

THE MUTUAL NON-DENIAL PRINCIPLE, CHINA'S INTERESTS, AND TAIWAN'S EXPANSION OF INTERNATIONAL PARTICIPATION

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TABLE OF CONTENTS

I.	INTRODUCTION	2	R
II.	THE FEELING IS MUTUAL: INTERNATIONAL INSTITUTIONS AND ASPIRING	4	R
III.	THE FUNCTIONALITY OF THE MUTUAL NON- DENIAL PRINCIPLE IN CROSS-STRAIT RELATIONS	11	R
IV.	TRUCE ON THE FRONT OF DIPLOMATIC RECOGNITION	19	R
V.	STATUS OF TAIWAN'S PARTICIPATION IN INTERNATIONAL INSTITUTIONS	22	R
	A. IGOs for Taiwan's International Functionality and Sustainability	29	R
	B. Get in First and See What to Do Next: Pragmatism in Membership Application	31	R
	C. What's in a Name? The Sematic Game of Taiwan's Nomenclatures	32	R
	D. Softening the Narrative Appeal	33	R
VI.	WHY IS IT IN CHINA'S INTEREST TO PROMOTE TAIWAN'S INTERNATIONAL PARTICIPATION?	36	R
	A. China's Sovereignty Assertion and Taiwan's Identity Shift	37	R
	B. Identity as a Salient Issue in Taiwan's Domestic Politics and Foreign Policy	40	R
	C. The Utility of Naming for Social Reconstruction .	43	R

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2 CONTEMPORARY ASIAN STUDIES SERIES

D. Bring It in: Taiwan’s Membership Status	45	R
VII. CONCLUSIONS: REFRAME AND REBUILT		
MUTUAL UNDERSTANDINGS	53	R

Abstract:

This study asserts that China’s efforts in promoting Taiwan’s meaningful expansion of international space will contribute greatly to China’s own national interest. The analysis will first describe in general terms how the advantages that IGOs and INGOs present to aspiring members return benefits to the international community by including Taiwan. The next section will elaborate the functionality of the “mutual non-denial” principle in cross-Strait relations. The third section will survey the general status of Taiwan’s international participation in recent years to derive some characteristics of cross-Strait interactions on this matter. Fourth, it will explore how and why a stronger China can facilitate Taiwan’s requests for the advancement of cross-Strait rapprochement. The analysis will focus more on what China can benefit from fulfilling Taiwan’s demands in the sphere of IGOs.

Key words: Taiwan, International Space, International Organization, Mutual Non-denial Principle, China

I. INTRODUCTION

Taiwan’s regime change in 2008 from the Democratic Progressive Party (DPP) to the Nationalist Party (Kuomintang, KMT) represented a drastic shift in Taiwan’s cross-Strait policy toward the People’s Republic of China (PRC). President MA Ying-Jeou’s proclamation of “no unification, no independence, and no use of military force” under the “framework of the Republic of China Constitution” was a policy departure from the cross-Strait policy of the two preceding presidents, LEE Teng-hui (1988-2000) and CHEN Shui-bian (2000-2008). Both former presidents had relentlessly pursued Taiwan’s *de jure* status of statehood in diplomatic rhetoric and action, and both had raised China’s fear of Taiwan splitting from the “Chinese motherland” and heightened concerns within the United States of possible entrapment in a likely conflict with China. Ma’s reversal of the previous administration’s confrontational approach came with a request. Ma sought ample international space with regard to the sustainability of diplomatic allies

THE MUTUAL NON-DENIAL PRINCIPLE

3

of Taiwan and the expansion of Taiwan's participation in international governmental organizations (IGOs) and international non-governmental organizations (INGOs). The key to peaceful coexistence and the expansion of Taiwan's international space still resides in the willingness of both sides to reach a consensus on how each party should treat its counterpart in bilateral relations. The cross-Strait historical legacy, power imbalance, social constructs, reputational considerations, and other factors have made it difficult for both sides to recognize each other as worthy counterparts for a mutually beneficial resolution. Thus, the improbability of mutual recognition of both sides as sovereign entities has prompted a new way of thinking — a “mutual non-denial” of either side of the Strait as a legitimate “political entity” in separate areas of governance. This maneuver allows each side to avoid the “tight jacket” demanded of sovereign statehood recognition. Seeing such an innovative idea coming out of left field shows a desire for an enlarged win-win situation, and a determination to shy away from the impasse of political formality in favor of problem-solving across the Strait. The “mutual non-denial” proposal has been envisioned by scholars, such as Hungdah CHIU and Su CHI, and advocated by Ma as a prominent framework in charting future cross-Strait courses and fulfilling Taiwan's desire for international participation.¹

China has not officially rejected or endorsed Ma's initiation of the “mutual non-denial” principle as a governmental agenda in response to Taiwan's request for active and meaningful international participation. However, China has tacitly chosen to accommodate Taiwan cautiously and selectively. As a result, the number of states offering diplomatic recognition to Taiwan remains, so far, largely unchanged, even though there are unsettling reports of Taiwan's diplomatic allies thinking of switching recognition from Taiwan to China have surfaced every now and then. In contrast to Taiwan's steady holding of diplomatic allies, there have been no major breakthroughs for Taiwan to work with international organizations and non-governmental organizations.

This study postulates that the “mutual non-denial” principle as a theoretical framework can pave a workable path on which to overcome the seemingly insurmountable barrier of sovereignty issues for cross-Strait relations. In particular, the adoption of the mutual non-denial principle in practice is a logical and practical op-

1. Su Chi, “Professor Hungdah Chiu, Taiwan, and Cross-Strait Relations,” *Maryland Journal of International Law*, 27, 2012, 36-47.

tion for Taiwan's expansion of international space, which has encountered resistance from China. This study also asserts that China's steady and sedulous efforts in promoting Taiwan's meaningful expansion of international space will contribute greatly to China's own national interests of improving relations with Taiwan and preventing Taiwan from drifting further away from the cross-Strait status quo. China's accommodation to Taiwan's diplomatic needs will result not only in a mutually beneficial situation for both sides, but also without severely compromising the core interests of either side. This friendly gesture toward Taiwan will also enhance China's status as a benevolent and pragmatic actor in its continued ascension to a global power.

This analysis will first describe in general terms the advantages IGOs, INGOs, members of the international community, and major powers, such as China, will reap by including Taiwan. The next section will elaborate upon the functionality of the "mutual non-denial" principle in cross-Strait relations. In light of Taiwan's diplomatic relations, the third section examines a cross-Strait diplomatic truce as a practical application of the mutual-non-denial principle. The fourth section will survey the general status of Taiwan's international participation in recent years to derive some characteristics of cross-Strait interactions on this matter. In the context of recent trends of Taiwan's participation in IGOs, the fifth section elaborates why it is in China's national interests to promote Taiwan's international participation, and how a stronger China can facilitate Taiwan's requests and better manage them for the advancement of cross-Strait rapprochement. There is one caveat for this study: since numerous studies explore this topic from Taiwan's perspective, this study will focus the discussion more on how China can benefit from fulfilling Taiwan's demands.²

II. THE FEELING IS MUTUAL: INTERNATIONAL INSTITUTIONS AND ASPIRING MEMBERS

Regardless of the focus of the theoretical framework one employs—realism, liberalism, or constructivism—it has become a common tenet that an international institution, IGO or INGO, offers its members numerous advantages in international politics and be-

2. For Taiwan and NGOs, see Wei-chin Lee, "Diplomatic Impetus and Altruistic Impulse: NGOs and the Expansion of Taiwan's International Space," *Taiwan-US Quarterly Analysis*, Brookings Institution, no. 10, July 2012. <www.brookings.edu/research/opinions/2012/07/16-taiwan-ngo-lee>.

THE MUTUAL NON-DENIAL PRINCIPLE

5

comes a crucial element in international relations. There are several distinctive features pertinent to this study in theoretical literature on international institutions. First, the powerful tide of globalization driven by material forces of change in communication, knowledge sharing, and economic exchanges has crossed geographic bounds. Globalization has remolded social and cultural arrangements and has impinged on the cognitive world of human behavior and awareness of the necessity of cooperation in managing the global commons.³ Hence, the amplification and densification of these institutions is a reflection of, and a response to, the shift in material settings and ideational ramifications by states and non-state actors. Although this does not pronounce the end of John Herz's territorial state, it indicates that the idea of a world society composed of sovereign states is no longer effective in managing global functional activities.⁴ The functional disability can be redressed with the principle of inclusiveness through welcoming the participation of multitudinous actors beyond the confine of the Westphalian system and the principle of democratization by offering various actors an appropriate forum for interest representation and articulation in global policy deliberation processes.

Second, liberalism has long advocated the importance of international institutions as part of the human habit of organizing and regulating orderly interactions in communication, commerce, finance, service, trade, transportation, travel, and other areas due to the fast pace of globalization. International institutions become a nexus of a pluralistic collection of transnational interests and a key vehicle for the development of international laws. With an emphasis on accountability, reciprocity, and transparency in rule setting and enforcements in international institutions, liberals are convinced that the increasing pooling of sovereignty and ongoing compromise of national interests would maximize institutional effectiveness and ultimately receive endorsements from state actors and non-state actors to honor their commitments and compliance. Rather than establishing a world government, liberals hope to achieve what Barry Buzan called a "more mature anarchy" for better cooperation among states.⁵ In addition, international institu-

3. John Gerald Ruggie, *Constructing the World Polity* (New York: Routledge, 1998); Malcom Waters, *Globalization* (New York: Routledge, 2001).

4. John H. Herz, "Rise and Demise of the Territorial State," *World Politics*, 9(4), 1957, 473-493.

5. Barry Buzan, *People, States and Fear* (Chapel Hill, NC: University of North Carolina Press, 1983), 97.

tions also generate a boomerang effect to persuade members to “internalize” institutional rules and norms in the arena of domestic jurisdiction, as evidenced in both Amy Gurowitz’s study on the profound impact of international legal norms and migrant rights on Japan’s domestic laws, and Harold Koh’s description of how the international norm against torture has been interwoven into various domestic laws.⁶ By opening the gate wide to aspiring members, international institutions wish to extend the applications of their norms and rules as much as possible. Through reiterated applications, members will consider those rules and norms to be “nearly universal” standard practices. When more states become affiliated with IGOs, a state’s membership could make the non-state actor’s job as a legitimate watchdog of agreed international rules much easier within said state, rather than the non-state actor being viewed as an unwelcome busybody that could encounter resistance from state authorities.⁷

Third, realism is less optimistic than liberalism in its assessment of the necessity and contributions of international institutions. However, realism does recognize the positive instrumentality and functionality of international institutions in reducing transaction costs in global resource management, and in providing participants with justifications and legitimacy in the convergence of self-interests and global benefits. For realists, in an anarchical world with power asymmetry, states naturally fear and distrust one another and, hence, rely essentially on self-help for survival. As Thucydides keenly observed in his epic description of the *Melian Dialogue*, “Right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must.”⁸

Still, compulsion and expediency demand that states not only possess muscle power, but also employ brainpower to win support from institutions, IGOs and INGOs alike, to achieve the state’s goals of survival and economic sustainability. The creation and

6. Harold Hongju Koh, “Filartida v. Pena-Irala: Judicial Internationalization into Domestic Law of the Customary International Law Norm Against Torture,” in *International Law Stories*, ed. John E. Noye, Laura A. Dickinson, and Mark W. Janis (New York: Foundation Press, 2007), 45-76; Amy Gurowitz, “International Law, Politics, and Migrant Rights,” in *The Politics of International Law*, ed. Christian Reus-Smit (New York: Cambridge University Press, 2004), 131-150.

7. David A. Martin, “Effective of International Law on Migration Policy and Practice: The Uses of Hypocrisy,” *International Migration Review*, 23(3), 1989, 554.

8. Thucydides, *The Peloponnesian War* (London, J.M. Dent; New York: E. P. Dutton, 1910), translated by Richard Crawley, book 5, chapter 89, section 1.

THE MUTUAL NON-DENIAL PRINCIPLE

7

maintenance of international institutions can be considered structural modifiers to shape and shove actors within a system devised in the hegemon's image. Even as the power of the hegemon declines, the long practiced hegemon-led and molded institutional rules are likely to have an enduring influence in easing the power transition between hegemony without immediately impacting the declining power. The best way to solidify the hegemon's influence is through institutional design to condense its regime setting, rather than a raw display of material power and military force. To gain the compliance and cooperation of weaker counterparts, the strong has to move beyond the employment of material force. As Rousseau proclaimed, "The strongest is never strong enough to always be the master, unless he transforms strength into right, and obedience into duty."⁹

Fourth, accordingly, constructivism offers a helping hand to major powers by stressing the importance of ideas to substantiate its dominance in either bilateral or multilateral settings. Any major power would intend to use its immense financial resources and political preponderance to ensure the submission of weaker counterparts in the short-run, and to construct the principles, rules, and norms in international institutions to redefine the normative beliefs, interest calculation, and behaviors of participating members within the institutional structure legitimized by the stronger party in the long-run. Power surely plays a crucial role in conditioning state behaviors. But when mutual understandings have been institutionalized between states, they serve as guidelines to state behaviors without coercive force and extensive material incentives. On this point, Christian Reus-Smit explains eloquently,¹⁰

International Politics, like all politics, is an inherently social activity. Through politics states and other actors constitute their social and material lives, determining not only "who gets what when and how," but also who will be accepted as a legitimate actor and what will pass as rightful conduct. International politics takes place within a framework of rules and norms, and states and other actors define and redefine these understandings through their discursive practices.

9. Jean-Jacques Rousseau, *The Social Contract and Discourse on the Origin of Inequality* (New York: Washington Square Press, 1967), ed. Lester G. Crocker, book I, chapter 3.

10. Christian Reus-Smit, "Introduction," in *The Politics of International Law*, ed. C. Reus-Smit (Cambridge: Cambridge University Press, 2004), 3.

Meanwhile, when there are incompatible political realities and material inconsistencies, visionary leaders, political entrepreneurs, or the epistemic community would attempt to re-align norm systems through argumentation and discursive reasoning to persuade others to reset the social fabric of the international community. The reiterated interactions between international actors, either state or non-state actors, shows why emerging legal rules and social norms are required. These rules and norms eventually constitute actors' behaviors, identities, and interests.¹¹ In essence, those seemingly immutable rules and norms are still subject to circumstantial changes of power distribution among international actors, which strategize and bargain to revise the rules of the game for a preferable outcome.¹²

By transcending the distribution of material power and interests among states, constructivists highlight the social power of the state to "denaturalize" previous beliefs and "sensitize" a new idea or emerging norm to resolve inconsistencies among competing social constructs at home and abroad.¹³ Such a reconstruction process has been periodically evidenced in China's past. For example, the definition of "China" as a state and the identity of being "Chinese" have been through a constant process of construction, contestation, and re-construction in shared subjective understandings throughout China's historical past due to shifting cultural, political, and social contexts. Here Lucian Pye once contended, "China is a civilization pretending to be a state."¹⁴ National identity has been broadly defined, sometimes even ephemerally, by national narratives that can be selective and tendentious, if necessary. The same applies to the modification of international law and normative understandings in areas such as human rights, humanitarian law, climate change, and humanitarian relief. These formerly impermeable issues, due to

11. Martha Finnemore and Stephen J. Toope, "Alternatives to 'Legalization': Richer Views of Law and Politics," *International Organization*, 55(3), 2001, 743-758.

