strait.¹¹²

Wangsgard, *Secession, Humanitarian Intervention, and Clear Objectives: When to Commit United States Military Forces*, 3 TULSA J. COMP. & INT'L L. 313, 315-23 (1996), Analyzing the doctrine of self-determination within the context of human assistance and intervention. See generally Yogesh K. Tyagi, *The Concept of Humanitarian Intervention Revisited*, 16 MICH. J. INT'L L. 883, 891-94 (1995). Highlighting the differences between humanitarian intervention and humanitarian assistance, specifically stating that pursuant to Article 2(5), it is a duty of all member states to extend every assistance to the United Nations to promote fundamental freedoms.

111. In general, a proportional military intervention by the UN in response to an armed conflict caused by a non-colonial self-determination movement will be considered as a necessary measure. Regarding the issue of the potential of an armed conflict in the self-determination movement of Taiwan, see *The Evolution of the Concept of Self-Determination and the Right of the People of Taiwan to Self-Determination*, 14 N.Y. INT'L L. REV. 167, 212-23 (2001). Noting that if the need and feasibility of protecting humanitarian imperatives and maintaining international peace and security can be proven, a proportional military intervention by the UN in response to an armed conflict caused by a non-colonial self-determination movement will be considered a necessary measure.

112. See Christopher J. Carolan, *The Republic of Taiwan: A Legal Historical Justification for Taiwanese Declaration of Independence*, 75 N.Y.U. L. REV. 429, 465 (2000). Stating the absence of war between Taiwan and China does not point to the presence of peace, indicating that until a solution is found that resolves the status of the island, there will be no peace; Christopher C. Joyner, *The Spratly Islands Dispute: What Role for Normalizing Relations between China and Taiwan?*, 32 NEW ENG. L. REV. 819, 837 (1998). Discussing how the issue of sovereignty represents different social and political dimensions for Taiwan and China; see also James Lilley, *The United States, China, and Taiwan: A Future With Hope*, 32 NEW ENG. L. REV. 743, 744-45 (1998) (describing

Since a potential armed conflict in the Taiwan Strait has been listed together with the Kashmiri and North Korean issues as the most troubled in Asia, a continuously hostile tension in the Taiwan Strait is therefore likely to endanger the maintenance of international peace and security.¹¹³ In view of that, the situation should be monitored by the United Nations, because a peaceful Taiwan Strait is a common desire of the international community.¹¹⁴

According to Article 11(3) of the UN Charter, the General Assembly may call the attention of the Security Council to situations that are likely to endanger international peace and security.¹¹⁵ In order to have a clearer understanding of the potential conflict in the Taiwan Strait, the UN General Assembly needs to build a "pre-warning system" by setting up a special committee to monitor any self-determination movement in Taiwan as well as the potential reaction from China.¹¹⁶ The Assembly can then effectively call the attention of the Security Council to help in managing the increasing tensions before they result in a devastating war

tensions between China and Taiwan as further exacerbated because China blames Taiwan for the major downturn in U.S.-Chinese relations in 1995).

113. See Jonathan I. Charney, *Resolving Cross-Strait Relations between China and Taiwan*, 94 AM. J. INT'L L. 459, 477 (2000). "Unfortunately, the serious differences of opinion across the Taiwan Strait stem from deep cultural, political, and historical foundations. These differences might make war inevitable;" see also Jainming Shen, *Sovereignty, Statehood, Self-Determination, and the Issue of Taiwan*, 15 AM. U. INT'L L. REV. 1101, 1161 (2000), "Independence for Taiwan is a dead-end. It is not only a legal impossibility, but also an actual impracticability, because the PRC Government will not allow that to happen or succeed. See generally Charles R. Irish, The "Republic of Taiwan": A Legal Justification for a Taiwanese Declaration of Independence, 75 N.Y.U. L. REV. 429, 465 (2000), regarding discussing tension throughout Taiwan.

