

# Taiwan and the Myth of UN General Assembly Resolution 2758

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At the [United Nations \(UN\) press briefing by the Office of the Spokesperson for the Secretary-General](#) on 27 March 2023, critical and long-overdue questions resurfaced. With the Secretary General portrayed as a champion for democratic values, why has the UN shut the door on Taiwan, the [most democratic country in Asia](#)? Why are citizens of Taiwan not even allowed to enter the premises of the United Nations—be it the headquarters in midtown Manhattan, or hundreds of other agencies worldwide? The spokesperson responded by reinterring the “one China policy” and maintained that only citizens of UN member states can enter the premises of the UN, which was soon contradicted by the practice of accepting Kosovo passports, as pointed out by the reporters at the press briefing. Why has Taiwan been excluded from the international community, in particular the UN system? Is this legitimate?

Questions as such touch upon the scope and application of UN General Assembly Resolution 2758, and the implications of China’s persistent strategy to inflate and distort it. In this post, we unfold the reasons for Taiwan’s long absence in international organizations, and its recent efforts to reengage. We then suggest the direction in which both the international community and Taiwan should move to better integrate Taiwan – a society with a vibrant democracy that upholds universal values – into international society. Before doing so, it is appropriate to take a closer look at what UN General Assembly Resolution 2758 says, how it differs from the PRC’s self-asserted “one China principle,” and explain how the PRC’s assertion of the “one China principle” is not supported by UN Resolution 2758.

## The Exclusion of Taiwan in International Organizations and Lack of Diplomatic Relations

This is unsurprising given China’s rise as a global power and omnipresent influence in the UN system and beyond. While attending [General Assembly debates](#) on 25 September 2022, China’s then Minister of Foreign Affairs, Wang Yi, stated, according to the press release of the ministry:

The one-China principle has become a basic norm in international relations and a general consensus of the international community. Fifty-one years ago, right in this august hall, the UN General Assembly adopted Resolution 2758 with an overwhelming majority, which decided to restore the lawful seat of the People’s Republic of China in the United Nations and to expel the “representatives” of the Taiwan authorities from the place which they had unlawfully occupied. Once and for all, Resolution 2758 resolved,

politically, legally and procedurally, the issue of the representation of the whole of China, including Taiwan, in the United Nations and international institutions. It completely blocked any attempt by anyone or any country to create “two Chinas” or “one China, one Taiwan.”

Interestingly, Taiwan’s Foreign Minister Joseph Wu, [in response to Honduras’ switching to the PRC during an interview](#), declared that Taiwan does not rule out the option of dual recognition by third countries, that is, the simultaneous establishment and maintenance of diplomatic relations with both the PRC and Taiwan. Vast changes in international politics in the past few months have presented a bewildering case of the absence of Taiwan from the international community, both in terms of its systematic exclusion from most international organizations and its diplomatic relations with major countries.

In our [previous post here on Verfassungsblog](#), we argue that Taiwan acquired its statehood through self-determination by virtue of constitutional amendment and the democratization process commencing in 1990s. Today, Taiwan possesses an international legal personality distinct from that of China. One question we left unanswered is why Taiwan is generally excluded from international community. A quick answer would be that international political reality is driven by power politics, and in that realm China has significant and prevalent influence. Apart from this *political* dimension, there is a *legal* aspect of this exclusion resulting from constant misinterpretation – or more precisely, a calculated strategy of [distortion by China](#) – of UN General Assembly Resolution 2758. The legal dimension and political dimension are intertwined and intermingled as China has long distorted and inflated UN General Assembly Resolution 2758 and argued, groundlessly, that its asserted “one China principle” derives from this resolution. Let us take a closer look at what UN General Assembly Resolution 2758 says and why the PRC’s self-asserted “one China principle” finds no place therein.

## What Does the UN General Assembly Resolution 2758 Say and Not Say?

On 25 October 1971, the UN General Assembly passed Resolution 2758 (XXVI), which basically stated that the PRC would be the only legitimate government of China recognized by the UN. Since then, the PRC replaced the Republic of China (ROC) as the sole legitimate government representing China, and took a seat as a permanent member of the UN Security Council. In the interest of clarity, we cite the resolution in full text below:

### THE GENERAL ASSEMBLY

Recalling the principles of the Charter of the United Nations.

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

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

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

## The Scope and Effect of UN Resolution 2758

Reading this passage, one would find that there is no mention of Taiwan, nor even of the ROC. Contrary to what the PRC persistently asserts, this resolution addresses only the representation of China in the UN, that is, the question of who is entitled to occupy China's seat in the UN. It does not, in any sense, touch upon the territorial title of Taiwan. In fact, a recent [report](#) published by the German Marshall Fund authored by Jessica Drun and Bonnie Glaser, details the historical context in which UN Resolution 2758 was passed. Competing proposals addressing the territorial title of Taiwan were advanced during the deliberation process, but did not obtain sufficient support. The majority of UN members agreed on the question of China's representation, but nothing more than that.