12. Steven R. Ratner and Anne-Marie Slaughter, "Appraising the Methods of International Law: A Prospectus for Readers," *American Journal of International Law*, 93(2), 1999, 294; Myers S. McDougal and W. Michael Reisman, "The Prescribing Function in World Constitutive Process: How International Law Is Made," *Yale Studies in World Public Order*, 6(2), 1980, 269. Faculty Scholarship Series, Paper 2661, Yale Law School Legal Scholarship Repository, 1-1-1980. <digitalcommons.law.yale.edu/fss_papers/2661>.

13. David Armstrong, Theo Farrell and Helene Lambert, *International Law and International Relations* (New York: Cambridge University Press, 2012), 104-110.

14. Lucian Pye, "China: Erratic State, Frustrated Society," *Foreign Affairs*, 69(4), 1990, 58.

THE MUTUAL NON-DENIAL PRINCIPLE

9

strict adherence to the supremacy of state sovereignty, have been through recent landscape modifications in institutional accountability, implementation, and enforcement with assistance from IGOs and NGOs. In fact, these institutions have been significant movers and shakers in information dissemination, agenda setting, monitoring, governance, rule enforcement, and compliance consolidation. Cogent participation of various state and non-state actors strengthens institutional authority and efficiency in the world community.

Therefore, any major power intending to assert its influence would consider all theoretical approaches as valuable and compatible complements to cross theoretical divides whenever synthesizing them appears fruitful. Sheer possession of coercive power requires, in Gramsci's keen observation, a cultural hegemony that leads the subaltern to perceive the world through an ideological perspective set up by great powers. The subtle proposition and propagation of such a world-view offers an underlying institutional framework for state and non-state actors to relate and react to each other within the global order. In this case, major powers would use international institutions as socializing agents to legitimize what the world is supposed to be and what an enduring order is likely to be. A combination, rather than a confrontation, of various approaches helps international institutions overcome collective action problems, nurture shared values and norms, and offers assistance to those less vocal and less represented in international politics.¹⁵

Fifth, with the synthesis of the liberal vision and constructive approach, power politics should be included, rather than discredited, in institutional designs. A stronger state wishing to have a favorable institutional order would try to "rope in" and "lock in" as many state actors as possible for rule compliance, policy monitoring and enforcement, and political efficacy. Such an exercise of power would signify authority and command in different genres, topics, and styles of discursive argumentation and dialogues.¹⁶ The inclusion of more supportive participants benefits and legitimizes the major power's vision and authority through a gentle soft power presentation, rather than a brutal hard power coercion. Certainly,

15. Randall L. Schweller and David Preiss, "A Tale of Two Realisms: Expanding the Institutions Debate," *Mershon International Studies Review*, 41, 1997, 1-32; Kelly-Kate S. Pease, *International Organizations* (Boston, MA: Longman, 2012), 5th ed., 69-72; G. John Ikenberry, "The Rise of China and the Future of the West," *Foreign Affairs*, 87(1), 2008, 23-37.

16. Tuena A. van Dijk, "Structures of Discourse, Structures of Power," in *Communication Yearbook*, 12, ed. J.A. Anderson (Newbury Park, CA: Sage, 1989), 29-30.

such a strategy requires the strong state to undercut some of its own privileges, rights, and voting powers stipulated in the institutional rules. Under greater pressure for long-term stability, the strong state is hence “strained” to conform to those rules of conduct stipulated by institutional rules jointly consented to by all parties.¹⁷ Stated differently, a strong state relinquishing some of its perks, and restraining itself from exercising its preponderant privilege, makes it more desirable for weaker counterparts to participate in institutional activities. As Ikenberry succinctly demonstrated, the more the strong state can deliberately restrain its exercise of power and credibly commit itself to an institutional bargain, the more likely its weaker counterparts will be interested in pursuing and being bound by such an institutional deal.¹⁸

The same can be applied in China’s power ascent in international institutions as well as its dealing with Taiwan in cross-Strait relations. As long as the stronger state skillfully manages the cross-Strait relations, the stickiness of bilateral institutional arrangements will produce favorable benefits to the stronger state without the huge cost of enforcement. Repeated interactions virtually reconstruct a reciprocal relationship between both parties in terms of their expectations and behaviors. Hence, a successful institutional framework minimizes fears, uncertainties, and malign intents engendered by the anarchic nature of interstate relations on the one hand, and maximizes the possibility of cooperation and reconciliation between actors for stable security and the supply of collective goods on the other.

For countries with a volatile relationship, like Taiwan and China, international institutions offer the potential to reverse or alleviate the frequent security dilemmas for those countries. At the same time, in light of accelerating globalization, increased democratization, and the trans-nationalistic nature of global issues, states have relied on the expanding networks of knowledge and action to tackle issues beyond national boundaries in a multilateral manner.¹⁹

17. Bruce Cronin, “The Paradox of Hegemony,” *European Journal of International Relations*, 7(1), 2001, 103-130.

18. G. John Ikenberry, “State Power and the Institutional Bargain,” in *US Hegemony and International Organizations*, ed. Rosemary Foot, S. Neil MacFarlane, and Michael Mastanduno (Oxford: Oxford University Press, 2003), 49-70.

19. Ronnie D. Lipschutz, “Reconstructing World Politics: The Emergence of Global Civil Society,” *Millennium*, 21(3), 1992, 389-420; Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca, NY: Cornell University Press, 1998); Mariya Y. Omelicheva, “Global Civil Society and Democratization of World Politics,” *International Studies Review*, 11, 2009, 109-132.

The inclusion, rather than exclusion, of parties in dispute within international institutions virtually bypasses political stalemates in favor of seeking solutions through international forums.

III. THE FUNCTIONALITY OF THE MUTUAL NON-DENIAL PRINCIPLE IN CROSS-STRAIT RELATIONS

The advocacy of the mutual non-denial principle adheres to the theoretical stipulations of various paradigms and seeks to find a pathway for cross-Strait conflict resolutions. The cross-Strait spatial division and military tension during the Cold War solidified Taiwan and China into two separate ideological spheres and divergent political operating systems.

The increasing speed and enlarged scope of socio-economic exchanges across the Strait have intensified people's self-awareness of locality and identity different from each other, and prompted the strenuous efforts of Taiwan-first fundamentalists to resist the pulling force of China's unification efforts. In the 1990s the Taiwanese resistance to China's drive towards unification prompted a nativity moment for Taiwan's independent statehood detached from China's governance. As a result, the multiplicity of cross-Strait exchanges has not mitigated political differences between the two sides. Instead, those differences are so real and basic that there is no foreseeable remedy for political integration for people advocating Taiwan's uniqueness and autonomy in governance.

Even for people acknowledging Taiwan's historical and cultural links to China, concerns over the loss of Taiwan's identity and democratic values have raised concerns regarding the negative consequences of integration with China. In light of the cross-Strait political stalemate, the mutual non-denial principle denotes a moderate proposal of desensitizing political controversy and softening the strong stances taken by both parties due to national identity, sovereignty demands, and internal domestic pressures. The mutual non-denial principle is thus presented to facilitate beneficial conditions for cross-Strait reconciliation and to sustain Taiwan's domestic and international maneuverability in the future.

On various occasions, Ma states that, under the current ROC's constitutional framework, both Taiwan and China are part of the ROC's territorial domain. The legal difficulty and political sensitivity in redrawing the ROC territorial boundary have made constitutional revision a very remote possibility in Taiwan. Hence, Ma has claimed that the relations between Taiwan and China should not be

treated as a state-to-state relationship, but as a “special relationship for which the model of recognition under conventional international law is not applicable,” meaning that mutual recognition of each side’s statehood is impossible legally and politically. Under this scenario, each party should not deny the reality of the other party’s authority of effective governance in separate territories under their respective controls. As Ma put it, “mutual non-denial” means that “the two sides do not recognize each other’s sovereignty, nor do they deny each other’s authority to govern.”²⁰ The principle actually carries multiple promises and implications.

First, this principle can be conceived as a referential extension of the cross-Strait “1992 Consensus”—“one China with respective interpretation.” As long as the essence of “one China” is upheld in a broad scope, each side’s political authority of governance and legitimacy of representation should be acknowledged mutually in accordance with its own designated political rules. Ma’s realist approach not only strives for peaceful coexistence to accommodate the current situation of separation, but also seeks a normative orientation within the broad realm of the “one China” principle to nurture a friendly cross-Strait atmosphere. It is a compromising and practical approach to seeking and cultivating a win-win situation for reconciliation. Ma’s adoption of the mutual non-denial policy actually has diminished the likelihood of Taiwan’s independence and expresses his intent to seek a conciliatory approach to cross-Strait relations.²¹

Second, in contrast to previous Taiwanese governments’ active push for indigenous identity and international recognition of statehood, this principle creates a *modus vivendi* to maintain the current collegial spirit and prevent both sides from deteriorating to one of confrontation a la pre-2008. It permits both sides to “agree to disagree” in terms of Taiwan’s international status in order to increase the pace and speed of cross-Strait political interactions. Its purpose is to signify the static differences between Taiwan and China to better search for flexibility in international participation. As long as one party does not deny the other’s “authority to govern” — the “internal” face of sovereignty as the first step for cross-Strait rapprochement — Taiwan’s “external sovereignty” in the international

20. “Major Policies of ROC,” National Security Bureau, Taiwan. <www.nsb.gov.tw/En/page13_01.htm>. This principle has been expressed at different occasions.

21. Lori Fisler Darmrosch, Louis Henkin, Sean Murphy, and Hans Smit, *International Law: Cases and Materials* (St. Paul, Minn.: West Publishing, 2009), 5th edition, 343.

THE MUTUAL NON-DENIAL PRINCIPLE

13

community can be resolved through negotiations and compromises.²²

Sovereignty should not be an impenetrable shield that deprives any political entity from responding to the needs of its population. Rather, political entities who are associated with the international society in an equitable arrangement should be allowed to fulfill the basic functions of securing internal peace and stability, ensuring respect for human rights, and maintaining good governance through the monitoring and enforcement mechanisms utilized by the IGOs and NGOs. After all, no political entity can be out of bounds with peremptory norms (*ius cogens*), laws, and rules established by international institutions.²³ The mutual non-denial principle is a way to place Taiwan within the orbit of international governance in its interactions with other states. For instance, when UN members actively supported China's replacement of Taiwan on the issue of representation in the UN, one argument was that the denial of the Chinese government's right of UN representation virtually deprived more than, at the time, 600 million Chinese people of their rights in international participation.²⁴ Following the same logic, the mutual non-denial principle aims to offer the 23 million people of Taiwan the equivalent rights of representation and participation in global policies over their own lives without the shield of state recognition.

Third, although names and titles are significant in representation and legitimacy, the mutual non-denial principle first emphasizes the construction of shared values, mutual understanding, and habits of collaboration, and changes in those elements. Echoing DENG Xiaoping's frequent reference of "letting future generations use their wisdom to resolve thorny political controversies," the mutual non-denial principle is partially a wait-and-see attitude to permit both sides to accept the status quo — the current reality of

22. According to Krasner, Taiwan undoubtedly possesses domestic sovereignty, but may lack substantial international legal sovereignty. See Stephen D. Krasner, "The Durability of Organized Hypocrisy," in *Sovereignty in Fragments*, ed. Hent Kalmo and Quentin Skinner (New York: Cambridge University Press, 2010), 101.

23. Bernd Ladwig and Beate Rudolf, "International legal and Moral Standards of Good Governance in Fragial States," *Governance without a State?* ed. Thomas Risse (New York: Columbia University Press, 2011), 199-201.

24. Regarding the representation issue of China, please see A. LeRoy Bennet and James K. Oliver, *International Organizations* (Upper Saddle River, NJ: Prentice Hall, 2002), 85-91; N. D. White, *The Law of International Organizations* (New York: Manchester University Press, 1996), 67; Thomas M. Franck, *The Power of Legitimacy Among Nations* (New York: Oxford University Press, 1990), 116, 126-129, .

separate authority in territorial governance — and expect incremental and favorable political benefits derived from frequent interactions. The goal is to lay out an atmospheric framework in a distinctive fashion in communicating the basis of each side's preferences to a broader audience and a less cumbersome style of discursive exchanges for political practitioners. Through time, both sides can gain time to rewind previous hostile mindsets and reformulate historical understandings.²⁵ In this case, it allows China to deliberate under what conditions, within what environment, and by what processes both sides can peacefully reach an equitable solution. The same applies to a divided society like Taiwan, which has been tormented by identity disputes over the past two decades. Serving as a socializing mechanism, this principle grants both governments the time and space to convince relevant audiences to embark on the reformulation of social constructs in plotting future cross-Strait relations.²⁶

Fourth, although it is inconceivable to achieve mutual recognition of sovereignty under current conventional international laws, the non-denial of each side's authority in governance offers an opportunity for both to search for an alternate and reasonable arrangement for Taiwan's participation in IGOs and NGOs. This would narrow international institutions' jurisdictional gap in policy enforcement and balance such organizations' democratic deficits in interest representation on issues related to the global commons without being tangled in the strait jacket of the Westphalian definition of sovereignty.²⁷ Rather than adhering to a strict binary of exclusion versus recognition, this principle signals an explicit acknowledgement of each side's temporal and spatial authority and control with a tint of not denying Taiwan's political existence within the "one-China" zone of inclusion. The underpinning is that "there can be, in principle, a meeting of the minds. I can appeal to your reason and try to persuade you, applying standards of logic and evidence that both of us are committed to by the very fact that we are

25. Christian Reus-Smit, "The Politics of International Law," in *The Politics of International Law*, ed. Christian Reus-Smit (New York: Cambridge University Press, 2004), 40-41.

26. For the concept of securitization and de-securitization, please see Barry Buzan, Ole Waever, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, CO: Lynne Rienner, 1998), 4, 23-24.

27. Kenneth W. Abbott, "Toward a Richer Institutionalism for International Law and Policy," *Journal of International Law and International Relations*, 9, 2004-2005, 33.

THE MUTUAL NON-DENIAL PRINCIPLE

15

both reasoning being.”²⁸ Motivated by the logical consequence of the expansion of Taiwan’s international space, this principle seeks an alternative strategy to untangle Westphalian sovereignty, and at the same time to fulfill the logic of appropriateness for Taiwan’s genuine right of association with international society.²⁹

Fifth, the principle is an example of the contribution of the epistemic community by scholars like Hungdah CHIU, Yung WEI, and others for a realistic approach to cross-Strait disputes.³⁰ These visions and proposals generated by the epistemic community, permitting both sides to be flexible in domestic maneuvering but not deviating from the one China principle, were also shared by Ma in his earlier writings prior to his ascension to the presidency.³¹ The distinctive, emerging epistemic community composed of professional experts in specific fields, for example climate change and human rights, has played various roles (adviser, advocator, and adjudicator) for new policies and solutions in knowledge provision, problem solving, and principle setting. The mutual non-denial principle is undoubtedly an attempt initiated by the epistemic community of professionals to iron out differences for better management of cross-Strait relations.

The mutual non-denial principle illustrates how different voices can be accommodated and implies how various aspects of world politics are interrelated. As Jürgen Habermas amplified the utility of “communicative action,” “speech acts,” and systems of symbols:³²

. . . a communication in which grammatical sentences are embedded, by way of universal validity claims, in three relations to reality, thereby assuming the corresponding pragmatic functions of representing facts, establishing le-

28. Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Penguin Books, 2011), 182.

29. Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), 70-71.

30. For Prof. Hungdah Chiu’s contributions, please see essays by Su Chi and others in the special issue of *Maryland Journal of International Law*, 27, 2012, in memory of Prof. Chiu. Similar views can be found in Yung Wei, *From “Multi-System Nations” to “Linkage Communities”*. Occasional Papers/Reprints Series. Contemporary Asian Studies, No.1, 1998 (144).

31. Ying-jeou Ma, “Cross-Strait Relations at a Crossroad: Impasse or Breakthrough?” in *Breaking the China-Taiwan Impasse*, ed. Donald S. Zagoria (Westport, CT: Praeger, 2003), 58.

32. Jürgen Habermas, *Communication and the Evolution of Society* (Boston, MA: Beacon Press, 1979), 67.

gitimate interpersonal relations, and expressing one's own subjectivity. According to this model, language can be conceived as the medium of interrelating three worlds; for every successful communicative action there exists a threefold relation between the utterance and (a) "the external world" as the totality of existing states of affairs, (b) "our social world" as the totality of all normatively regulated interpersonal relations that count as legitimate in a given society, and (c) "a particular inner work" (of the speaker) as the totality of his intentional experiences.

Consequently, the discourse of mutual non-denial intends to form shared understandings of the "external world" of the factual separation between Taiwan (ROC) and China (PRC) and a regulated "social world" full of dignity, equality, and reciprocity in cross-strait interactions even in an objective power asymmetry. Most importantly, Taiwan, the "engaged speaker," is able to connect to and take up an international relationship in scope and scale.³³ In Georg Simmel's analysis, the utterance of this "speech act" — "mutual non-denial" principle — relies on the ideas of fairness and legitimacy to guide the behaviors of both sides to turn mutual apprehension and repulsion derived from past separation and "strangeness" into gestures of social inclusion and non-subordination for possible integration.³⁴

If one agrees with Foucault, then the epistemic community hopes that discourses represent not simply a composite system of meaning and authority, a reflection of the belief and intention of the initiator, but also an action plan to receive positive response from the audience for specific meaningful results. The fulfillment of Taiwan's proposal of the mutual non-denial principle still requires reciprocal acts from the respondent, China.³⁵

Sixth, the sensibility of the mutual non-denial principle still relies on the stronger party's willingness to chip and constrain Westphalian sovereignty in a context of power disparity. Even Ikenberry, an advocate for liberal world order, admits that institutional rules have to contain "escape clauses, weighted voting, opt-out agreements, and veto rights" to accommodate the stronger politico-military power's interests and to minimize "its exposure to

33. Habermas, *Communication and the Evolution of Society*, 63.

34. Georg Simmel, *The Sociology of Georg Simmel*, translated and edited by Kurt H. Wolff (New York: Free Press, 1950), 275-279, 405-407.

35. van Dijk, "Structures of Discourse, Structures of Power," 19-21.

THE MUTUAL NON-DENIAL PRINCIPLE

17

sovereignty-reduction commitments” in the agreement.³⁶ Even so, the mutual non-denial principle is an opportunity for China, the stronger party, to adjust its strategic pose to allure Taiwan, the weaker counterpart, into a desirable arrangement. The principle also sidesteps the issue of sovereignty within the one-China realm drawn up by China to coexist and to gain governance autonomy as much as possible.

The idea of mutual non-denial has its precedential value for emulation, though understandably the cross-Strait context is different from the relationship between the two Germanys prior to unification. Still, the intentional non-specification of status between the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR) has been a useful analogy for functional coexistence between the two Germanys. Like the 1972 Treaty on the Basis of Inter-German Relations (the Basic Treaty) between the FRG and the GDR, which acknowledged the literal non-representation of the other in the international sphere with the notion of “Germany as a whole,” the mutual non-denial principle strives to achieve a similar condition.³⁷ In execution, both Germanys exercised discursive innovation by using “permanent missions,” not “embassies,” and in each’s “government’s seat” rather than “capitals,” to facilitate the special bilateral relationship and to perform its administration within the mutually “respected,” not “recognized,” area of governance. And just as in Germany’s situation, here the purpose is to reconstruct a common historical understanding, cultural identity, and social unity to reinforce preferential conditions for both sides to decide a best route for unification when the opportunity arises. Since each German state claimed to be the representative of the German nation, bilateral hostility was mitigated with a formal acknowledgement of the existence of the other Germany.³⁸ The notion of a “special” inter-German (or intra-German)

36. G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order* (Princeton, NJ: Princeton University Press, 2011), 86, 306.

37. 12 ILM 16 Art. 6. James Crawford, *Brownlie’s Principles of Public International Law* (New York: Oxford University Press, 2008), 138.

38. See the Basic Treaty, December 21, 1972, Art. 2 and Art. 8. For analysis, please see Shaocheng Tan, “A Comparison between Intra-German Relations in the 1970s and Cross-Strait Relations Since 2008,” *Issues and Studies*, 46(1), 2010, 10. Chun-I Chen, “Legal Aspects of Mutual Non-Denial and the Relations Across the Taiwan Strait,” *Maryland Journal of International Law*, 27, 2012, 123; Derek J. Vanderwood, “The Korean Reconciliation Treaty and the German Basic Treaty,” *Pacific Rim Law and Policy Journal*, 2(2), 1993, 411-432. Alexander Wendt and Daniel Friedheim, “Hierarchy under Anarchy: Informal Empire and the East German State,” in *State Sovereignty as*

relation is an example for the resolution of cross-Strait impasse in status designation of both sides. This illustration assists to smooth interactions in low politics issue areas with transnational characteristics. Following the German model, the mutual non-denial principle accepts the temporal division of “China” into two entities under the shared identity of “China.” The recent cross-Strait efforts to establish liaison offices in each side without referring to national titles and flags, along with quasi-privileges granted in the Vienna Convention on Consular Relations, is a valuable replica of the two-Germany experience.

Such a “special cross-Strait relationship” with the mutual non-denial principle embedded in practice has been applied in multiple agreements signed by Taiwan and China. For example, the Cross-Strait Trade in Services Pact between the Taipei-authorized Straits Exchange Foundation (SEF) and the Beijing-designated Association for Relations Across the Taiwan Straits (ARATS) in June 21, 2013, is a concrete case of accepting each side’s authority to govern in separate territorial arenas.³⁹ On the surface, SEF and ARATS have long served as quasi-official organizations to conceal actual official exchanges. Governmental officials have actually participated in bilateral negotiations as “advisers or consultants” of SEF or ARATS not only to avoid political recognition of each side’s sovereignty, but also to not deny the governing authority of each and the impossibility of extending one’s legal authority to the other. Stated differently, so far, all bilateral agreements completed by SEF and ARATS rather than full-fledged government agencies, have been virtually repeated acknowledgments of each side’s “internal” sovereignty in substance and in formality. Taken one step further, the principles and rules of the World Trade Organization’s General Agreement on Trade in Services also facilitates the negotiation of the 2013 service pact. It illustrates the utility of IGOs in creating a win-win situation for service providers by toning down the sovereignty issue and nomenclature’s debates across the Strait.

Social Construct, ed. Thomas J. Biersteker and Cynthia Weber (Cambridge: Cambridge University Press, 1996), 240-277, particularly 264-266.

39. “Trade in Services Pact to Boost Cross-Strait Ties,” *Taiwan Today*, June 21, 2013. <taiwantoday.tw/>.

IV. TRUCE ON THE FRONT OF DIPLOMATIC RECOGNITION

Since Taiwan's loss of UN membership and China's re-entry into the international community in the 1970s, Taiwan's evolving international participation began to display several features. First, diplomatic ties with allies are sustained and consolidated through "dollar diplomacy" by offering economic aid and technological assistance to counter China's aggressive move. Second, if the severance of diplomatic ties is inevitable, unofficial ties are maintained through "substantive diplomacy" (*shizhi waijiao*), in the areas of technology, economics, trade, and cultural exchanges for active cooperation and economic sustainability. As long as countries are willing to retain unofficial or quasi-official ties, Taiwan will try to collaborate with host countries, whose names are mutually agreeable, to ward off China's objections utilizing the principle of "flexible diplomacy" (*tanxing waijiao*). This is exemplified by US-Taiwan relations seen in the framework of the "unofficial" American Institute of Taiwan in the US and the Coordination Council for North American Affairs (CCNAA) in Taiwan. Third, the principle of flexibility has been extended to Taiwan's willingness to compromise over the issue of nomenclatures in its participation with IGOs and NGOs, since strenuous efforts to uphold its official title appears unlikely.⁴⁰

In the area of diplomatic relations with other countries, Taiwan's proposal of a diplomatic truce (*waijiao xiubing*) has appeared to receive tacit collaboration from China. As long as neither side takes action to win additional diplomatic recognition, Taiwanese diplomatic allies have been relatively easier to sustain. After all, 171 countries recognized China in 2008, compared to Taiwan's current number of 23 diplomatic allies, a drop from 71 in 1969. Additional diplomatic recognition has given China no noticeable gain in its global prestige, but has increased further resentment and frustration amongst Taiwanese people and politicians. Thus, the number of Taiwan's diplomatic allies during Ma's first term of presidency (2008-2012) remained at 23 (the Vatican in Europe, 4 allies in Africa, 6 in Oceania, and 12 in Central and South America).⁴¹ This

40. Scott Pegg, *International Society and the De Facto State* (Brookfield, VT: Ashgate, 1998), 183-187.

41. For a list of Taiwan's diplomatic allies, please see Taiwan's Ministry of Foreign Affairs. <www.mofa.gov.tw/Official/Home/Index>. Of course, there are downsides of diplomatic truce. See Le Guanghan, "Lianhe biji: shuzi zhong de anyu" (Lianhe Notes: The Hidden Message of Numbers), *United Daily*, Taipei, July 3, 2012. <udn.com/NEWS/

remarkable understanding between Taipei and Beijing moves away from the confrontational diplomacy of the previous administration to a diplomatic truce. By doing so, China improves its image in Taiwan and cultivates a better atmosphere in cross-Strait relations. The announcement of a diplomatic truce also stops senseless, “dollar diplomacy” cross-Strait bidding contests for diplomatic recognition by promising hefty financial aid packages to win new allies. In the past, some countries in Latin America, Africa, and Oceania took advantage of cross-Strait rivalries to bargain for lucrative economic resources for their financial and investment needs.

Obviously, one immediate benefit of this diplomatic ceasefire is the reduction of the Taiwanese government’s “confidential” funding of its allies for the sustainability of diplomatic relations (\$18 million in 2008 to \$12 million in 2009).⁴² Although Taiwan’s use of economic aid packages continue, downplaying the importance of dollar diplomacy surely creates a mutual win-win situation; neither Taiwan nor China needs to engage in a bidding war for diplomatic competition, thus lowering the chances of being held hostage by an ally’s unreasonable financial demands for recognition. During his presidential travels abroad, Ma has also kept a relatively low-profile during his stopovers in the US in order to avoid unnecessary political speculation by China and the US of using official visits to brandish and promote Taiwan’s independent status in the world economy.

Undoubtedly, Ma’s diplomatic initiative carries political risks as China’s global economic and political power continues to rise due to China’s charm offensive and energy investments in Africa, Latin America, and other regions. China securing resources, markets, and strategic influences, in said regions has caught the attention of Taiwan’s diplomatic allies, who may consider switching diplomatic recognition from Taiwan to China. Since Ma’s inauguration in 2008, for example, several of Taiwan’s allies — El Salvador, Honduras, Panama, and Paraguay — have felt the pinch of Taiwan’s reluctance to meet excessive requests for foreign aid in order to

OPINION/X1/7199411.shtml>; Chen Yuren, “Liangan waijiao xiubing, wo bugan she daibiaochu” (Diplomatic Truce Across Strait, We Don’t Dare to Set Up Unofficial Representative Office) *Apple Daily*, July 2, 2012. <www.appledaily.com.tw/appledaily/article/headline/20120702/34339474>. Gambia announced to cut off diplomatic ties with Taiwan in November 2013, though China expressed little interest in recognition.

42. Shih-chung Liu, “Seeking a Cross-Strait Diplomatic Truce,” Center for North-east Asian Policy Studies, Brookings Institution, Oct. 30, 2008, p. 7. <www.brookings.edu/~media/events/2008/10/30%20taiwan/1030_taiwan.pdf>.

THE MUTUAL NON-DENIAL PRINCIPLE

21

sustain diplomatic relations. They then threatened to switch recognition to China to test Taiwan's will, but China has so far declined their requests. Since Taiwan's change of guard in 2008, delicate cross-Strait relations have gained higher priority than relations with the prospective allies in Latin America.⁴³ There are also examples of mutual non-denial of each other's representation when both sides' diplomats were present at the same public occasion without official interactions in 2009.⁴⁴ China's acquiescence to a diplomatic truce across the Strait has made the efforts of the abovementioned countries to switch recognition powerless. Consequently, Honduras indicted its intent to open a trade office in China in December 2012. In June 2013, Honduras took action to lower their diplomat's rank in Taiwan from envoy extraordinary to charge d'affaires in Taipei to pressure Taiwan for aid.⁴⁵ Several allies, such as Belize, Haiti, Palau, Paraguay, and the Vatican followed suit and downgraded the ranks of their respective diplomats stationed in Taiwan. Should an ally of Taiwan eventually switch recognition from Taiwan to China without any financial deals on the table, it will be a challenge for both China and Taiwan to cooperatively manage the thorny issue, and avoid embarrassing Ma over his dedication to a diplomatic truce, while also preventing other Taiwanese diplomatic allies from following suit.

On the domestic front, Ma's bold and unilateral move has encountered doubts, criticism, and resistance, particularly from the opposing party, the Democratic Progressive Party (DPP), and some members of Ma's own ruling party, the Nationalist Party (Kuomintang, KMT). Simply speaking, Ma's rush into a unilateral diplomatic truce without a clear path forward might put Taiwan in the worst possible outcome, with a hefty loss of diplomatic allies switching recognition, should China choose not to cooperate. In the critics' views, the suspension of diplomatic bickering still requires a soul-searching process to ask what the next step will be.

43. Joseph Yeh, "No Allies of Taiwan Meet with Xi on Diplomatic Trip to Caribbean: MOFA," *The China Post*, June 7, 2013. <www.ChinaPost.com.tw>; "Wikileaks: China Rejects Panama's Wish for Ties," *Fox News*, May 12, 2011. <www.foxnews.com>; Kristina Kironská, "Taiwan and Palau: How to Maintain This Diplomatic Alliance?" *Net Journal of Social Sciences*, 1(1), June 2013, 11-23.

44. Fang Zhengxiang, "Liangyan shijie tongtai wo bu beige" (Both Sides' Delegates Appeared on the Same Stage. We Do Not Protest), *Liberty Times*, Feb. 18, 2009.

45. Joseph Yeh, "Honduras Ambassador to Leave: MOFA," *China Post*, June 1, 2013. <www.chinapost.com.tw>. "Qi bangjiaoguo jin linshi daiban zhutai" (Seven Diplomatic Allies Has Sent Charge d'affaires to Taiwan), *Apple Daily*, June 29, 2013. <www.appledaily.com.tw>.