114. See Omar Saleem, *The Spratly Island Dispute: China Defines the New Millennium*, 15 AM. U. INT'L L. REV. 527, 536 (2000), recognizing the important implications of China accepting Taiwan as independent state; see also Carolan, *supra* note 112, at 465 ("Not to recognize Taiwan's claim would be to dilute the product of decades of international legal development, something that states would be hesitant to do.").

115. See *The New Security Council*, N.J.L.J., Sept. 19, 1994, at 16, discussing how the Security Council's powers have been redefined by allowing them to permit intervention into the internal domestic affairs of member states in order to protect people from human rights abuses; *Charter Committee Reports Progress Regarding UN Fact-Finding Process*, 27 UN CHRONICLE 2, 32 (1990) (discussing the role of the Security Council in dealing with threats to international peace and security in the framework of the UN as a whole); see, e.g., Thomas L. Friedman, *U.S. May Back International Talks if Israel Stymies Vote Plan*, N.Y. TIMES, July 9, 1989 (stating the UN's plan for calling an international peace conference because of an international situation which is likely to endanger international peace).

116. See Coffey, *Keynote Address: Rule of Law and Regional Conflict*, 19 WHITTIER L. REV. 257, 273 (1997) (discussing the importance of early warning systems being institutionalized on the multi-lateral level.); see also Ambassador David J. Scheffer, *The International Criminal Tribunal Foreword: Deterrence of War Crimes in the 21st Century*, 23 MD. J. INT'L L. & TRADE 1, 1(1999) (stating President Clinton's concern with the establishment of a formal mechanism in the U.S. Government to facilitate early warning of atrocities and to consider means to prevent or respond to them as quickly and effectively as possible); see also John Shattuck, *Preventing Genocide: Justice and Conflict Resolution in the Post-Cold War World*, 3 HOFSTRA L. & POL'Y SYMP. 15, 18 (1999) (recognizing the importance of early warning and preventive in an effort to prevent the recurrence of future problems like what happened in Bosnia and Rwanda).

as was the case in the 1996 missile crisis in the Taiwan Strait.¹¹⁷ The function of this committee is to create the necessary condition for a pre-warning mechanism, based on information gathering and fact-finding without getting involved in the dispute as to Taiwan's status.¹¹⁸ It is conceivable that a proposal for creating such a special committee will be accepted by the UN General Assembly because it is deeply related to the interests of most member states of the UN.¹¹⁹

1. Taiwan's Accession to the WTO and Cross-Strait's Economic Integration

As a result of the PRC's Three NOs policy¹²⁰ that refers, in part, to "no support for Taiwan's membership in international organizations in which statehood is required," regardless of its continuous efforts to bid for UN membership in the past decade, Taiwan is still excluded from the UN specialized financial agencies, especially the two major international financial institutions: the IMF and the World Bank.¹²¹

117. See *Why Did So Many People Look the Wrong Way?*, *ECONOMIST*, May 29, 1999, at 1 (categorizing the Taiwan missile crisis of 1996 as a "world changing event"); see also George Wehrfritz, *Blaming the Messenger*, *NEWSWEEK*, Dec. 30, 1996, at 33 (classifying 1996 as a bad year for China, due to several factors including the missile crisis in the Taiwan Strait). See generally John Pomfret, *Business Takes Back Seat on China Trip; U.S. Firms Find Access at Low Ebb*, *WASH. POST*, June 26, 1998, at F01 (stating that government-to-government ties between the United States and China have improved since the 1989 crackdown on student-led protests in Tiananmen Square and the Taiwan missile crisis of 1996).

118. See Lucia Mouat, *Taiwan Looks for a Seat in the House of Nations*, *CHRISTIAN SCI. MONITOR*, Aug. 25, 1994, at 7 (discussing how Taiwan has gained a much more democratic status in the eyes of the UN as well as the international sphere); see also Marilyn Greene, *Taiwan Campaigns for United Nations Status*, *USA TODAY*, Sept. 17, 1993, at 4A (noting Taiwan's efforts to gain status in the U.N. after two decades of exclusion); *Taiwan Offers \$1 Billion to UN for Membership*, *BALT. SUN*, June 27, 1995, at 6A (discussing Taiwan's rigorous efforts to try and end its outcast status in the UN).