China has distorted and inflated the scope of this resolution in an attempt to invent a legal foundation for its "one China principle". In its recent [white paper](#) on "The Taiwan Question and China's Reunification in the New Era," the PRC has elaborated on its "one China principle", stating there is only one China in the world; Taiwan is an inalienable part of China; and the PRC is the sole legitimate government representing China." The white paper further argues that "[t]he UN General Assembly Resolution 2758 is a political document encapsulating the one-China principle whose legal authority leaves no room for doubt and has been acknowledged worldwide, says the white paper. The one-China principle represents the universal consensus of the international community; it is consistent with the basic norms of international relations." This syllogism constitutes the main thrust of the PRC's "one China principle", but the first two elements are far from clear or settled, in particular the question as to whether Taiwan is a part of China. As mentioned above, the UN Resolution 2758 is silent on this point and, as the historical evidence reveals, UN members were not able to agree on this point.

The PRC's assertion that its "one-China principle" has become a basic norm in international relations, and that there is a general consensus in the international community, is again twisting/perverting UN resolution 2758 and a malign interpretation of various "one-China policies" maintained by other countries. To begin with, *principles* obviously have different legal force than *policies*. China clearly knows this but is trying to conflate the two and confuse international community. Secondly, "a basic norm in international relations" (which seems to be invented by China as it rarely, if ever, appeared in international relations in the past century), also differs

from what is known in international law as “general principles of international law,” which has a clear definition and neat criteria. By using the wording ‘*basic norms of international relations*’, the PRC is trying to inject confusion, importing concepts that have legal binding force and general applicability into *policies*, which are by nature subject to change. Moreover, in a [report published by Carnegie Foundation](#), Ian Chong details different one China policies espoused by countries around the globe and concludes that while 51 countries agree fully on what the PRC terms “one China principles”. A large number of countries, however, only acknowledge or take note of, or in some cases in a stronger tone, recognize the PRC’s claim that Taiwan is part of China. By using these terms “acknowledge” “take note of” or “recognize,” these countries maintain an ambiguous posture on the question of whether or not they agree with, or are supportive of, the PRC’s claim that Taiwan is a part of China. In particular, the United States, while maintaining relations with the PRC adopted a “one China policy,” that [takes no position on the territorial title of Taiwan’s sovereignty, which in practical terms, means for the United States, Taiwan’s status is undetermined](#).

## **An Undue Practical Expansion of the UN General Assembly Resolution 2758**

In legal terms, UN General Assembly Resolution 2758 addresses only UN representation of China and does not touch upon the sovereignty of Taiwan. The PRC, since replacing the representative of Chiang Kai-shek and obtaining a permanent seat on the Security Council, has exercised its significant political and economic power to wield tremendous influence on various aspects of UN systems. This influence has translated into all sorts of measures that prevent Taiwan from having a presence, or participating, in the UN system and elsewhere.

In a letter of rejection to Nauru, a Pacific Island country which attempted to help deposit Taiwan’s ratification of the Convention on the Elimination of All Forms of Discrimination against Women, then Secretary-General Ban Ki-moon explained why he could not accept the instrument by referring to the UN General Assembly Resolution 2758. Ban [reportedly](#) said, “In accordance with that resolution, the United Nations considers Taiwan for all purposes to be an integral part of the People’s Republic of China.” This statement soon invited criticism from some UN members, notably the United States. According to former US-diplomat [John Tkacik](#), the US in July 2007, presented a nine-point demarche in the form of a “non-paper” to the UN Under-Secretary-General for Political Affairs that restated the position of the United States that it takes no position on the question of Taiwan’s sovereignty and specifically rejected the Secretary-General’s statement that the organization considers, “Taiwan for all purposes to be an integral part of the PRC.” Moreover, the former US ambassador to the UN, Zalmay Khalilzad, in a telegram mentioned that in discussions with the UN Secretary General, “[Ban said he realized he had gone too far in his recent public statements, and confirmed that the UN would no longer use the phrase “Taiwan is a part of China”](#)”. Australia, Canada, Japan, and New Zealand also consulted with the Secretary General and received the same commitment that the UN would no longer use that phrase.

Ban's statement exposes a few critical issues. First, given that the scope of UN General Assembly Resolution 2758 by no means addresses Taiwan's sovereignty, the UN may not use this as a legal basis to bar Taiwan from participating in its organizations. Second, who is entitled to interpret the UN General Assembly resolutions, and if the UN Secretariat, including its chief, moves beyond the boundary of administrative affairs, who is in a position to sanction or correct it?