Even so, the diplomatic ceasefire has appeared to hold up so far without any surprises, though China has neither given its official nod to Ma's diplomatic initiative nor rejected his idea outright. Both sides seem to have accepted and implemented this unspoken understanding to end their counterproductive and resource-squandering diplomatic tug-of-war. On this aspect, Taiwan's "good deed" has received China's reciprocal response in a tit-for-tat manner. The interaction has cultivated an atmosphere of reconciliation for trust-building in cross-Strait relations. Undoubtedly, a diplomatic truce is a subtle practice of the mutual non-denial principle insofar as it quietly acknowledges each side's diplomatic sphere and tolerates the other side's non-political interactions in the host country.

The relative stability and success of Taiwan's diplomatic relations has not been transposed to a broader access to and participation in IGOs, which still awaits China's willingness to acquiesce to Taiwan's demands. Taiwan's participation in international organizations has only shown a slight improvement during Ma's first term of presidency. There is no more opportune time than the second term of Ma's presidency for both sides to search for a feasible solution to Taiwan's international participation.

V. STATUS OF TAIWAN'S PARTICIPATION IN INTERNATIONAL INSTITUTIONS

When China (the People's Republic of China, PRC) replaced Taiwan (the Republic of China, ROC) in the UN in 1971, Taiwan lost its membership in eight UN specialized agencies within two years. In 1966, Taiwan was a member of 39 IGOs, by 1977 that number had dropped to ten. However, China's membership increased from one to 22 during the same period. The situation further deteriorated in the wake of the United States' formal recognition of the PRC in 1980. Substantial losses included the departures from those institutions within the Bretton Woods system, such as the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD).⁴⁶ In 1990, Taiwan's IGO membership remained at ten.⁴⁷ Those remaining IGOs tended to be regional (e.g., Asian Productivity Organization since 1961), financial (e.g., Asian Development Bank since

46. Chien-pin Li, "Taiwan's Participation in Inter-Governmental Organizations." *Asian Survey*, 46(4), 2006, 597-614.

47. Hui-wan Cho, "China, Taiwan Co-representation in IGOs." *Quanjia zhengzhi pinglun* (English title: *Review of Global Politics*), 26, 2009, 93-130.

THE MUTUAL NON-DENIAL PRINCIPLE

23

1966), and technical (e.g., International Seed Testing Association since 1962) in nature. China's insistence on the "one China" principle with the PRC as the sole legitimate government in both IGOs and INGOs practically blocked Taiwan's every move to rejoin any previously Taiwan-affiliated organization or new organization in which China had become a member.

Taiwan also felt the heat of Chinese pressure in the sphere of INGOs, where Taiwan hoped to retain its international identity. In 1973, under pressure from China, the UN Educational, Scientific, and Cultural Organization (UNESCO) delivered a request to all of its then 319 affiliated NGOs to cut off any institutional ties with Taiwan.⁴⁸ By July 1975, 20 of the 37 INGOs that had institutional associations with Taiwan had replied. An overwhelming majority refused to terminate their institutional ties with Taiwan by arguing that political considerations should not interfere in the self-governing principle of non-political INGOs.⁴⁹ Even so, the request for all INGOs to terminate their institutional associations with Taiwan remained an active agenda item in UNESCO meetings through the late 1970s.⁵⁰

China's determination to smother Taiwan's international space in the circle of INGOs continued into the 1980s. Undoubtedly, the wish to have China within its organization led some INGOs to search for an alternative option in resolving the Taiwan issue. China usually demanded either ousting Taiwan or downgrading Taiwan's membership status to regional representation in the INGO as a precondition for China's admission. Taiwan's desire to stay active in international society prompted the search for a feasible solution in the changing international political reality. For example, Taiwan

48. UNESCO, "Resolutions and Decisions Adopted by the Executive Board at Its 93rd Session, Paris, 12 September-11 October 1973," UNESCO Executive Board, 93 EX/Decisions, Paris, November 9, 1973, 40; UNESCO, "Report of the Director-General on the Application of 93 EX/Decision 6.9," UNESCO Executive Board, 94 EX/33, Paris, February 20, 1974. Also see "Volume 1, Resolutions," Records of the General Conference, Eighteenth Session, UNESCO, Paris, October 17 to November 23, 1974, p. 84.

49. UNESCO, "The Question of International Non-Governmental Organizations Maintaining Relations with UNESCO and in Which Bodies or Elements Linked with Chiang Kai-shek Still Participate, Having Illegally Usurped the Name of China," UNESCO Executive Board, 98 EX/20, Paris, August 29, 1975. NGOs' refusal to follow UNESCO's request also appeared in the 1976 UNESCO Director-General's report to the Executive Board. Please see 100 EX/25 Paris, August 26, 1976.

50. UNESCO, "Volume I, Resolutions," UNESCO, Records of the General Conference, 20th Session, Paris Oct 24- November 28, 1978, 115.

boycotted the 1980 Winter Olympics in Lake Placid, New York in protest of the International Olympic Committee's (IOC) decision that it could compete only under the name "Chinese Taipei". However, in 1981 Taiwan had no alternative but to accept this name to attend the biggest international sporting events. Another example was the compromise Taiwan made to maintain its membership in the international scientific community, accepting the title of "The Academy of Sciences Located in Taipei, China" in exchange for China's acceptance of "The China Association for Science and Technology, Beijing" in the International Council of Scientific Unions in 1982.

In 1993, China further tightened its grip by permitting Taiwan's international participation only under the name "Taipei, China" or "Taiwan, China," thereby implying Taiwan as a sub-unit within China's political domain. This declaration applied to a broad definition of "international gatherings." China reiterated a similar message in its 2000 White Paper by declaring that that "Chinese Taipei" is "only an *ad hoc* arrangement and cannot constitute a model applicable to other inter-governmental organizations or international gatherings."⁵¹ In other words, Taiwan's nomenclature as "Chinese Taipei" in the Asia-Pacific Economic Cooperation (APEC), International Olympics, and as "a separate customs territory of Taiwan, Penghu, Kinmen and Matsu" ("Chinese Taipei" in abbreviation) in the World Trade Organization (WTO) should not be considered precedent for future cases. China was determined to grind to a halt Taiwan's attempt to maintain its profile in international participation. Such a determination was written into China's controversial Anti-Secession Law in 2005, with provisions stipulating the employment of "non-peaceful means and other necessary measures" against any Taiwanese attempt for formal independence by then President CHEN Shui-bian and his pro-independence Democratic Progressive Party, though the law gave no clear thresholds warranting China's military response. With a proclamation that "both the Mainland and Taiwan belong to one China," the law reconfirms its

51. The Taiwan Affairs Office and the Information office of the State Council, PRC, "White Paper—The Taiwan Question and Reunification of China," August 1993, <<http://us.china-embassy.org/eng/zt/twwt/White%20Papers/t36704.htm>>; The Taiwan Affairs Office and the Information office of the State Council, PRC, "White Paper—The One-China Principle and the Taiwan Issue," February 21, 2000. <www.taiwandocuments.org/white.htm>.

THE MUTUAL NON-DENIAL PRINCIPLE

25

rejection of any interference by outside forces as an apparent reference to Washington's intervention.⁵²

In China's view, its adamant adherence to the one-China principle is based on its own interpretation of the 1992 Consensus, "*yizhong gebiao*" (that is, there is "one China," but each side reserves the right to interpret the political contents of "one China"), a mutual understanding reached by SEF and ARATS in Hong Kong in 1992. Taiwan is eager to keep a broad and open interpretation of "China," according to each side's political necessity and domestic constraints, in order to expand and thicken cross-strait interactions prior to serious political dealings. The mutual non-denial principle allows space for each side's preference on the meaning of "China," with Taiwan's reading as the "Republic of China" in full name and China's claim of "China" being the "People's Republic of China." Still, the spirit of "each according to its needs" on the meaning of "China" contained in the 1992 consensus has not placated the anxieties and frustrations of Taiwan's pro-independence supporters. On the contrary, China has frequently touted the importance of "*yizhong*" ("one China"), while deliberately ignoring the phrase "*gebiao*" ("separate interpretation") to uphold its sole representation and legitimacy of the whole China. In fact, China seldom reiterates the whole phrase "*yizhong gebiao*" in reference to the 1992 Consensus. Whenever the PRC confirms its enthusiastic adherence to the 1992 Consensus, the official declaration of "one China" (*yizhong*) is vividly pronounced, with the second part of the phrase, *gebiao*, barely mentioned.⁵³

The PRC's adamant stance on the "one China" principle has shut off any of Taiwan's IGO application attempts. China's forceful, repeated, and unequivocal assertions of the PRC as the sole proprietary owner of "China" have cultivated and further consolidated an international identity construct that the PRC is the one and only political entity to assume the name of "China"; the "Republic of China" in Taiwan, or, the "other China," should have no

52. Articles 2, 3, and 8 of the Anti-Secession Law, adopted at the 3rd Session of the 10th National People's Congress, March 13, 2005. <english.people.com.cn/200503/14/eng20050314_176746.html>.

53. See the speech by Li Yafei, China's Vice President of China's Association for Relations Across the Taiwan Strait (ARATS), the counterpart of Taiwan's Straits Exchange Foundation (SEF), <video.chinatimes.com/video-bydate-cnt.aspx?cid=1&nid=35720>. Also, Shiquan Xu, "The 1992 Consensus: A Review and Assessment of Consultations Between the Association for Relations Across the Taiwan Strait and the Straits Exchange Foundation," Donald S. Zagoria, ed., *Breaking the China-Taiwan Impasse*, (Westport, CT: Praeger, 2003), 82-83.

legitimacy in using “China” in any international attribution. The PRC automatically presents itself as the epitome of “China” in international media through years of propagation in press circulation and official exchanges without further explanation. The Cold War era distinction of two Chinas (that is, China being classified as the ROC in Taiwan versus the PRC in mainland China, or “free China” in Taiwan versus “Communist China” as the PRC) has dissipated in recent international politics. The marginalization of the ROC as the symbol of “China” naturally has forced Taiwan to seek an alternative identity for distinction in international representation.

The PRC initiated a lengthy diplomatic battle to compete for the exclusive use of the name “China” in all political references during the two Chiangs’ era (Presidents CHIANG Kai-shek and CHIANG Ching-kuo) in the 1970s and 1980s. As a result, the PRC’s scorched-earth diplomacy against Taiwan’s use of the name “China” finally gained a sizable victory to become the sole identity representation of “China.” At the same time, China’s refusal to allow Taiwan to co-share the reference of “China” (in a way similar to the two-Germany and the two-Korea models) gave pro-independence Taiwanese political elites, such as LEE Teng-hui, a handy opportunity to proclaim and preach their ideas for a separate identity from China in the international landscape for differentiation and survival. Such advocacy for a new, discernible identity also served Taiwan’s political elites’ interests to push for Taiwanese indigenous identity for mass mobilization to capture the lion’s share of the Taiwanese voters in support of Taiwan’s democratic transition from a China-centered authoritarian regime to a pluralist democracy. Consequently, the massive domestic awakening to *different-ness* precipitated by a series of deliberate government-led social reconstruction programs of de-Chineseness within Taiwan eventually translated into repeated callings for *separate-ness* from “China” to manifest Taiwan’s own indigenous identity in the 1990s and early 2000s.⁵⁴ In the words of John R. Gillis, “Identities and memories are not things we think *about*, but things we think *with*” (original

54. Wei-chin Lee, “Taiwan’s Cultural Reconstruction Movement,” *Issues and Studies* 41(1), March 2005, 1-51; Alastair Iain Johnston, “Beijing’s Security Behavior in the Asia-Pacific: Is China a Dissatisfied Power?” *Rethinking Security in East Asia*, J. J. Suh, Peter J. Katzenstein, and Allen Carson, ed. (Stanford, CA: Stanford University Press, 2004), 65.

THE MUTUAL NON-DENIAL PRINCIPLE

27

emphasis) in internal politicking and external operation.⁵⁵ In essence, the old basis of China-oriented national identity were undermined and transformed into a Taiwan-centered one to fit the beginning of a new era of democracy, though it encountered resistance in the domestic arena and external sphere.

Taiwanese politicians' increasingly bold requests for an indigeneous identity resulted in cross-Strait tensions and disrupted the triangular relationship between the US, China, and Taiwan. Taiwan's annual campaign for UN recognition as a legitimate political entity started in 1993 and increasingly picked up steam through various domestic political campaigns, becoming more and more pugnacious in international discursive arguments for UN membership. Eventually, these efforts encountered UN Secretary General BAN Ki-moon's refusal in 2007 on the grounds that the 1971 UN General Assembly Resolution 2758 states that the UN decided 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."⁵⁶

Despite the UN's rejection, Taiwan's President CHEN Shui-bian remained committed to putting forward a referendum on Taiwan's UN membership as an electioneering agenda to broaden his support base in the 2008 presidential campaign. Such political maneuvering surely generated a political storm and domestically ruptured the social fabric of national identity. It also seriously strained Taiwan's relationship with both the US and China, as sensational and populist slogans in severe electoral campaigns could slip into a serious crusade toward the ultimate goal of Taiwanese independence. The developing tension only reinforced China's conviction to thwart any of Taiwan's diplomatic efforts in IGOs and even Taiwan's participation in INGOs.⁵⁷ The PRC's staunch position in monopolizing the "China" nomenclature coincided with the marginalization of Taiwan's international status, readily prompted Taiwan's withdrawal from any reference to "China," and precipi-

55. John R. Gillis, "Introduction: Memory and Identity," in *Commemorations: The Politics of National Identity*, ed., John R. Gillis (Princeton, NJ: Princeton University Press, 1994), 5.

56. UNGA Resolution, "Restoration of the Lawful Rights of the People's Republic of China in the United Nations," 1976th Plenary Meeting, Oct. 25, 1971.

57. Sigrid Winkler, "Taiwan's UN Dilemma: To Be or Not to Be," *Taiwan-US Quarterly Analysis*, no. 9, June 2012. <www.brookings.edu/research/opinions/2012/06/20-taiwan-un-winkler>.

tated Taiwan's intransigent quest – stronger than before – for alternative options to sustain its international status.

According to Taiwan's Ministry of Foreign Affairs, as of June 2013, Taiwan is a member of 53 IGOs, including 33 full memberships, 16 observerships, two associate memberships, one corresponding membership, and one cooperating non-membership separately.⁵⁸ Among these IGOs, Taiwan joined ten of them by 1988. The number rose to 30 by the end of 2000. Then, prior to Ma's inauguration in 2008, Taiwan's total IGO participation stood at 47. By mid-2013, Ma's government achieved admission to six additional IGOs. The numerical increase could be considered a normal result of attempts to harness the trends of accelerated globalization, trade expansion, and economic growth, as well as a reaction to internal initiatives empowered by its democratic transition since the late 1980s, the desire to propagate Taiwanese indigenous identity outward, and a booming civil society anxious to engage international society. IGOs and INGOs have become crucial venues for Taiwan to sustain its international status amid China's diplomatic encirclement of Taiwan, to communicate with China in international forums without serious domestic quibbles, and to network with countries without official diplomatic ties. One noticeable point is that Taiwan's numerical increase in IGOs after 2008 is actually less phenomenal than one would expect in light of the significant improvement of cross-Strait relations; even though the Chinese government under the previous leader HU Jintao and current XI Jinping has indicated several times that rational and reasonable arrangements (*heqing heli de anpai*) will be made for Taiwan's requests to have a legitimate role in international participation. In other words, the expectation to see a cascading increase in IGO membership after Ma's extraordinary efforts toward reconciliation with China and supporting the 1992 Consensus appeared to be overly assumed. One explanation is, of course, that

58. The rights and duties of each class of IGO membership other than full membership may differ between organizations and even from one member to another member in the same organization. Usually, all these non-full members do not have the right of voting. For example, Art. 2, para. 11 of the Constitution of the Food and Agriculture Organization of UN, an associate member is a political entity that is responsible for the territory's international relations. Then, Art. 3, para. 1 of the FAO constitution states that an associate member shall not hold office or have the right of voting. Again, observers cannot vote, though the rights and privileges of observer vary in different organizations. For a brief discussion of different classes of membership, see Jan Klabbbers, *An Introduction to International Institutional Law* (New York: Cambridge University Press, 2002), 111-114.

