

Righting a Wrong:

Taiwan, the United Nations, and United States Policy



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Cover Image: A pro-Taiwan protester holds a flag during a demonstration outside of the United Nations offices on the opening day of the World Health Assembly (WHA), the World Health Organization's annual meeting, on May 22, 2017, in Geneva. Despite impassioned pleas from several countries, the World Health Organization's annual assembly refused on May 22 to even discuss admitting Taiwan to the meeting, in a move hailed by China. Self-governing Taiwan, which China sees as a renegade province awaiting reunification, has been invited to attend the WHO's main annual meeting as an observer every year since 2009, but this year it did not receive an invitation. (Source: “*Fabrice Coffrini*” / “*Getty Images.*”)

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Key Points

- United Nations General Assembly Resolution 2758, which expelled “the representatives of Chiang Kai-shek” from the UN, does not provide a legal basis for excluding the Republic of China (Taiwan) from the UN system. Chinese influence has led UN officials to misread the resolution.
- Taiwan’s participation in the UN system would be in full accord with international law, American law and policy, and the interests of a globalized world.
- Absent greater flexibility from Beijing regarding Taiwan’s engagement with the UN, the United States should launch a full court press to achieve Taiwan’s formal membership.

Introduction

On September 21, 1999, a 7.6-magnitude earthquake struck Taiwan, causing 2,400 fatalities and 11,000 injuries. Buildings crashed to the ground, bridges crumpled, roads buckled.¹ Some 300,000 people faced homelessness.² Financial and property losses amounted to between U.S.\$10 and \$12 billion, and parts of the island’s landscape were permanently altered.³ But because Taiwan is not a member of the United Nations (UN), and because China claims Taiwan as its own, the UN Office for the Coordination of Humanitarian Affairs (OCHA) faced complications in mounting a rapid response. The delay was minor but eye-opening.

Hours after the earthquake hit, OCHA’s first situation report indicated that the office was “in contact with the United Nations Resident Coordinator in Beijing, China, who is monitoring the development of the situation through the national authorities in charge.”⁴ The national government in Beijing, of course, had little insight into developments in Taiwan and certainly no authority to respond. On September 22, OCHA official Rudolf Mueller explained, “We are awaiting China’s official position indicating it would welcome assistance.” OCHA received Beijing’s “welcome” later that day. Meanwhile, the international community leapt into action, with 700 rescue workers from around the world beginning to arrive within days.⁵

In this particular instance, Taiwan’s exclusion from the UN turned out to be more a nuisance than a major problem. On the other hand, it was clear that having to rely on Chinese beneficence was not a comfortable state of affairs for Taiwan’s people. But 21 years later, Taiwan remains on the outside looking in. The UN General Assembly (UNGA) and UN agencies do not welcome Taiwanese officials at their meetings, deny Taiwanese passport holders access to their buildings, and pressure non-governmental organizations that work with the UN to ensure paperwork and websites do not refer to Taiwan as a country. Even as the pandemic has raged, the World Health Organization (WHO) has kept Taiwan at arm’s length, despite Taiwan’s early and effective response and Taipei’s eagerness to share its lessons learned.

It has now been a half-century since the United Nations expelled the representatives of the Republic of China (ROC, Taiwan) and seated in their place delegates from the People’s Republic of China (PRC, China). That expulsion was always contrary to American interests, but the negative implications have grown even more significant and more apparent in recent years. As the U.S. Ambassador to the United Nations, Linda Thomas-Greenfield, put it during her confirmation

hearing, “China is working across the UN system to drive an authoritarian agenda that stands in opposition to the founding values of the institution, American values.”⁶ Washington, then, needs all the help it can get within the UN. What is more, in preventing Taiwan’s participation in the WHO, the International Civil Aviation Organization (ICAO), and the UN Framework Convention on Climate Change (UNFCCC), for example, Beijing is putting its parochial self-interests ahead of combating pandemics, ensuring the safety of civilian air travel, and responding to climate change. Quite simply, Taiwan’s ongoing exclusion from the UN system is a national security concern for the United States.