119. See Mouat, *supra* note 118 (stating that Taiwan's status is an important issue for the UN); see also Marilyn Greene, *Taiwan Campaigns for United Nations Status*, *USA TODAY*, Sept. 17, 1993 (explaining that the issue of Taiwan's status is important to UN members). *But see* Wen-Yen Chen, *Earthquake Illustrates Importance of Recognizing Taiwan*, *WASH. TIMES*, Oct. 2, 1999, at A-11 (recognizing the disappointment of Taiwanese-Americans at the fact that the UN waited to get China's approval before sending relief assistance to Taiwan after the massive earthquake of 1999).

120. The "THREE NO'S" refer to: 1) no support for Taiwan's independence, 2) no support for "two Chinas" or "one China, one Taiwan" and 3) no support for Taiwan's membership in international organizations in which statehood is required.

121. The International Monetary Fund (IMF) and the World Bank, also known as the Bretton Woods Institutions (BWIs), were formed in Bretton Woods in 1944 on the eve of the end of World War II. They were precursors to the United Nations and other multilateral institutions formed after World War II and reflected the new spirit of cooperation between nations, especially in economic matters. See generally Sandra Blanco & Enrique Carrasco, Symposium, *The Functions of the IMF and the World Bank*, 9 *TRANSNAT'L L. & CONTEMP. PROBS.* 67, 67 (1999). See also Dominique Carreau, *Why Not Merge the International Monetary Fund (IMF) with the International Bank for Reconstruction and Development (World Bank)?*, 62 *FORDHAM L. REV.* 1989, 1989 (1994). Both the IMF and the World Bank now address human rights, which involves a number of civil, political, economic, social, and cultural rights, in their relations with member countries. This development-

In order to break through this limitation imposed by the PRC, Taiwan has adopted pragmatic diplomacy to ensure its international position by being an active member in international economic organizations, such as APEC and the Asian Bank, by using titles other than its official designation and accepting dual recognition from foreign governments. Apparently, China is somewhat comfortable with this pragmatic policy as it acknowledges that China's obstacle on Taiwan's participation in international economic organizations does not resolve the differences between the two sides of the Strait. On the contrary, given the fact that Taiwan's economy is much more developed than China's, it would be likely to have a negative economic impact on the Chinese and Taiwanese people. Taiwan's numerous economic achievements brought by Taiwan's democratization is precisely the direction that China can follow in its economic development, especially along with the opening up and liberation of the Chinese market.

After twelve years of negotiations, Taiwan was admitted as a full member of the World Trade Organization on January 1, 2002. The WTO admission of both sides of the Taiwan Strait has created a new opportunity for the further development of cross-strait relations. This is because not only will there be closer cross-strait trade and economic relations, but both sides will also be able to use the WTO spirit of consultation to handle other issues resulting from promoting cross-strait trade normalization. Although the WTO is not a place to discuss political affairs, the two sides of the Strait can reduce political tensions and gradually increase economic cooperation through their repeated contacts at WTO meetings.

2. Taiwan's Accession to the IMF and the World Bank

Taiwan's membership in the APEC, the Asian Bank and the WTO are evidences that the two sides' mutual interest lies in economic cooperation and any issue relating to economic sovereignty is no longer a sensitive issue to cross-strait relations. The PRC apparently does not

oriented operations by the two UN specialized agencies have enabled it to influence human rights situations in Member States. At this point, to open up the membership of the UN system to either *de facto* or *de jure* political entities would assist in developing the concept of "implementing democracy" as a whole. In this sense, the ROC on Taiwan is well known as a major economic player in the Asian-Pacific and world economy. As a trade-oriented and major investor state, Taiwan is more qualified than most other developing countries to join the UN and its specialized agencies, such as the World Bank and the IMF. Regarding the critical issues facing the Bretton Woods System, see Enrique R. Carrasco, *Can the IMF, World Bank, and the GATT/WTO Promote an Enabling Environment for Social Development?*, 6 TRANSNAT'L L. & CONTEMP. PROBS. I, i-xx (1996); see also Daniel D. Bradlow, *The World Bank, The IMF and Human Rights*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 47 (1996).