THE MUTUAL NON-DENIAL PRINCIPLE

29

China is concerned with the possibility of Taiwan reversing its course of action under a pro-independence party, the DPP, should the voters choose a regime change in the future.

Even so, it is an indisputable fact that Taiwan's recent flexibility in arrangements, public sentiment for reconciliation, and shifting discourse in reasoning for international participation offer China an opportunity. China can consolidate its core interest — the one China principle — by promoting Taiwan's international participation based on skillful institutional arrangements under the mutual non-denial principle. An examination of Taiwan's record in the past two decades reveals several discernible features of Taiwan's relentless diplomatic efforts to maintain its participation in the international community.

A. IGOs for Taiwan's International Functionality and Sustainability

Most of the IGOs in which Taiwan participates concentrate on low-politics, technical, and functional areas. Realizing the difficulty in joining high-politics IGOs on issues of security and military, Taiwan focuses on the pursuit of low-politics IGOs in areas of agricultural collaboration, banking, economic cooperation, public health, resource conservation and management, and international standards in technology and information transmission. These IGOs are essential to Taiwan's continuous prosperity, sustainability, and functionality as a viable international player. These low-politics IGOs usually welcome non-sovereign state actors to meet the constant challenge of globalization. For instance, with many Taiwanese fishing fleets cruising the different maritime zones of the world, several regional fishing regimes have been quite receptive to, including Taiwan better conservation and management of fish stocks in the region. As a substantial economy in East Asia and a significant manufacturer in select industries, Taiwan's membership in several functional IGOs in banking and technical codes not only helps Taiwan comply with global standards and rules for its economic sustainability, financial integrity, and trade expansion, but also allows IGOs to prevent the possibility of free riders within their realms of governance.⁵⁹ In light of the axiom "disease knows no state boundary," Taiwan's association with the World Health Assembly (WHA)

59. Cheri Attix, "Between the Devil and the Deep Blue Sea: Are Taiwan's Trading Partners Implying Recognition of Taiwanese Statehood?" *California Western International Law Journal*, 25, 1994-95, 357-387.

in 2009 benefits the global health network for seamless coverage against a pandemic crisis after a series of application failures in Taiwan in 1997, 2005, and 2007 respectively. Taiwan's repeated applications for WHA membership is a vivid example of China's veto power, though the US, Japan, and the European Union supported Taiwan's entry into WHA.

In addition, Taiwan's democratization, national wealth, and flexible diplomacy in the 1990s helped Taiwan gain admission to some IGOs whose mission and function might not fit well into China's national interests. For example, Taiwan joined the Association of Asian Election Authorities in 1998, when China was still considering how to extend election mechanisms upward from village elections to various levels of government. Taiwan participated in the Egmont Group of Financial Intelligence Units of the World in 1998 to ensure good governance for crimes such as money laundering, terrorist financing, and other financial crimes, while China's absence was understandable in light of its challenging task of avoiding any unpleasant exposé of rampant corruption scandals inside the country. China's reluctance to join organizations like the Egmont Group gave Taiwan an opportunity to seek admission.

Taiwan also increased its IGO membership in the 1990s and 2000s through its participation in some IGOs that have emanated from a "parent" IGO.⁶⁰ For example, the World Customs Organization has several spin-offs, such as the Technical Committee on Customs Valuation and the Technical Committee on Rules of Origin, both of which Taiwan has joined. The technical and functional characteristics of these spin-off IGOs provide major states with little room for power politics and tend to be more conducive than their parent organizations in their constitutional requirements of membership and operational regulations. This is one category of IGOs that Taiwan may be able to explore and expand into further in the future.

Taiwan's expansion of international space also benefited from the proliferation of Taiwanese INGOs, such as the Tzu Chi (Ciji) Foundation. These INGOs serve as "the nexus of the global and the local," as Huang described, free from most political constraints in international politics for the supply and demand of global public

60. For an excellent analysis of Taiwan's membership in these IGO's spin-off organizations, please see Chien-pin Li, "Taiwan's Participation in Inter-Governmental Organizations."

goods.⁶¹ Their outreach efforts have become a societal response to overcoming Taiwan's ambiguous international identity in global politics, though it does not mean their operation is unobstructed by political consideration. That being said, these INGOs still cannot substitute the IGO's functionality in contemporary international relations.

B. Get in First and See What to Do Next: Pragmatism in Membership Application

China's position has been a critical factor affecting Taiwan's efforts to expand its international space. In order to gain entry to additional IGOs in the future, Taiwan is fully aware of the possibility of "second-class citizen" status in membership and organizational functionality. Taiwan's policy orientation towards flexibility and pragmatism in the wake of Taiwan's democratic transition has facilitated its negotiations towards IGO membership. For example, when a targeted IGO encounters China's coercive pressures, and no sufficient support of current members can prevail over China's opposition, Taiwan is often willing to make concessions and take on a participatory role rather than "sovereign state" membership without seriously affecting national pride and dignity. Thus, on Taiwan's list of 53 IGOs, 20 of them are listed under observer status, associate member, corresponding member, and cooperating non-member. Even for those IGOs listed in the category of "full member," Taiwan has taken advantage of the targeted institution's inclusion of non-sovereign state entities for membership eligibility in their constitutions. In some cases, Taiwan's full membership in IGOs may not infer Taiwan's state sovereignty, but rather, acknowledges its eminent and essential capacity (for instance, as a "fishing entity," "health entity," or "a separate customs territory") so that the inclusion of Taiwan would substantially fulfill the IGO's specific mission. Furthermore, some of these listed IGOs are loosely organized, functionally oriented institutions composed of mid-level governmental bureaucracies or research institutes in membership representation, though membership may distinctively specify national title.⁶² Even so, most of these organizations carry insignifi-

61. C. Julia Huang, "Genealogies of NGO-ness: The Cultural Politics of a Global Buddhist Movement in Contemporary Taiwan," *Positions: East Asia Cultures Critique*, 17(2), 2009, 366.

62. Also see Sigrid Winkler, "Biding Time: The Challenge of Taiwan's International Status," *Taiwan-US Quarterly Analysis*, Brookings Institution, no. 7, Nov. 2011. <www.brookings.edu/research/papers/2011/11/17-taiwan-international-status-winkler>.

cant political weight in the world of power politics. As long as the IGO does not catch much media attention, Taiwan's applications for these types of IGOs tend to be less politically sensitive or controversial. While one would not expect an auspicious elevation of Taiwan's international status for its affiliation with such functionality oriented IGOs, they still count toward the numerical growth of Taiwan's international participation for public satisfaction.

C. What's in a Name? The Semantic Game of Taiwan's Nomenclatures

Taiwanese pragmatism is clearly illustrated in its malleable choices of official titles in IGOs, ranging from the "Republic of China" (Asian Productivity Organization and Central American Integration System) and "Taiwan" (International Council for Information Technology in Government Administration) on the preferred end of Taiwan's name choices, to the odious nomenclature of "Taipei, China" (Asian Development Bank) at the other end of the spectrum. Situated in the middle of this continuum is a list of moderately unfavorable, but tolerable, official titles, such as "Chinese Taipei" or some other neutral and uncontroversial titles. Depending on the mission, organizational rules, and negotiation results in each case, Taiwan has bargained hard for a proper nomenclature to fit the contextual environment of IGOs and INGOs. At its best, Taiwan has tried strenuously to evade the designation of "Taipei, China" and "Taiwan, China" with a comma between Taiwan (or Taipei) and China because these two terms symbolize Taiwan's subordinate status within China's political domain. As long as China is not a member in the targeted organization, Taiwan has a better chance of utilizing the titles of "ROC" and "Taiwan," though it is not guaranteed that the organization will not have second thoughts the moment China expresses interest in joining the targeted organization. Understandably, IGOs tend to adopt a favorable policy toward China when both Taiwan and China are members, or when China joins an IGO where Taiwan is already a member. One example is the Asian Development Bank's (ADB) unilateral change of Taiwan's nomenclature from "Republic of China" to "Taipei, China" in 1986, and its disregard of Taiwan's strong protest in order to include China within the organization. The ADB made this decision even though Taiwan had been a founding member of the ADB in 1966 with an impeccable record of contributions to the organization. The game of semantics and punctuation in the tug-of-war regarding Taiwan's membership designa-

tion is also exemplified by the case of the Organization for Animal Health (OIE), which Taiwan joined in 1954.⁶³

Therefore, when unusual circumstance warrants the inevitable, Taiwan has accepted with extreme reluctance those unfriendly terms, “Taiwan, China” or “Taipei, China,” under protest, in order to keep its IGO membership. In summary, Taiwan’s nomenclatural adaptation allows it to circumvent the harsh reality of China’s influential presence in the political calculations of IGOs.

D. Softening the Narrative Appeal

Taiwan’s diplomatic narrative has increasingly geared itself toward a satisfactory goal of “meaningful international participation” as a way of vindicating Taiwan’s statehood, instead of aiming for recognition of full sovereign membership. Without any input in the establishment of international norms, rules, and standards, it is difficult for Taiwan as a non-member to learn the concerns, controversies, and complexities of global issues debated and deliberated on in various IGO sessions and to adopt domestic policies for the implementation of those decisions to its full capacity. Being present at the IGO meeting simply gives Taiwanese participants full knowledge of the issue’s intrigues and nuances, an awareness of the issue’s urgency and policy details, and a sense of fairness and participation in global governance as a member of the international community. This will augment the democratic responsibility of Taiwan as a member to fulfill the IGO’s policy in good faith. In other words, “process legitimacy” gained through engagement in IGOs solidifies the member’s “output legitimacy” in policy execution to minimize domestic resistance.⁶⁴

However, realizing the intensive pressures of China’s resistance, Taiwan’s narrative shift is directed to downplay the sensitiv-

63. Heh-Song Wang, “Taiwan and the Asian Development Bank,” *ABA Journal of Banking and Finance*, 22(2), 2007, <www.aba.org.tw>. Hui-wan Cho, “China, Taiwan Co-representation in IGOs,” 102-104, 112-114. Also see Ministry of Foreign Affairs, Taiwan, “‘Shijie dongwu zuzhi’ (OIE) jianjie ji Taiwan yu zhongguo canyu OIE qing-xing” (World Organization for Animal Health and the Situation of Taiwan’s and China’s Participation in the OIE), May 25, 2007, <www.mofa.gov.tw/official/Home/Detail/>; World Organization for Animal Health (OIE) website, “OIE International Committee Succeeds in Bringing China and Taiwan to Fully Participate Together in the Organization’s Activities,” May 25, 2007, <www.oie.int/en/for-the-media/press-releases/>

64. For elaboration, please see Susan Marks, “Democracy and International Governance,” in *The Legitimacy of International Organizations*, ed. By Jean-Marc Coicaud and Veijo Heiskanen (Tokyo: United Nations University, 2001), 47-68.

ity of sovereignty in reaching a suboptimal compromise for a win-win solution among all concerned parties—Taiwan, China, and the IGO—in membership applications.⁶⁵ While an IGO membership with voting rights would be ideal for Taiwan's endeavors, the Taiwanese government is fully aware of how challenging a task it is for an IGO to grant Taiwan's wish. Thus, diplomatic flexibility attests to Taiwan's eagerness to strive for any opportunity to connect itself to the international society (*guoji jiegui*) through IGOs as well as INGOs for information exchange, experience sharing, articulation of the concerns of locality, proposition of fresh thinking, networking and bonding, image uplifting, and the vitality of civil society in Taiwan's democracy. In return, Taiwan tries to maintain its political viability on the world political map and transmit a message of "forget-me-not" in the global community. Therefore, "meaningful international participation" drives Taiwan to stress the rewards in substance derived from participation rather than the simple pursuit of name recognition.

Even with Taiwan's discourse alteration, China's intent to squeeze Taiwan's international space has remained largely unchanged. While the situation has been tense, sensationalized media coverage of the dispute has not helped cross-Strait reconciliation. For example, SHA Zukang, a high-level Chinese representative in the UN, has been known as the diehard eliminator of any Taiwanese attempts for participation in UN-related IGO meetings. His well-circulated remark of "Who cares about you [Taiwanese]!", in the midst of journalist inquires into the world's slow reaction to Taiwan's SARS crisis in 2003, became a classic example of China's suppression of Taiwan's IGO attempts. His abrupt, arrogant, and insensitive Chinese attitude toward Taiwan's public health crisis instantly provoked a public outcry from the Taiwanese. China's usual sense of commanding authority toward subordinating provincial governments within its own political hierarchy in dealing with Taiwan, and its lack of political savvy and understanding of Taiwan's democratic dynamics provokes only resentment and disgust. It only offered more reasons for the Taiwanese public to support politicians who sought independence or status quo and to doubt the wisdom of associating with China in any rational and reasonable logic in the foreseeable future.

65. Deon Geldenhuys, *Contested States in World Politics* (New York: Palgrave Macmillan, 2009), 222.

THE MUTUAL NON-DENIAL PRINCIPLE

35

Similar senseless events have occurred in the sphere of INGOs, despite the fact that INGOs tend to be less politically sensitive and controversial than IGOs. Still, China's long-term educational and socialization processes have framed Taiwan as a renegade province, a view which is now deep-rooted in the minds of the Chinese people, and the Chinese governmental imposition of harsh restrictions on the Taiwanese use of names has caused unnecessary friction in Taiwan's participation in typically non-political transnational INGO events. Even as recently as March 2012, Taiwan's NGO delegates with Taiwanese IDs were prohibited from attending the session hosted by the UN Commission on the Status of Women until these delegates quickly improvised by showing foreign IDs to join the session.⁶⁶ At the 2010 Tokyo International Film Festival, a Chinese representative's request that Taiwan's delegation only be admitted under "Taiwan, China" quickly provoked a media sensation and public debates in Taiwan about China's nonsensical demand in transitional non-political events. Similar kinds of naming controversies have unfortunately continued in recent years, even over sporting events, which has hit a nerve and affected cross-Strait relations.⁶⁷

Over the years, such non-media savvy comments and thoughtless actions has given China an image of being bossy and a bully in their dealing with Taiwan. Each unpleasant China-Taiwan encounter can be instantly uploaded to and infinitely replayed on YouTube and blogs, not only arousing heated public debates but also providing the Taiwanese with an opportunity for self-reflection and soul-searching for the formation of inter-subjective understandings, as constructive approach scholars like Alexander Wendt have described. One unfortunate incident can immediately negate past united-front efforts by the Chinese Communist Party to win the hearts and minds of the Taiwanese people. Such repeated events has cultivated, in Taiwan, a collective sense of sorrow, as well as sensitivity to being helpless amid China's muscle-flexing threats of unification. The fear of losing their democratic way of life under a potential Chinese non-democratic governance only reinforces the

66. "Tai minjindang : zhonggong daya yi cong guanfang yanshen dao feizhengfu zuzi" (Taiwan's Democratic Progressive Party: China's suppression has extended from governmental organizations to NGOs), Radio Free Asia (Chinese), March 28, 2012. <www.rfa.org/mandarin/yataibaodao/mjg-03282012095152.html>.