In this paper, we explore the history leading up to Taiwan’s expulsion and the legalities involved. Next, we explain why Taiwan’s more fulsome engagement with the UN aligns with American interests. Finally, we offer policy prescriptions for Washington and Taipei as they seek to redress this 50-year injustice.

Historical Overview: The Republic of China's Expulsion from the UN

The “China seat” in the UN became a matter of international concern – and international consequence – not long after the founding of the People’s Republic of China in October 1949. In January 1950, the Soviet Union proposed to the UN Security Council (UNSC) the expulsion of ROC representatives from the UN and their replacement with a PRC delegation. The motion failed, and the Soviet Union staged a months-long boycott of UNSC meetings, ironically making it possible for the passage of UNSC Resolution 82 in June 1950, which unambiguously identified North Korea as the aggressor after the outbreak of war on the Korean Peninsula.

The “China seat” question did not disappear after this first failed attempt. In a major speech on China policy early in President Eisenhower’s second term, Secretary of State John Foster Dulles spoke in some detail about China and the UN. Explaining that the UN “is not a reformatory for bad governments,” he argued that members must be willing and able to abide by the UN Charter’s “basic obligation,” which Dulles said was “to renounce the international use of force, except in defense against armed attack.”⁷ The Beijing government, according to Dulles, was neither willing nor able to uphold that obligation:

“The Chinese Communist regime has a record of successive armed aggressions, including war against the United Nations itself, a war not yet politically settled but discontinued by an armistice. The regime asserts not only its right, but its purpose to use force if need be to bring Taiwan under its rule.”⁸

The public case Dulles makes here is much more about ensuring the continued effective functioning of the UN than denying international acceptance of the PRC government. Indeed, he argues against American diplomatic recognition of Beijing, in part, *because* it would make PRC participation in the UN more likely. Referring to the UN Charter’s investing of the UNSC with “primary responsibility for the maintenance of international peace and security,”⁹ he raises concerns about granting the PRC a permanent seat and veto power on the Council:

“Communist Russia, with veto power, already seriously limits the ability of the United Nations to serve its intended purposes. Were Communist China also to become a permanent, veto-wielding member of the Security Council, that would, I fear, implant in the United Nations the seeds of its own destruction.”¹⁰

Dulles perhaps foresaw a debate that would rile the UNGA – and the outcome of which would be a measure of the relative sway of Washington and Moscow – in the early 1960s. Working to complicate the Communist bloc’s efforts to replace the ROC, the United States partnered with Australia, Colombia, Italy, and Japan in 1961 to introduce an ultimately successful resolution on the question of China’s representation. The resolution gave the issue the status of an “important question” for the UNGA, which meant that giving the ROC’s UN seat to the PRC would require a two-thirds majority vote.¹¹ Resolutions in 1961, 1962, and 1963 to replace the ROC in the UN all failed, with none even securing a simple majority in favor, let alone a supermajority.¹²

Chinese representation remained a point of contention between the Eastern and Western blocs throughout the 1960s, with votes in the UNGA held annually. As the number of countries granting

the PRC formal diplomatic recognition increased, the ROC's place in the UN became increasingly insecure. Over the course of the 1960s, Beijing picked up 14 new diplomatic partners in Africa. France recognized the Beijing government in 1964. Thirteen countries did so between October 1970 and August 1971, including three more members of the North Atlantic Treaty Organization (NATO): Canada, Italy, and Turkey. At a UNSC meeting in February 1971, France and Italy joined with Somalia, Poland, and the Syrian Arab Republic in arguing that "only the representatives of the People's Republic of China were entitled to the Chinese seat in the United Nations."¹³

Seeing the writing on the wall, the United States shifted tack ahead of the autumn 1971 UNGA gathering. In advance of that meeting, according to *Yearbook of the United Nations 1971*, the United States argued as follows:

*"...in dealing with the problem of the representation of China, the United Nations should take cognizance of the existence of both the People's Republic of China and the Republic of China; it should reflect that incontestable reality in the manner in which it made provision for China's representation. The United Nations should not be required to take a position on the respective conflicting claims of the People's Republic of China or the Republic of China pending a peaceful resolution of the matter as called for by the United Nations Charter. Thus, the memorandum added, the People's Republic of China should be represented and at the same time provision should be made to ensure that the Republic of China was not deprived of its representation."*¹⁴