regard these efforts by Taiwan to maintain its political economic sovereignty as an affront to its one China policy. In this respect, allowing Taiwan's presence in international financial institutions will not only be conducive to the process of growing global concern on the issues of the humanitarian level and economic integration, but also serves the best interest of all people of both sides of the Strait in terms of economic prosperity. Hence, the model of Taiwan's WTO membership provides a good example to help Taiwan access to the IMF and the World Bank which can benefit by having another economically viable member. As for a long-term solution, if such a bid for Taiwan to join the IMF and the World Bank can succeed, it would create an evolution of the concept of political economic sovereignty that might be useful to some of the arrangements between Taiwan and China, without affecting each side's territorial integrity, in which people on both sides can enjoy reciprocity and prosperity. As such, both sides of the Taiwan Strait can conduct diplomatic relations, enter into economic treaties, maintain independent trade relationships, and adopt certain types of security treaties.

VIII. CONCLUSION

In 1945, the ROC affirmed its commitment to these ideals when it signed the UN Charter in San Francisco and thus originally become a UN founding member in the General Assembly and the Security Council until 1971. As a founding member of the UN, the ROC played a very positive, constructive role during its 26-year-long tie with this world body.

Since leaving the UN in 1971, the ROC has encountered many diplomatic frustrations and weathered an array of crises.¹²² In order to respond to these challenges, the ROC must blend its political status into its economic position by working for long-term development focusing on domestic, economic, political and social growth.¹²³ Currently, the ROC

122. See Jianming Shen, *Sovereignty, Statehood, Self-Determination, and the Issue of Taiwan*, 15 AM. U. INT'L L. REV. 1101, 1121-21 (2000). (Noting that more States recognize the PRC Government instead of the "ROC." In 1949, eight States entered into diplomatic relations with the newly established PRC. By 1956, twenty-five States established diplomatic relations with the PRC Government. By 1969, the number doubled to some fifty States. In 1972, particularly following the resumption of China's representation at the United Nations, the number of States with diplomatic relations with the PRC dramatically increased to about eighty-eight. In 1979, more than 110 States maintained such relations with Beijing. The number kept growing at a steady pace in the following two decades: about 128 by the end of 1985, about 141 by the end of 1991, and 161 by 1999. Currently, about only twenty-nine States, mostly in Central America and Africa, are maintaining official relations with Taiwan).

123. See Wallace Wen-Yeu Wang & James Ting-Yeh Yang, *Financial Institutions in Taiwan: An Analysis of the Regulatory Scheme*, 4 J. CHINESE L. 3, 5-6 (1990) (Noting that historically, the government pursued an economic policy of strict surveillance. This initial policy contributed to the

has transformed Taiwan into a model of freedom, democracy and equitable prosperity in developing countries.¹²⁴ Taiwan is willing to share its economic success with the world community and to contribute to international development. However, while Taiwan's economic achievement has reshaped its role on the global economic stage, it has not been sufficient in strengthening its political position in the global context.

A. PARALLEL REPRESENTATION OF DIVIDED COUNTRIES

What the ROC seeks is only proper and effective protection for the twenty-three million people of Taiwan, and representation of their fundamental rights in the UN. It does not seek to represent the territory under the effective jurisdiction of the PRC. In the UN, there are precedents for parallel representation of divided countries. The former East Germany and West Germany, as well as North and South Korea were admitted into the UN,¹²⁵ first as observers and later as full members. The former East and West Germanys have already achieved national unification since 1990, and the two Koreas still aspire to national unification. This demonstrates that the divided status of nations does not impede equal and parallel participation by both sides in the international community. On the contrary, it may help to ease the tension between them, thereby helping to create more favorable conditions for either status quo or reunification.

reform of Taiwan's economy and laid the foundation for its early financial expansion and economic prosperity. In its transformation from an agrarian economy to a major economic power, Taiwan has managed to achieve an economic growth rate that very few other countries have matched). See also Tay-sheng Wang, *The Legal Development of Taiwan in the 20th Century: Toward a Liberal and Democratic Country*, 11 PAC. RIM L. & POL'Y J. 531, 537-8 (2002) (Noting that in the 1960s and 1970s, the prosperous economy in Taiwan further promoted the prevalence of modern civil and commercial law based on the Western concept of capitalism. In the 1950s, the ROCOT government joined the Cold War camp of the Western democracies led by the United States, and, consistent with this, American legal institutions and ideas were to a certain extent "imported" into Taiwan).