67. According to Taiwan's Ministry of Foreign Affairs, there were 85 cases reported in 2010 for wrongfully listing Taiwan's NGO as China's regional member in transnational NGO websites under Chinese NGO's demand. <www.taiwannngo.tw/files/15-1000-6330,c88-1.php>. "Taiwan Wins First Grand Slam Title," *China Post*, July 8, 2013. <<http://www.chinapost.com.tw/>>.

Taiwanese determination to keep its liberal political system. The effect is a conversion from a China-centered national identity to an indigenous Taiwanese identity.

It is no wonder that public identification with Taiwan and “Taiwanese” has increased tremendously in the 1990s and 2000s. Even under Ma’s regime, the trend of “Taiwanese” identification has shown no sign of recession. In other words, China’s containment policy of squeezing Taiwan’s international space has not accomplished what it wished to achieve. Instead, under China’s constant pressure, the Taiwanese government has stood unwavering on the political legitimacy of the ROC in Taiwan with solid public support from the general public. However, the Taiwanese public has displayed a pragmatic posture, as demonstrated in a 2008 survey in Taiwan, indicating a support of “Chinese Taipei” becoming Taiwan’s nomenclature for international participation, if the official membership titles of “Republic of China” and “Taiwan” encounter strong opposition from China.⁶⁸

VI. WHY IS IT IN CHINA’S INTEREST TO PROMOTE TAIWAN’S INTERNATIONAL PARTICIPATION?

The aspiration for an associational life in the global community has led Taiwan to launch the so-called “*huolu waijiao*,” or “flexible diplomacy.” So far, cross-Strait relations since Ma’s inauguration in 2008 have not generated noticeable expansion of Taiwan’s international space. During the period of 2008 to mid-2013, Taiwan had become either a full member or an observer in six international organizations.⁶⁹ Among these six IGOs, the name “Chinese Taipei” was adopted to represent Taiwan as a full member in the Inter-American Tropical Tuna Commission (IATTC) in 2010, the Standards and Trade Development Facility (STDF) in 2010, and South Pacific Regional Fishery Management Organization (SPRFMO) in 2012. The same title was used for Taiwan as an observer in the

68. T.Y. Wang, Wei-chin Lee, and Ching-hsin Yu, “Taiwan’s Expansion of International Space: Opportunities and Challenges,” *Journal of Contemporary China*, 20(69), 2011, 263.

69. According to Bonnie Glaser and Brittany Billingsley, Taiwan joined 6 additional international organizations by October 2011, though the website of Taiwan’s Ministry of Foreign Affairs in 2012 shows only five after 2008. See Taiwan’s Ministry of Foreign Affairs, <www.mofa.gov.tw/Official/Home/RelatedLink/?opno=be23c3a0-2e22-4fe3-b37c-3599074880f4> and Bonnie Glaser and Brittany Billingsley, *Taiwan’s 2012 Presidential Elections and Cross-Strait Relations: Implications for the United States* (Washington, DC: Center for Strategic and International Studies, 2011), A Report of the CSIS Freeman Chair in China Studies, November 2011, 3.

THE MUTUAL NON-DENIAL PRINCIPLE

37

WTO's World Health Assembly (WHA) in 2009 and the International Renewable Energy Agency (IRENA) in 2011.⁷⁰ The only IGO that Taiwan joined during this timeframe under the name of "Taiwan" was the International Council for Information Technology in Government Administration (ICA), an IGO with a mission to address policies concerning the public sector's computer-based information system. Undoubtedly, with its immense web of monitoring and tight control of its internet traffic and limited transparency in domestic governance, China is unlikely to join this organization to avoid sharing details regarding its IT system policies with other member states.

Naturally, it is hard for Taiwan to expand its international space by leaps and bounds. China will definitely continue its own self-defined "one China" principle, unless various constituencies of the Chinese government, including the powerful People's Liberation Army and the Ministry of Foreign Affairs – two primary defenders and executors of the one China principle – realize that the long-term benefits of promoting Taiwanese international participation outweighs the cost of not doing so. Under the circumstances, why is it in China's interest to promote and broaden Taiwan's space of international participation?

A. China's Sovereignty Assertion and Taiwan's Identity Shift

Following Taiwan's active and systematic identity reconstruction movements started by two former presidents, LEE Teng-hui and CHEN Shui-bian, Taiwan's indigenous identity has garnered significant support from the Taiwanese people, as tracked systematically by the Election Study Center of the National Chengchi University from 1992 to 2012. The percentage of people who identified themselves as solely "Chinese" was 25.5% in 1992, and steadily declined to a mere 4% in 2008, and to 3.1% in 2012. In contrast, the increasing trend of "Taiwanese" identification rose from 17.6% in 1992 to 48.4% in 2008, and again to 53.7% in 2012. If one adds the percentage of respondents with dual identities, "both Chinese and Taiwanese," either 43.1% in 2008 or 39.9% in 2012, to the percent-

70. Here, the South Pacific Regional Fisheries Management Organization can be a good model to illuminate Taiwan's international participation in IGOs. According to Art. 1, paragraph 2 (b), the SPRFMO permits "any entity" involved in the regional organization's operational mission to join as a contracting party by citing Art. 305, paragraph 1 (c), (d), and (e) of the 1982 Law of the Sea Convention as a guideline for accepting "non-state" fishing entities. In this case, the Law of the Sea opens up a gate of entry for Taiwan to join IGOs related to management of maritime resources.

age of Taiwanese identifiers, it is safe to conclude that more than 90% of respondents have identified themselves more or less as Taiwanese. On the other hand, respondents who solely identify themselves as Chinese have dwindled to single-digits in ratio consistently since 2002.⁷¹ The divergent paths of political development and mutual distrust have led to a significant perception gap between what most Taiwanese perceive to be the confines of “China” and the identity of “Chinese” and the Chinese government’s naïve presumption of Taiwan’s willingness to be part of the PRC’s China and be identified as “Chinese” within the PRC political domain. The PRC’s wishful thinking has not found a huge audience in Taiwan, where most people, if prompted to make a choice, regard “China” as a reference to the ROC (Republic of China). Even some Taiwanese pro-independence elites, who in the past have scorned any slight reference to “China” in Taiwan’s political market as anathema to their noble cause for Taiwan’s independence, now say that they are willing to deal with “China,” as long as “China” refers specifically to the “ROC” in Taiwan. Apparently, an emerging consensus in Taiwan is that the “Republic of China” has gained increasing support from both the KMT and the DPP, as seen by recent and more vivid showings of the ROC flag in various public gatherings by political groups with different ideological dispositions.

Taiwan’s unwillingness to be affiliated with PRC governance has made maintaining the cross-Strait status quo the preference for the majority of Taiwanese citizens, told by various surveys conducted since 2000. The supporters of both “unification as soon as possible” and “maintain status quo, but move toward unification” with China combined to register a minority opinion of lower than 10% in 2012.⁷² The survey results imply that the identity shift over time and the separate track of social development have shattered

71. “Changes in the Taiwanese/Chinese Identity of Taiwanese as Tracked in Surveys by the Election Study Center, NCCU (1992-2012.06),” Election Study Center, National Chengchi University, <esc.nccu.edu.tw/english/modules/tinyd2/content/TaiwanChineseID.htm>. Similar situation occurred in in German public opinion pools concerning what “Germany” is in the 1970s and 1980s. See Gebhard Schweigler, “German Questions or the Shrinking of Germany,” *The Two-German States and European Security*, ed. by F. Stephen Larrabee (New York: St. Martin’s Press, 1989), 102.

72. “Changes in the Unification-Independence Stance of Taiwanese as Tracked in Surveys by the Election Study Center, NCCU (1994-2012.06),” Election Study Center, National Chengchi University, <esc.nccu.edu.tw/english/modules/tinyd2/content/tonduID.htm>. A similar trend is also confirmed by the 2011 Taiwan National Security Survey, Duke University, February 24-27, 2011. See the result in Table C10.

THE MUTUAL NON-DENIAL PRINCIPLE

39

essential components of “Chinese” nationalism that held sway in the past. As Benedict Anderson described, nationalism has been a key source in sensitizing different narrative discourses to mold imagined political communities. Nevertheless, the changing nexus of time-space can result in people of the same ethnic and cultural origin drifting into heterogeneous identities from an otherwise commonly shared nationalism.⁷³ Regrettably, the Chinese government has neither understood nor sympathized with the emergence of Taiwan’s indigenous identity since the late 1980s.

In a nutshell, if unification remains a core interest for China, this should be a serious concern. The widening identity gap can be partially attributed to the persistent efforts of former Taiwanese leaders to lessen Chinese essence in social constructs and to carefully craft and effectuate a separate national identity. Nevertheless, Beijing should also take part of the blame for emphatically prohibiting Taiwan from co-sharing the domain of China in international society. Hence, one should not be surprised to learn that more than 70% of the respondents of the 2011 Taiwan National Security Survey considered Taiwan as an independent sovereign state, officially called “the Republic of China,” without any necessity of declaring independence.⁷⁴

The loss of the political representation of “China” in the international arena further precipitated Taiwan’s questioning of the purpose and utility of its socio-political linkages to China. This not only alienated the Taiwanese public from having any significant identity linkage with China, but also prompted Taiwan to seek a proper nomenclature to illustrate its own identity. China’s domineering style and “bossy” attitude towards Taiwan, treating Taiwan as an inferior, regional counterpart, like Hong Kong, in its asymmetrical positioning toward China, has precipitated the trend of Taiwanese alienation and drifting away from the PRC’s self-defined version of “China” and “Chinese.” Instead, it has proven what former Taiwanese governments have long preached: China’s intent to surround, shrink, and suffocate Taiwan’s international space in order to bring Taiwan to its knees using diplomatic pressure. As a defensive mechanism, the Taiwanese public as well as socio-political

73. Elizabeth A. Povinelli, “Citizens of the Earth,” in *Varieties of Sovereignty and Citizenship*, ed. Sigal R. Ben-Porath and Rogers M. Smith (Philadelphia: University of Pennsylvania Press, 2013), 219-221.

74. The 2011 Taiwan National Security Survey, Duke University, February 24-27, 2011. See the result in Table C34.

elites naturally adopted a trenching mentality in resisting China's diplomatic pressures.

B. Identity as a Salient Issue in Taiwan's Domestic Politics and Foreign Policy

Taiwan's drift from a China-centered identity has impacted domestic political development. Like other democratic societies, Taiwan's policy agenda setting, design, and implementation are usually the result of a strategic game of "pulling and hauling" among multiple domestic actors, including political parties, social groups, and bureaucratic institutions. Since electoral victory is the prerequisite for governance in democracy, most actors will need to detect public sentiment and best reflect what the public wants in order to win an electoral mandate for political authority. In Taiwan's case, the presidential elections in both 2008 and 2012 were clear endorsements of Ma's cross-Strait proposals. Ma's moves for peaceful reconciliation since 2008 and his explicit declaration of "one 'Republic of China,' two areas" in his 2012 inaugural speech have been important signals in Taiwanese politics, which have been tormented by a divided sense of national identity for decades. Ma's announcements also fall within the spirit of the 1992 Consensus as a baseline for reconciliation.

Regardless, to expect Ma to have a giant leap forward beyond what he has proclaimed would be unrealistic in light of Taiwan's identity division and competitive party politics. His positive outreach still depends on China's favorable return to make gradual progress. Taiwan's requests for international participation require both sides to work in a somewhat synchronized manner. China could reciprocate by consolidating Ma's proclamations by accommodating Taiwan's international space expansion. This would help Ma's policy effectiveness, tone down Taiwanese criticism of China's suppression of Taiwan's international participation, and abate the Taiwanese public's suspicion of China's cross-Strait overtures.

Here, the claim that international institutions are primarily a reflection of the balance of national power underestimates both the intricacies of strategic interactions among domestic actors with diverse preferences, and the uncertainties embedded in the aggregating mechanism of domestic politics in a democratic society.⁷⁵ While

75. For discussion of the interaction between domestic politics and international politics, please see John Mearsheimer, "The False Promise of International Institutions," *International Security*, 19(3), 1994/95, 7; Helen V. Milner, "Rationalizing Politics:

THE MUTUAL NON-DENIAL PRINCIPLE

41

China has stressed government-to-government interactions with Ma's administration in dealing with the issue of international institutions, China's imposition of its self-defined "one China" policy, uncompromising attitude, and "bullying" style of diplomacy have created concerns about Taiwan's future association with China amongst the Taiwanese public. This has offered a political agenda for Taiwanese parties to mobilize and gain electoral advantages. Identity division between political parties has made any cross-Strait policy deliberation loaded with anxiety, distrust, and suspicion of selling Taiwan to China's exploration and penetration. A significant proportion of "Sino-skeptic" Taiwanese, along with the opposition parties, believe that the island nation would be at risk if it deepens its ties with the "big and bossy" China. Any simple cross-Strait interaction is intensely examined by media and political parties, and offers ample reasons for Sino-skeptics to jeer, not cheer, as much as possible. Any of Ma's moderate pragmatic initiatives concerning China have to combat opponents' "pull up the drawbridge" approach to cross-Strait relations, as evidenced in the approval process of the Economic Cooperation Framework Agreement (ECFA) for the reduction of trade barriers in 2010, and the Agreement on Trade in Services in 2013 for mutual market access and transparency.

Moreover, this is not merely a domestic political issue, but also a concern for Taiwan's allies because Ma's 2008 initiative of cross-Strait rapprochement could redraw Taiwan's relations with its allies, particularly the US and Japan, in equal measure. The East Asian strategic landscape and regional security would look very different shorn of its useful counterweight to the rapid expansion of China's powerful ascendancy. Even so, both the US and Japan also encountered similar tasks of reevaluating their approach to China in light of China's inevitable and immeasurable presence.

China's failure to realize the collateral impacts of its rigid "one China" principle on Taiwan's pluralistic society surely explains why it has had a tough time converting unfavorable public sentiment within Taiwan toward China's policy. After all, Ma's policy of "dignity, autonomy, pragmatism, and flexibility" in managing Taiwan's foreign affairs and cross-Strait relations is derived from the convergence of domestic preferences and pressures. Thus, China's current priority should focus on the cultivation of a friendly political atmos-

phere toward Taiwan in order to win over Taiwanese hearts and minds in a bottom-up approach to influence Taiwanese government policy.

Hence, in an asymmetric balance of tangible power across the Taiwan Strait, a feasible deal would require the stronger party (i.e., China) to give extra latitude for a better offering to convince the weaker party (i.e., Taiwan) to reach a solid institutional commitment. This is because the stronger party has abundant resources to spare, and the weaker party often harbors anxiety and fear of future uncertainties in any institutional deal. Particularly, when the power gap between them widens, the weaker party will request further concessions from the stronger in order to place additional constraints upon the stronger party. On the other hand, the more the stronger party can credibly restrain itself and make “above and beyond” concessions, the more likely the weaker party will be inclined to seriously consider an institutional bargain with its stronger counterpart.⁷⁶ This line of thinking echoes what Mensius stated before: “The superior will treat the inferior with compassion; the inferior will deal with the superior with wisdom.” (*Dashiao yiren; xiaoshida, yizhi*).⁷⁷ In the case of cross-Strait relations, the situation is even more complicated in that Taiwan has US support to mitigate China’s compelling threats. China’s suppression of Taiwan’s international space only increases the Taiwanese people’s and Chinese leaders’ fear that China will exploit them further in the future and drive Taiwan closer to the US.⁷⁸ Therefore, China’s generous concessions signal a strong commitment to be self-constrained by an institutional deal, which attempts to trade short-term benefits for long-term gains.