The United States ultimately introduced a proposal to this effect, which would have seated the PRC on the UNSC and maintained the ROC's position with the UN. Saudi Arabia introduced a similar resolution, which also supported a UN-organized plebiscite in Taiwan to determine its future.¹⁵ On the day of voting, October 25, 1971, the UNGA voted against a U.S.-led proposal to make China's representation an "important question" (again, requiring a two-thirds supermajority for a change), with 59 opposing, 55 favoring and 15 abstentions. The UNGA then voted in favor of the Albanian proposal, or Resolution 2758 – 76 for, 35 against, 17 abstentions – in which it:¹⁶

*"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."*¹⁷

The UNGA did not take up the American resolution regarding dual representation within the United Nations.

A year earlier, the voting was quite different. The UNGA supported the "important question" resolution in 1970 by a vote of 66 to 52 with 7 abstentions. The Albanian proposal received 51 votes in favor, 49 against, and 25 abstentions, thus failing to meet the two-thirds supermajority requirement. From 1970 to 1971, the Albanian proposal picked up an additional 25 votes.¹⁸

What changed?

Although support for including the PRC in the UN had been growing for some time, that one-year spike in handing Beijing the “China seat” followed Washington’s own change in approach to China. With the Vietnam War dragging on and with Washington finally, and very belatedly, cognizant of the Sino-Soviet split, the United States began reaching out to China. The Nixon Administration was hopeful that a new relationship with Beijing would enable a speedier, more acceptable conclusion to its involvement in Vietnam and would likewise give Washington a leg up in the Cold War.

An American ping pong team visited Beijing in April 1971 with State Department approval and, in early July, National Security Advisor Henry Kissinger made a secret trip to Beijing to meet with Zhou Enlai, the Chinese Premier. Days later on July 15, Nixon shocked the world. Noting that he had pointed out on a number of occasions that “there can be no stable and enduring peace without the participation of the People’s Republic of China and its 750 million people,” Nixon revealed that Kissinger had just visited Beijing, and that Nixon himself would do so before May 1972. According to the text of the announcement agreed upon by both governments, Mao and Nixon would meet “to seek the normalization of relations between the two countries and also to exchange views on questions of concern to the two sides.”¹⁹

The 1971 UNGA meeting took place just three months later. Although the pace at which the United States and China would pursue normalization remained uncertain, intentions had been made clear. As it tried to stave off Resolution 2758, Washington had put itself in a position in which it was, effectively, telling allies and partners, “do as I say, not as I do.” It was an ineffective tact. The United States and China did not ultimately establish formal diplomatic ties until January 1, 1979, but Taiwan started paying the costs for the Sino-American breakthrough in 1971 almost immediately.

International Law and the Expulsion of the “Representatives of Chiang Kai-shek”

The UN Charter specifically mentions the “Republic of China” twice. Article 23 lists the ROC as one of the five permanent members of the UNSC (the P5), along with France, the Soviet Union, the United Kingdom, and the United States. Article 110 includes the ROC along with the rest of the P5 as necessary signatories for ratification of the Charter.²⁰

The Charter also sets ground rules for admitting new members and expelling current members. In both cases, the UNGA can admit or expel members “upon the recommendation of the UNSC.”²¹ The UN may expel a member that “has persistently violated the Principles contained in the present Charter.”²²

There are several pertinent legal questions here. First, did the UN admit the PRC as a new state? It seems fairly clear that it did not. Resolution 2758 “restored” the PRC’s rights and recognized its representatives “as the only legitimate representatives of China to the United Nations.” The UN, in effect, treated these circumstances in a manner similar to others in which a country’s name was changed. As Yehuda Z. Blum has argued, “there have been numerous instances of member States changing their names as a result of constitutional (or unconstitutional) changes of their form of government,” but those name changes did not “*per se* affect the membership status of the State in question.”²³