On a more general level, the treatises of public international law make clear the lack of legally-binding effect of General Assembly resolutions. Accordingly to [James Crawford and Ian Brownlie](#), while General Assembly resolutions "may have direct legal effect as an authoritative interpretation and application of the principles of the Charter," they are normally considered as majority votes of the UN member states that "constitute[] *evidence* of the opinions of governments in the widest forum for the expression of [an] opinion" (emphasis original). [Malcolm Shaw](#) also stresses that "except for certain internal matters, such as the budget, the Assembly cannot bind its members. It is not a legislature in that sense, and its resolutions are purely recommendatory." Of course, each individual resolution should be read in light of the historical and political context upon adoption, while also making reference to the opinions of member states on the matter. The bottom line is, General Assembly resolutions are not legally binding, but just the majority opinion of the UN member states on a specific matter at a given time.

A related issue is the policy currently maintained by the UN that Taiwanese citizens, namely, those holding the passports of ROC, are not allowed to enter into the premise of the UN. Is this policy an undue extension and misinterpretation of the UN General Assembly Resolution 2758? Does this exceed the administrative discretion of the Secretariat? Or does it constitute discrimination as people holding the passports of Kosovo, which is also not a UN member, are allowed to enter the UN? Such issues fall well beyond the scope of this post, but call for a closer examination through the lens of [international public authority](#) or [global administrative law](#).

Finally, both within the UN system and beyond, Taiwan is referred to as "Taiwan, Province of China." This is common practice in UN agencies, and even organizations outside the UN family, notably under the [International Standardization Organization](#). According to ISO, "[\[s\]ince Taiwan is not a UN member it does not figure in the UN bulletin on country names. The printed edition of the publication \*Country and region codes for statistical use\* gives the name we use in ISO 3166-1. By adhering to UN sources the ISO 3166/MA stays politically neutral.](#)" Two more issues surface here. The first relates to the administrative discretion of the UN Secretariat. If the UN General Assembly Resolution 2758 does not address the sovereignty of Taiwan, is the Secretariat in a position to use the nomenclature of "Taiwan, province of China?" Secondly, is the ISO, an organization outside the UN system, by any means obliged to adhere to the UN practices? Again, UN General Assembly resolutions do not have legally binding power over members states, UN specialized agencies, not to mention organizations outside the UN system.

## Road Ahead? Drop the Strange Name of “Chinese Taipei” and Debunk the Myth of UN General Assembly Resolution 2758

Despite the clear scope and effect of the UN General Assembly Resolution 2758, China has persistently distorted and inflated the resolution to serve its interests for the unfounded “one China principle.” Due to the misinterpretation and undue expansion of this resolution, Taiwan has been largely excluded from the international community, in particular within the UN system. Taiwan, most frequently, participates in international relations under the strange name “Chinese Taipei,” [which finds its origin from the participation of both Taiwan and China in the International Olympic Committee and its relevant activities](#). Such nomenclature is followed in Taiwan’s participation in the World Trade Organization and Asia Pacific Economic Cooperation as separate customs territories. The use of “Chinese Taipei” in various fora has the value of convenience, flexibility, and practicality. Nonetheless, it places Taiwan’s sovereign character at risk as it appears that Taiwan does not see itself as a sovereign state in accepting the name of “Chinese Taipei.” It is thus imperative for Taiwan to rethink its adherence to this nomenclature.

Looking forward, it is essential for Taiwan to make clear that it is [a sovereign state distinct from China](#) (or a Chinese state, if translated literally from Mandarin), and is not represented by the PRC in the UN. President Tsai Ing-wen’s national day speech in 2021 reaffirmed her administration’s commitment that neither the [Republic of China, nor the People’s Republic of China, should not be subordinate to the other](#). However, this statement that neither of the two sides of Taiwan Strait is subordinate to the other does not necessarily lead to defining relations as “state-to-state” relations, although Tsai administration regularly reiterates that the ROC (Taiwan) is an independent country with sovereignty rested on its national population of 23 million people. Due attention should also be paid to the reference of Taiwan’s limited alliance to it. A tricky case in point is the President of Guatemala’s recent reference of Taiwan as the [“only and true China,”](#) which may fall into the trap of competing for the representation of China (the Chinese state). For this reason, Tsai’s utterance must be clearer, which may help to clear the doubts raised by James Crawford in his seminal [The Creation of States in International Law](#).

A sensible move for Taiwan is to continue to apply for UN membership. Taiwan previously did this under the administration of Chen Shui-bian, but quickly abandoned the effort cognizant of the slim chance of success, political cost, and the potential of Chinese sanctions. Nonetheless, the application for UN membership signifies Taiwan’s sovereign status. Moreover, whereas major countries are most likely to look on such applications with disfavor, they are possessed with an opportunity, by virtue of this application, to expose and counter China’s distortion and inflation of the resolution and express their views on the scope and effects of UN General Assembly Resolution 2758. It is abundantly clear that the General Assembly Resolution 2758 does not address the status of Taiwan whatsoever and China’s asserted “one China principle” finds no legal basis there.