China actually can receive multiple benefits by promoting Taiwan’s international participation in IGOs. First, it could defuse rhetorical power and sentiment of anti-Chinese opponents within Taiwan. Second, China could also create a boomerang effect to gradually tone down the feverish sentiment of nationalism within China for a reasonable and rational approach to cross-Strait rela-

76. Please see G. John Ikenberry, *After Victory: Institutions, Strategies, Strategic Restraint, and the Rebuilding of Order after Major Wars*. Princeton, NJ: Princeton University Press, 2000, 4-5; G. John Ikenberry, “State Power and the Institutional Bargain,” 50-54.)

77. See Mensius, *Lianghuiwang pian* (the volume of King Lianghui). President Ma frequently cited this statement to support his rapprochement policy toward China.

78. Todd S. Sechser, “Goliath’s Curse: Coercive Threats and Asymmetric Power,” *International Organization*, 64(4), fall 2010, 627-660.

tions. Third, it would improve China's global image as a benevolent power, responsible stakeholder, and pragmatic actor in regional and international affairs. Overall, this would aid China's aspiration for a "peaceful rise" in the world arena. As mentioned earlier in reference to Habermas's insights, any utterance of norms and principles in communicative action represents both the factual presentation of the reality and legitimizes the interpersonal relations as well as the particular vision and wish of the initiator (Taiwan) and respondent (China).⁷⁹ These multiple benefits of China's concession effort could be examined in two interrelated issues: one dealing with Taiwan's nomenclatures, and the other addressing Taiwan's membership status.

C. The Utility of Naming for Social Reconstruction

Several suggestions are worth considering. First, China should not impose its ideal nomenclature of Taiwan, such as "Taipei, China" or "Taiwan, China." Both names carry a negative implication and have been adamantly rejected by Taiwan.⁸⁰ Hence, "Chinese Taipei" seems to be an unobjectionable choice for both sides because it meets both Taiwan's wish for political distinction and China's interest in keeping "China" as part of Taiwan's nomenclature. Frankly, the term "Chinese Taipei" has become a nominal substitute for Taiwan's representation in international participation since its inception for Taiwan's participation in the Olympic Games in the early 1980s, though both sides might not rank this nomenclature high on their preference lists. China's claim in its 2000 White Paper that "Chinese Taipei" is "only an *ad hoc* arrangement and cannot constitute a model applicable to other inter-governmental organizations or international gatherings" has, in reality, actually been modified.

Second, China should not object to a nomenclature falling within the IGO premises of membership, such as Taiwan's name as

79. Habermas, *Communication and the Evolution of Society*, 67.

80. Semantic differences of nomenclatures signify various identity perspectives and political implications. "Chinese Taipei" will be a better choice because the word "Chinese" carries a broader implication beyond politics, should Taiwan's official title, "Republic of China," be unattainable. Still, the translation of "Chinese Taipei" in Chinese should be "Zhonghua Taipei," not "Zhongguo Taipei," because the Chinese translation of "Zhongguo Taipei" still implies China's authority over Taiwan. See David W. F. Huang, "Shitan liangan hejiexia Taiwan canyu guoji zuzhi zhi falu jichu" (Exploring the Legal Bases of Taiwan's Participation in International Organizations in the Contest of 2008 Cross-Strait Rapprochement), *Taiwan guojifa jikan* (Taiwan International Law Quarterly), 5(4), 2008, 81-83.

a separate customs territorial entity in the WTO, as long as the specific IGO accepts non-sovereign state entities for membership. Since Taiwan remains out of China's administrative control, China's acceptance of Taiwan's IGO membership with limited rights is merely to meet the Taiwanese people's welfare, domestic satisfaction, and management of the global commons. Such a "non-sovereign state" membership status is rarely treated as recognition of statehood by the international community. In reality, it is simply a pragmatic expression of Ma's assertion of "mutual non-denial of governing authority" to ensure the inclusion of Taiwan in a seamless coverage of global resource management.⁸¹ Until now, both sides should have developed a list of mutually non-objectionable nomenclatures based on past practices for Taiwan's international participation.

Third, China's conciliatory move in naming within the broad confines of "one China" would carry beneficial socializing effects by injecting some elements of "Chineseness" into media, political discussion, and daily references to Taiwan at the onset and hopefully influence and reorient various political actors' subjective and inter-subjective preferences in the construction of their individual interests.⁸² This would socialize each side's domestic constituencies as well as international audiences for gradual convergence and integration of mindsets. Unnecessary disputes and disruption on the nomenclature issue would only add fuel to the fire of Taiwan's domestic politics, and simultaneously toughen the uncompromising stance of Chinese nationalists. On this point, China's willingness to make concessions represents a blend of realistic calculations to entice Taiwan into a joint liberalist conviction in an institutional framework based on the 1992 Consensus, and to rope Taiwan into the identity confines of a broader meaning of "China." The practice of "mutual non-denial" of governance authority in each side's territorial control in international participation would reinforce the "one China" principle.

With China's increasing influence and power in world politics, China effectively holds a quasi-veto power over any of Taiwan's attempts for sovereign recognition in IGOs. As long as the representative title of Taiwan does not seriously deviate from the essence of

81. As for the analysis of "mutual non-denial of governing authority," please see Chun-I Chen, "Legal Aspects of Mutual Non-Denial, 111-127.

82. Colin Hay, "Ideas and the Construction of Interests," in *Ideas and Politics in Social Science Research*, ed. Daniel Béland and Robert Henry Cox (New York: Oxford University Press, 2011), 65-82.

the 1992 Consensus, China should take this golden opportunity to employ Taiwan's IGO and INGO participation to conceptualize, contextualize, and construct a broadly and loosely defined "one China" concept.

D. Bring It In: Taiwan's Membership Status

As for Taiwan's application for IGO membership, China has frequently cited the difficulty of changing the strict membership requirements stipulated by the constitutional conventions of the IGO, which tends to accept only state members. However, as past examples of the UN's acceptance of new members have shown, political discretion toward geopolitical concerns, ideological considerations, and political reality have undoubtedly played a large role in membership approval. There are cases in which countries have been granted IGO membership even prior to their UN membership, as testified by the FAO (Food and Agriculture Organization of the United Nations) memberships of Burma/Myanmar (FAO membership in 1947, UN membership granted in 1948) and Indonesia (FAO membership in 1948, UN membership established in 1950). Namibia even acquired IGO memberships in 1977 through a UN General Assembly Resolution long before its eventual independence in March 1990. As Rosalyn Higgins, the former President of the International Court of Justice, 2006-2009, judiciously indicated, the admission to the UN specialized agencies has shown a sense of pragmatism in their experiences in granting new membership. Some constitutions of the UN specialized agencies have not used the term "state" as a requirement of membership, and non-UN membership has not been an adamant prior condition which prevented legitimate political entities from being admitted to UNESCO, ICAO, the WHO, the UPU, and the ILO. Higgins even pointed out that political entities with controversial international status and an inability to secure "state" membership for the UN can bring a dispute to the attention of the General Assembly or be invited to appear before the Security Council, without a vote, to participate in the discussion for the purpose of peaceful settlement of disputes under Article 32 and Article 35(2) of the UN Charter. In a similar design, Art. 93 of the Statute of the International Court of Justice (ICJ) also encourages non-UN members to join the ICJ to employ the judicial mechanism for conflict resolution.⁸³

83. Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (New York: Oxford University Press, 1994), 41-42.

Consequently, after examining multiple practices of IGO memberships in the past, Robert H. Jackson declared that political expediency has striven to include various quasi-states similar to Taiwan in international institutions with the idea that “. . . international law adapting to the new, inclusive, pluralistic, egalitarian, and far flung community of states, by a definite and indeed pronounced loosening of empirical qualifications on sovereign statehood.”⁸⁴ Political entities without UN membership could be invited and granted observer status, or even full membership in accordance with the specific IGO’s constitutional provisions and political contexts. It is self-evident that the admission of members can be permitted by reasons other than strict constitutional provisions in the convention.⁸⁵

That being said, it does not mean Taiwan’s increased international participation would be easy. For example, despite its status as a non-ICAO (International Civil Aviation Organization) member, Taiwan’s Taoyuan international airport was ranked 16th in the world in terms of the number of international passengers embarked and disembarked in 2012.⁸⁶ In June 2013, the US House of Representatives and Senate consecutively passed bills to endorse Taiwan’s bid for observership in the triennial ICAO’s Assembly meeting scheduled to take place in September 2013 in Montreal, Canada. After the US granted Taiwan visa waiver status in 2012, proponents of the bill claimed that Taiwan’s participation in the ICAO increases the safety and security of travel across the Pacific.⁸⁷ And finally, on September 14, 2013, ten days before the ICAO Assembly meeting, the ICAO Council President invited Taiwan’s Civil Aeronautics Administration Director-General to attend the ICAO Assembly meeting as a “guest,” rather than “observer,” due to the lack of consensus among ICAO members regarding Taiwan’s international status.

84. Robert H. Jackson, “Quasi-Sates, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the third World,” *International Organization*, 41(4), 1987, 531.

85. White, *The Law of International Organizations*, 58-62.

86. Taiwan’s Taoyuan International Airport was ranked 19th airport in terms of the number of passengers in 2011. See International Civil Aviation Organization (ICAO), *Annual Report of the Council, 2011*, Documentation for the Session of the Assembly in 2013, Doc 9975, published in 2012, 10. As for the 2012 data, please see Airports Council International’s Monthly Traffic Statistics Collection. <www.aci.aero/Data-Centre/Monthly-Traffic-Data/International-Passenger-Rankings/12-months>.

87. “US Senators Hail Passage of Bill Supporting Taiwan’s ICAO Bid,” *Focus Taiwan* (news channel), June 22, 2013, <focustaiwan.tw/news/aall/201306220023.aspx>.

THE MUTUAL NON-DENIAL PRINCIPLE

47

Taiwan has been absent in the deliberation and decision-making of ICAO rules since Taiwan lost its UN seat in 1971, though Taiwan is in charge of the Taipei Flight Information Region, a crucial air traffic area in northeast Asia. Without the membership privilege of learning the details of ICAO's standards and code, Taiwan has had to rely on the goodwill of friendly allies to deliver and share technical and safety information in a delayed fashion, including the ICAO's mandatory Universal Security Audit Program launched in November 2002.⁸⁸ Most of the time, Taiwan's air traffic system compatibility has had to rely on the US for audits to ensure its compliance with the ICAO Standards and Recommended Practices (SARPs). Not being a member of the ICAO has also delayed the timely and effective implementation of international compatible rules and regulations in Taiwan's international aviation traffic to more than 100 international destinations as well as more than 600 plus cross-Strait weekly flights in 2013. In the past, miscommunications have occurred when Taiwan's aviation control has failed to keep abreast of rapidly changing technology and route procedures affecting the Taipei Flight Identification Region (TFIR) approved by the ICAO.⁸⁹ When Obama signed H.R. 1151 into law, supporting Taiwan's request for ICAO observer status in July 2013, China's official response was that foreign interference in Taiwan's IGO participation merely complicated the issue. China claimed that Taiwan's participation was more of an "internal matter" and that consultation should take place between the two sides without third party intervention.⁹⁰ In fact, China's snail-pace response to Taiwan's IGO requests made since Ma's 2008 inauguration was intended to increase pressure on Ma to actively engage in serious political dialogues with China regarding Taiwan's sovereign statehood and its subordinate position within China's interpretation of the "one China" principle.

88. Chi-kuo Mao, "Allow ROC's Place in ICAO," *The Korean Times*, Sept. 20, 2010. <www.koreatimes.co.kr/www/news/opinion/2010/09/167_73382.html>; Halina M. Biernacki, *The ICAO Aviation Security Program*, <www.icao.int/Meetings/FAL12/Documents/Biernacki.pdf>. For a brief understanding of ICAO, please see Louis Henkin, Richard Crawford Pugh, Oscar Schachter, and Hans Smit, *International Law: Cases and Materials* (St. Paul, Minn.: West Publishing, 1993), 3rd edition, 1476-78.

89. "Ma ganxie mei zhichi" (Ma Appreciated US Support), *United Daily*, July 14, 2013, p. A2; David Brown, "Time Taiwan Joined Global Air-Safety Body," *Asia Times*, May 22, 2013. <www.atimes.com>.

90. China's complaints were based on the author's interview with Chinese scholars on cross-Strait relations in Shanghai, July 21-25, 2013.

Candidly speaking, Taiwan's admission to the ICAO would also ensure better business practices in air traffic safety regulations and standards compatible with the ICAO's guidelines. After all, the ICAO is a technical organization with "many good reasons to bring everyone in," as David MacKenzie has concluded, rather than keep any state or political entity out.⁹¹ Surely, as required, Taiwan's membership application for the ICAO will need a four-fifths vote of the 191 member states in the Assembly (as of 2011).⁹² As one of the Security Council's permanent members with veto power, China's decision will greatly influence Taiwan's application for observer status in the ICAO. Despite the requirement of a four-fifths majority, China's implicit or explicit stand of non-opposition to Taiwan's observer status would definitely facilitate Taiwan's membership application. In other words, if China's opposition is the paramount barrier to Taiwan's membership application, then the easy way to cut the Gordian Knot is China's explicit non-opposition to Taiwan's application. If full membership is unlikely due to China's strong objection, Taiwan must pursue observership status without voting rights. If granted, China would virtually hold the veto power to check any of Taiwan's future moves to gain full sovereign state membership. In this way, Taiwan could fulfill its goal of meaningful participation while China retains its control of Taiwan's membership status. Interestingly, the eligibility of ICAO membership does not require the applicant to first be a UN member in order to be eligible for ICAO membership, as exemplified in the case of Switzerland, who became a member of the ICAO long before joining the UN.⁹³

If China becomes concerned about Taiwan's maneuvering to gain full state membership through observership, China could request that the Assembly prescribe conditions to protect China's vital interests as quid pro quo of the approval of Taiwan's observer

91. David Mackenzie, *ICAO: A History of the International Civil Aviation Organization* (Toronto: University of Toronto Press, 2010), 217.

92. Ministry of Foreign Affairs, Taiwan, "Taiwan's quest for meaningful participation in the International Civil Aviation Organization," April 2011, <www.mofa.gov.tw/Organizations/TwoColumnList/TwoColumnListNews/?opno=63b9b1ed-faed-4830-91b7-cc6797ee34d9>; "Taiwan Seeks to Join ICAO Technical Meetings," September 27, 2010. <www.chinapost.com.tw/taiwan/national/national-news/2010/09/27/274076/Taiwan-seeks.htm>.