Even if the UN viewed seating the PRC’s representatives as resulting from a name change (more on this below), there is an additional complication. Given the ROC’s specific inclusion in Article 23 of the UN Charter, did the PRC have any right to assume a seat on the UNSC? Blum quite reasonably argues that “it would be absurd to assume that a mere change in the name of a permanent member could bring about the termination of its seat in the Council” and that “this provision of Article 23(1) must thus be read as referring to the names of the permanent members *at the time of the Charter’s adoption* and subject to subsequent name changes” (emphasis in original). According to Blum, “this, in fact, was the practice adopted by the United Nations in 1971” with respect to the China seat. He notes that amending 23(1) “was deemed unnecessary.”²⁴

But was it legitimate to replace the ROC’s representatives at the UN with the PRC’s based on an assessment that the country had undergone a simple name change? This assessment “rests on the assumption that the international legal personality of the State in question” was preserved.²⁵ According to *Oxford Reference*, “entities who are endowed with rights and obligations under public international law are said to have international legal personality.”²⁶ By 1971, however, both the PRC and the ROC on Taiwan had undeniably distinct international legal personalities.

Indeed, the ROC continued to enjoy “rights and obligations under public international law” right up until, and beyond, its representatives’ expulsion from the UN. At the time of that expulsion, the ROC had official diplomatic relations with 54 countries, including with the United States, Japan, Australia, South Korea, New Zealand, West Germany, Israel, and South Africa. Just two years before in 1969, the ROC had a record-high 68 diplomatic allies.²⁷ Its mutual defense treaty with the United States would remain operative for the remainder of the decade. The ROC had just ratified the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in 1970, after signing the

accord in 1968. A founding member of the World Bank and the International Monetary Fund, the ROC remained a member of those organizations until 1980, when it lost its seats to the PRC.

The PRC, for its part, had official diplomatic relations with 69 countries at the time of the seating of its representatives in the UN. Beijing had signed treaties with the Soviet Union and North Korea. It had settled a border dispute with Pakistan. Zhou Enlai represented the PRC at the landmark Bandung Conference in 1955. Its foreign friends had been pushing for its inclusion in the UN since shortly after the PRC's founding in 1949, at which time it quickly established diplomatic ties throughout the Eastern Bloc.

Regarding the ROC's international legal personality, there was no substantive change between the time it deposited its instruments of ratification for the NPT in 1970 and the time the UNGA passed Resolution 2758 in 1971. Nor did the PRC, during that timeframe, acquire an international legal personality that it had previously lacked. This raises the question: If both the ROC and the PRC had unique international legal personalities in 1971, was the UN's decision – to strip the “China seat” from the ROC and give it to the PRC – appropriate as a matter of international law?

By 1971, there was a strong case for the PRC's inclusion in the UN and even perhaps in the UNSC, given that the Council had been intended to serve as an instrument through which the major powers would exercise, as the UN Charter put it, “primary responsibility for maintenance of international peace and security.” It is certainly true that the 850 million people living under PRC rule in 1971 did not have representation in the United Nations, that the PRC met the qualifications for statehood as defined in the Montevideo Convention (a permanent population; a defined territory; a government; and the capacity to enter into relations with other states), and that the PRC indeed governed most of the territory claimed by the ROC at the time.

It is harder to make the case, however, that the PRC was the *successor* state to the ROC – that it was the same country, “China,” but with a new name – given that the ROC *never ceased to exist* and, like the PRC, continued to meet the Montevideo Convention qualifications for statehood (see page 14 for more on the Montevideo Convention). A true reckoning of the state of affairs in 1971 would have recognized the existence of two states, both with a right to UN membership and both with reasonable claims to the “China seat” on the UNSC.²⁸

Replacing the ROC's representatives with the PRC's was a political, not legal, decision. That decision did not accord with the existing reality that both the PRC and the ROC were separate sovereign states. Thus, the legal justification for Resolution 2758 – and for the ROC's subsequent exclusion from the UN – is fraught.

The UN One China Policy: Where Did It Come From?