124. Michael E. Mangelson, *Taiwan Re-Reorganized: A Model for Taiwan's Future Global Status*, 1992 B.Y.U.L. REV. 231, 251 (1992) (Noting that Taiwan's economic and political progress, coupled with the changing order of the Pacific region, necessitates a more active role for it in world affairs. Granting Taiwan increased international rights and allowing it to participate in world organizations would improve the peace and prosperity of the region. It would also foster change in the PRC and affirm Washington's support for democracy, a free market economy, human rights, and loyalty to its allies).

125. Regarding the UN precedents on "divided nation" membership, see Parris Chang & Kok-Ui Lim, *Taiwan's Case for United Nations Membership*, 1 UCLA J. INT'L L. & FOREIGN AFF. 393, 425-6 (1997) (Noting that admission to the UN as a divided country is contingent on (1) the competing governments' qualifications being relatively equal and (2) the rival government's mutual acquiescence. For example, in the Korea's case, dual admission for Seoul and Pyongyang occurred simultaneously in July 1991, only after the rival governments did not object each other's entry. Similarly, UN admission for a divided German state occurred only after a détente was reached between the two rivals in 1973.)

Due to the possibility of the use of force by the PRC to enforce its claim of sovereignty over Taiwan, maintaining a peaceful Taiwan Strait should be regarded as a common desire of the international community.¹²⁶ In this respect, allowing the ROC on Taiwan to join the UN is not challenging the PRC's position in the United Nations. The world body can therefore provide necessary assistance to settle the existing disputes between the two sides of the Taiwan Strait before they degenerate into serious conflicts. After all, the UN's assistance is provided on the basis of commitments from the member states concerned to maintain a peaceful Taiwan Strait.

B. COMMON INTEREST OF MAINTAINING A PEACEFUL TAIWAN STRAIT

If Taiwan were a UN member state, greater access to information about potential threats to the peace of the Taiwan Strait would enhance the UN's ability to launch any necessary measures to maintain a helpful role. Here the Korean model can be used for Taiwan's membership in the UN that would allow both the PRC on the mainland and the ROC on Taiwan to have UN membership. In this case, the major positive vision would be for the ROC to seek its peaceful coexistence and cooperation with the PRC in the UN and thus, they can settle any dispute between them through peaceful dialogue. Accordingly, the two sides of the Taiwan Strait will be able to forge good will and mutual trust to benefit the people of both sides that will be a boon to regional peace and prosperity.

Currently, the ROC and the PRC are full members in some international organizations (such as the Asian Bank, the APEC and the WTO) showing that it is becoming possible to see both sides of the Taiwan Strait seated and represented in the international arena. It is in the best interest of both governments to create a stable framework in which the PRC and the ROC on Taiwan can negotiate toward reunification or some form of association over the long term.

C. A WORTHY MEMBER OF THE UN

For the purposes of globalization, it is true that more progress has been made in the area of economic rights by the international community. The establishment of the WTO is a notable example that is easily visible. In

126. See Charney, *supra* note 113, at 477 ("Unfortunately, the serious differences of opinion across the Taiwan Strait stem from deep cultural, political, and historical foundations. These differences might make war inevitable."); see also Shen, *supra* note 3, at 1161 ("Independence for Taiwan is a dead-end. It is not only a legal impossibility, but also an actual impracticability, because the PRC Government will not allow that to happen or succeed."). See generally Charles R. Irish, *The "Republic of Taiwan": A Legal-Historical Justification for a Taiwanese Declaration of Independence*, 75 N.Y.U. L. REV. 429, 465 (2000) (discussing tension throughout Taiwan).

view of the increasing integration of the global economy, it is important to emphasize again that Taiwan's responsibility for economic rights must be related to its actual participation in any international organization it desires, besides the WTO. The UN is the most significant one that Taiwan desires to join. This is because only the actual participation as a member state in the UN would ensure accountability for the protection of these people on Taiwan.