93. Mackenzie, *ICAO: A History*, 218.

THE MUTUAL NON-DENIAL PRINCIPLE

49

status.⁹⁴ Here the idea of China's prescription of conditions of Taiwan's application comes from Article 93 of the ICAO Convention, which stipulates that those enemy states of World War II seeking admission to the ICAO can be subject to "conditions as the Assembly may prescribe." In other words, the past practices of Article 93 could be a precedent for China's handling of Taiwan's application. Even Article 92(a) of the 1944 ICAO Convention states, "this Convention shall be open for adherence by members of the United Nations and States associated with them, and States which remained neutral during the present world conflict" – this can become a creative way to admit Taiwan. Although the second part of Article 92(a) on states with neutrality refers to those parties adhering to the Declaration of United Nations in 1942, it should not be an insurmountable barrier for ICAO members to offer an innovative interpretation of limited membership to Taiwan, with China's consent.⁹⁵ In reality, the ICAO admitted some former enemy states, such as Romania in 1965, Bulgaria in 1967, and Hungary in 1969, without subjecting them to a four-fifths majority vote as required by the ICAO convention.⁹⁶ The message is clear: if there is a will, there is always a way to resolve the issue of Taiwan's expansion of space for international participation.

In fact, in the ICJ's advisory opinion of the *First Admissions Case* in 1948, upon a request made by the UN General Assembly in 1947, regarding applications for UN memberships by several states, the court concluded that member states do not need to explain the grounds of their voting decisions.⁹⁷ In other words, in the world of political reality, there is no obligation for China to elaborate upon its reasons to support Taiwan's application for IGO membership as long as Taiwan acts within the realm of the "one China" frame-

94. Mackenzie, *ICAO: A History*, 75. The Convention on International Civil Aviation Organization is available in <www.icao.int/publications/Pages/doc7300.aspx>; *Convention on International Civil Aviation Organization*, 9th edition, 2006, Doc 7300/9.

95. White, *The Law of International Organizations*, 60.

96. Niels M. Blokker, Henry G. Schermers, *International Institutional Law* (Leiden: Brill, 2011), 5th ed., 82-83.

97. "As a Member who votes is entitled to do so without giving any reasons for his vote, he may act in accordance with his own view of the case." International Court of Justice, *Conditions of Admission of a State to Membership in the United Nations* (Article 4 of the Charter), May 28, 1948, General List No. 3, 1948 I.C.J. 57, p. 36. <www.ilsa.org/jessup/jessup07/basicmats/icj_advisory_opinion.pdf>. For further elaboration, see C. F. Amerasinghe, *Principles of the Institutional Law of International Organizations* (New York: Cambridge University Press, 1996), 105-110.

work. China's non-obstructionist act of goodwill would facilitate Taiwan's participation in international affairs.

In essence, observer status or other non-full membership without voting rights does not constitute an automatic entitlement to the rights of full membership, which usually requires additional action to cross the IGO threshold. Nevertheless, the common idea of universal representation in IGOs refers to not only "universal representation of states," but also "universal representation of territories," which are not under any state member's effective governance.⁹⁸ In accordance with its Standing Rules of Procedure of the Assembly of the ICAO, non-contracting states and international organizations duly invited by the Council or the Assembly may participate in Assembly sessions as observers without voting rights.⁹⁹ Hence, the claim that the ICAO's decision to invite Taiwan to participate in the 2013 ICAO Assembly meeting as the ICAO Council President's "guest," rather than an "observer," with China's immediate comment of its show of "good will" toward Taiwan indicated China's significant weight behind the scenes.¹⁰⁰ In fact, over 40 observers representing international organizations, non-full sovereign entities, and enterprises in the aviation industry have been invited to attend the ICAO meetings as observers in the past.¹⁰¹ For example, after the Palestinian Liberation Organization (PLO) became an ICAO's non-voting observer in 1974, its attempt to gain full membership was still blocked in 1989 by the US.¹⁰² US

98. Michael Sheng-ti Gau, "Guoji minhang zuzhi guanchayuan zhidu ji lingyu daibiao pubianhua zhi gainian" (ICAO System of Observership and the Concept of Universalization of Territorial Representation), *Soochow Law Journal*, 11(1), 1998, 73-112.

99. *Standing Rules of Procedure of the Assembly of the ICAO*, Doc 7600/7, 7th ed., 2012, Adopted by the Assembly in 1952 (Resolution A6-12; Doc 7670). Articles concerning observer can be seen in 5, 25, 26, and 43. <www.icao.int/publications/Documents/7600_7ed.pdf>. The ICAO's *Rule of Procedure for the Council* also contains provisions regarding observers. See Michael Milde, *International Air Law and ICAO* (Portland, Oregon: Eleven International Publishing, 2008), 145.

100. Lawrence Chiu and Y.F. Low, "China Says Taiwan's ICAO Invitation a Show of China's Good Will," *Focus Taiwan*, News Channel, Sept. 13, 2013, <focustaiwan.tw/news/acs/201309130016.aspx>

101. "In Support of Taiwan's Observership and Meaningful Participation in the ICAO," April 18, 2013. <www.thevoiceslu.com/features/2013/april/18_04_13/In_Support.htm>.

102. The ICAO voted to allow the PLO to become a non-voting observer in 1974 to attend the regional meeting but only as a member of the delegation from the Organization of African Unity, African Union, or the Arab League. In 1977, the ICAO voted again to permit the PLO to attend ICAO meetings with 70 countries in favor, 33 countries in abstention, and three countries (the US, Israel, and South Africa) in opposition.

THE MUTUAL NON-DENIAL PRINCIPLE

51

conditions restraining the PLO's ICAO membership status could be a model for China to emulate.

With a prior arrangement of conditions for Taiwan's membership, China could impose conditions to bind Taiwan within the specific IGO. Meanwhile, China could also lay out thresholds to bail Taiwan out of the IGO. Although there are variations in constitutional provisions of membership in other functional IGOs with technical aspects, such as the United Nations Framework Convention on Climate Change (UNFCCC) and the World Meteorological Organization, Taiwan's admission to the ICAO with proper membership status, rather than an *ad hoc* "guest" in the case of 2013 ICAO Assembly meeting, would pave the way for other organizations to explore. In this case, Taiwan may be able to request admission to the annual Conference of Parties of the UNFCCC in accordance with Art 7(6) of the Convention, as long as no more than one third of the Parties present object to a nomenclature accepted by both Taiwan and China.¹⁰³ As of 2013, Palestine, the Vatican, and South Sudan are observers of the UNFCCC. The acceptance of Taiwan to the UNFCCC conference would make the global network of climate change missions more complete. The same applies to the mission of the World Meteorological Organization, an IGO of 185 state members and six territories including "Hong Kong, China" and "Macao, China." Taiwan lost its WMO membership in 1972 after China's entrance to the UN.

Therefore, should a single IGO, China, and Taiwan achieve an acceptable compromise, the chapter on Taiwan's repeated moves to

"PLO Gets Observer Status in the ICAO," The Global Jewish News Source, Oct. 5, 1977. <www.jta.org/1977/10/05/archive/plo-gets-observer-status-in-the-icao>. This is not to say that the US is capable of preventing PLO from changing its status from observer to full membership. A good example is the PLO's bid for full membership in the UNESCO on Oct. 31, 2011 with several political ramifications to the US and Israel. See Institute for Middle East Understanding (IMEU), "Fact Sheet on the PLO's Bid for UNESCO membership," Oct. 31, 2011. <imeu.net/news/article0021674.shtml>. BBC New, Middle East, "Palestinians' Upgraded UN Status," November 30, 2012. <www.bbc.co.uk/news/world-middle-east-13701636>.

103. Art. 7(6), UNFCCC, stipulates that "The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Anybody or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties."

employ international participation as a publicity stunt for the cause of achieving sovereignty for Taiwan will close. Cross-Strait relations will then shift increasingly toward bilateral interactions without much disruption from the international community. Also, by accepting such a politically arranged deal of non-sovereign membership for Taiwan in IGOs, China benefits from Taiwan's consistent commitment to utilize the nomenclature of "Chinese Taipei" when joining IGOs. The recurrent confirmation of "Chinese Taipei" within the "one China" principle in various IGOs eventually creates a "legitimate clarifying process," in Thomas M. Franck's extrapolation, to fixate Taiwan's identity in agreements and mutual understandings for a "compliance pull" in international society and cross-Strait interactions.¹⁰⁴

All these scenarios rely on the acknowledgement of the mutual non-denial principle in governance authority to assist the legitimizing and clarifying process of the "one China" principle. When China chooses to embrace the mutual non-denial principle in spirit and action to promote Taiwan's international participation within the PRC's conditions, Taiwan's demands for full sovereignty in IGO representation will lose steam. As Huang cautiously noted, the legal implication of the continuous adoption of the title "Chinese Taipei" can inadvertently and gradually undermine the sovereignty and status implied by the use of the name "Republic of China" in international society.¹⁰⁵ Meanwhile, China is still haunted by the "shadow of the past" — Taiwan's aggressive assertion for its independence by former presidents and the Democratic Progressive Party — and the shadow of the future — the anxieties over Taiwan's cross-Strait policy shift due to regime change from a China-friendly governing party (KMT) to a China-hostile government by the DPP.¹⁰⁶ The interplay of dual shadows has made China cautious towards making any bold and creative moves. Unfortunately, the consequence has been an extremely conservative approach to Taiwan's requests for the expansion of its international space.

104. Franck, *The Power of Legitimacy*, 73, 80-88, 234.

105. Wei-feng Huang, "Shitan liangan hejiexia Taiwan canyu guoji zuzhi zhi falu jichu" (Exploring the Legal Bases of Taiwan's Participation in International Organization in the Context of 2008 Cross-Strait Rapprochement), *Taiwan guojifa jikan* (Taiwan International Law Quarterly), 5(4), December 2008, 63-94.

106. Based on the author's interview with Chinese scholars on cross-Strait relations, July 21-25, 2013, China's concerns are shown in its 'case-by-case' approach to Taiwan's request.

THE MUTUAL NON-DENIAL PRINCIPLE

53

Notwithstanding such concerns, such an arrangement considering Taiwan as a limited sovereign entity is not new for Taiwan. And the adoption and application of the mutual non-denial principle virtually reconciles irreconcilable positions of Taiwan's status for both sides across the Strait. Like other contested states, Taiwan has been treated as a non-full-sovereign state in some of its bilateral relations with allies since the 1970s, and its full maneuverability in a variety of international activities often has been constrained.¹⁰⁷

There are multiple advantages to accepting Taiwan, one of the contested states, in international institutions. The availability of the institutional network and mechanism serves as a mediated mechanism for contesting parties to solve issues of mutual concern without battling tenaciously over politically charged matters. Second, if one accepts the claims of the functionalist school in integration studies, one should hope that the "domestication" of reiterated interactions on the international level may nurture goodwill, establish a convenient precedent for future reference and adoption in other areas, and eventually firm up habits of cooperation and mutual trust. Third, multilateralism is an option to overcome the cross-Strait bilateral stalemate and to tone down the pressure of domestic politicking in each respective society. In the end, one important task for dealing with Taiwan's requests for more international participation is to envision and design an institutional arrangement acceptable to both sides with regard to the representative title, status, rights, and benefits of Taiwan's membership without arousing any fear of the recognition of sovereign statehood on the part of the challenging state.

VII. CONCLUSIONS: REFRAME AND REBUILD MUTUAL UNDERSTANDINGS

The traditional Westphalia concept of sovereignty has been constantly contested in the age of globalization and has to be modified to fit the specific time, place, and other circumstances. In particular, those political entities lacking *de jure* recognition, the so-called "contested states" like Taiwan, with uncertain and restrictive legal statuses in their proclamations of sovereignty, have faced unbearable challenges in participating in IGOs. Thus, they have had limited opportunities to benefit from the growing scope of international governance. The traditional emphasis on Westphalian sover-

107. J. Samuel Barkin, *International Organization: Theories and Institutions* (New York: Palgrave Macmillan, 2006), 49-50.

eighty has not ruled out the possibility for political entities, including a contested state like Taiwan, from seeking “a ticket of general admission to the international arena.”¹⁰⁸ Broad participation of multiple political actors closes the “jurisdiction gap” and enhances the legitimacy and representation of international institutions in the management of global public goods.¹⁰⁹ There are ample examples in which contested states have reached agreements, participated in international organizations, and secured resources for security maintenance and economic vitality. The failure to gain widespread recognition based on the Westphalian sovereignty model should not preclude Taiwan from engaging in activities that only recognition facilitates.

Dworkin’s words resonate with Taiwan’s public sentiment to expand its international space: “the right of a political community to treat its members as having obligations in virtue of collective community decisions — is to be found not in the hard terrain of contracts or duties of justice or obligations of fair play that might hold among strangers. . . but in the more fertile ground of fraternity, community, and their attendant obligations.”¹¹⁰ Thus, when political leaders and legal practitioners are searching for answers to a tough case like Taiwan’s membership status in IGOs or INGOs, one should recall Dworkin’s claim that the interpretation, argumentation, and application of institutional laws, in the case of Taiwan, should be perceived as a matter of communitarian interest and an issue of moral reasoning, rather than a predicable application of rules.

While institutions establish rules and regulations in their constitutions to control and circumscribe the behaviors of members, institutions and members should respond to new possibilities and fresh circumstances beyond the institution’s present positioning.¹¹¹ When past political strife about ideological beliefs, social norms, and governance styles unfortunately have led to long-standing divisions between political communities, one solution is to try to find a common ground by changing the character of the dispute and rede-

108. Krasner, *Sovereignty*, 16.

109. For a discussion of the jurisdiction gap, please see Inge Kaul, Isabelle Grunberg, Marc A. Stern, ed., *Global Public Goods: International Cooperation in the 21st Century* (New York: Oxford University Press, 1999).

110. Ronald Dworkin, *Law’s Empire* (Belknap Press of Harvard University Press, 1986), 206.

111. Ben Colder and Peter Fitzpatrick, *Foucault’s Law* (New York: Routledge, 2009), 79.

THE MUTUAL NON-DENIAL PRINCIPLE

55

fining the problem through practice. International institutions provide a perfect mechanism to bring cross-Strait relations into a co-constitutive process at both levels—among states and within states—through recognition of each side’s undeniable existence based on the mutual non-denial principle.¹¹² And the mutual non-denial principle is trying to find a common and consensual political frame in China. At the same time, this standard allows both sides to function internationally without piling up more hostilities.

Taiwan’s loss of international legal sovereignty in the 1970s has not condemned it to oblivion. Alternative arrangements by some countries, especially the US, have provided a functional equivalent of recognition for Taiwan’s continuous global operation.¹¹³ Facing China’s demands for unification, Taiwan’s global connection to and interaction with other states and non-state actors through IGOs and INGOs is essential for its political survival and economic prosperity. China’s active promotion of Taiwan’s space of international participation fits well into its national interests in recent promotion of law diplomacy in international institutions related to cross-Strait relations and global strategy.¹¹⁴ If a democratic Taiwan constantly faces China’s suppression in international participation, China is unlikely to present a wholly positive and benevolent image as a crucial element of China’s vision of *Pax Sinica* in world affairs. Taiwan’s request for the expansion of international space can be a good opportunity for both Taiwan and China to look good in the international community.

112. Nicholas Onuf, “Recognition and the Constitution of Epochal Change,” *International Relations*, 27(2), 2013, 121-140.

113. Krasner, *Sovereignty*, 18-19, 42, 70.

114. Wenxian Zhang and Zhaomin Gu, “China’s Law Diplomacy: Theory and Practice,” *Global Review*, summer 2013, 40-41.