In today's world, the interdependent global community requires the positive contributions of many other actors in the international community. Accordingly, in order to fulfill the goal of universality membership and equal respect for national sovereignty, it is necessary for the United Nations to consider the exceptional situation of the ROC on Taiwan and accommodate Taiwan's accession to the world body. As we all know that even before the UN was founded, the ROC has been already an established state. Until now, the ROC is a state as it was. Moreover, Taiwan embraces democratic values and has full respect for human rights; its economy is larger than ninety percent of the UN member states; and its population is bigger than two-thirds of the UN's members.¹²⁷ The record of the ROC on Taiwan economically and politically is highly impressive. If a major contribution that the UN can make to world affairs is to aid in breaking down barriers that divide the people of the world, the question arises as to what possibly could be the reason for the government of Taiwan not being admitted to membership in the United Nations.

In spite of the fact that Taiwan stands ready to join the UN, it could be that it is not yet the right time for the ROC on Taiwan to gain a full membership in the United Nations. It does not mean, however, that it will be impossible in the future. The end of the Cold War has raised expectations of people across Taiwan to look toward the world body to work its way into a wide humanitarian concern about this matter. Moreover, because Taiwan's UN membership would pose no barrier to the future peaceful and democratic unification of a divided China, therefore, Taiwan's UN bid may be structured on an individual basis such as "one country two territorial entities," or "one country two adhering bodies."¹²⁸ At the very least, to participate in a UN observer

127. See John J. Metzler, *Why Can't Taiwan Come to the UN?*, CHINA POST, (Taiwan), Sep. 29, 1999. Noting that "if Taiwan should participate in the world body, its budget assessments and contributions to enhance economic development programs would be a boon for the cash-strapped organization."

128. See Michael C. Davis, *The Concept of Statehood and the Status of Taiwan*, 4 J. CHINESE L. 135, 142 (1990). Noting that membership may be structured on an individual basis, as an affiliation

status, as is the case of Palestine, could be a positive precedent that could be applied to the ROC particularly with respect to the humanitarian concerns as well as the inalienable right of the Taiwanese people. As a matter of fact, the international support¹²⁹ for Taiwan to play a valuable role in the UN system is growing so that it will eventually look for ways for Taiwan to be heard. In this sense, the government of Taiwan should increase its efforts to join as many international organizations as possible that do not require statehood for membership. This would be a more flexible strategy to build stronger ties with other countries that eventually can actively benefit Taiwan's UN bid.

with full, or an observe status, or as "one country, two organization," "one country, two adhering bodies," or "one country, two territorial entities."

129. On July 18, 1996, the European Parliament adopted a resolution on "Taiwan's Role in International Organizations," supporting Taiwan's bid to secure better representation in international forums and encouraging the UN to set up a working group to study the scope of Taiwan's participation in the United Nations. In September of the same year, the U.S. Congress expressed its support for incorporating Taiwan into the global community by passing Resolution 212 to endorse the resolution adopted by the European Parliament. The Resolution 212 indicating that "the people of Taiwan ought to be better represented in international organizations than they are at present, which would benefit both Taiwan and the whole of the international community." (See H.R. Con. 212, 104th Cong., 1996). See also the U.S. House of Representatives Resolution 390 (passed in 106th Congress, October 3, 2000), which emphasized that "(1) Taiwan and its 23,000,000 people deserve appropriate meaningful participation in the UN and other international organizations such as the World Health Organization; and (2) the United States should fulfill the commitment it made in the 1994 Taiwan Policy Review to more actively support Taiwan's participation in appropriate international organizations."