In 2003, the UN Correspondents' Association (UNCA) invited Andrew L.Y. Hsia, then the Director-General of the Taipei Economic and Cultural Center in New York, to address reporters at UN headquarters about Taiwan's efforts to join the World Health Organization. Previous guests of the UNCA had included representatives of the Falun Gong, the Irish Republican Army, the Taliban, and Chechen rebel groups. It was Hsia's potential entry into the building, however, that crossed a line for Kofi Annan, then the UN Secretary-General. He barred the Taiwanese diplomat from stepping foot inside. Responding to a question about the decision at a press conference a few days later, he explained that "the event... conflicted with the 'One China' policy," reiterating an explanation the UN spokesman had previously offered. These appear to be the first instances in which senior UN officials referred to a UN "One China policy." They would not be the last.²⁹

In December 2003, a reporter asked Annan whether a referendum in Taiwan planned for the following year would "complicate issues and affairs in Asia." Calling for a peaceful resolution of differences, the Secretary-General noted, "we maintain the One China Policy."³⁰ At a press conference in September 2004, he restated that "the One-China policy remains."³¹

Annan's apparent invention of a UN One China policy was egregious, but his successor's contribution to cross-Straits policy was even more damaging. In March 2007, Ban Ki-moon refused to accept Taiwan's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, which Nauru's representative had delivered to him on Taiwan's behalf. Ban did not refuse to do so not because Taiwan is not a member of the United Nations, but rather because "in accordance with that resolution [2758], the United Nations considers Taiwan for all purposes to be an integral part of the People's Republic of China."³² Of course, Resolution 2758 says nothing of the sort as it does not refer to Taiwan and does not address the question of sovereignty over territory that the ROC governs.

In the years since these statements, UN agencies have themselves referred to the UN One China policy. When Taiwan was not invited to the 2016 ICAO assembly, ICAO communications chief Anthony Philbin explained that "ICAO follows the United Nations' 'One China' policy."³³ When asked about an ICAO news release from February 2020 that referred to "its [China's] Taiwan Province,"³⁴ Philbin emailed that since the passing of Resolution 2758, "the UN has considered Taiwan as a province of the People's Republic of China with no separate status."³⁵ Referring to ICAO's own resolution on the matter,³⁶ he noted that "ICAO thus continues to adhere to the longstanding 'One-China' policy of the UN."³⁷

The World Health Organization has been no better. According to Chinese state media, following his election as Director-General of the WHO in 2017, Tedros Adhanom Ghebreyesus "reiterated the organization's adherence to the One-China principle" and "said the UN agency will properly handle the Taiwan-related issues based on the resolutions of the UNGA and the World Health Assembly, the WHO's decision-making body."³⁸

Two leaked WHO memoranda do not use the "One China policy" phrase, but both mimic Ban Ki-moon's language on Taiwan (which itself mimics China's language). One memo, on the

application of 2005 International Health Regulations to Taiwan, includes a section on “Proper Terminology for The Taiwan Province of China:

“Documents or information which is published, incorporated or referred to in WHO publications, whether electronic or in hard copy, must use the terminology ‘the Taiwan Province of China.’ Information related to the Taiwan Province of China must be listed or shown as falling under China and not separately as if they referred to a State.”³⁹

The second memorandum, on the implementation of the 2005 China-WHO memorandum of understanding (MOU), which the two parties concluded in secret and have not released, refers to “Taiwan, China.” Both memoranda refer to Resolution WHA 25.1 with nearly identical language. The MOU implementation memorandum notes:

“the implementation of the MOU must take place with full respect for resolution WHA 25.1... and the consequent obligation for the Secretariat of refraining from action which could constitute a recognition of a separate status of Taiwanese authorities and institutions.”⁴⁰

Like Resolution 2758, however, WHA 25.1 refers only to “representatives of Chiang Kai-Shek” and makes no mention of Taiwan or its status. There is no basis to be found in either resolution for avoiding “recognition of a separate status” of Taiwan.⁴¹

Despite these inconsistencies, and despite the lack of an explicit “One China policy” for the first five decades of the UN’s existence and the first two decades of the PRC’s membership, UN leadership now acts as if the UN has made a determination on the status of Taiwan and that it has long maintained a “One China policy.” *Here’s the problem: the UN has not made such a determination, it cannot make such a determination, and it has never formally adopted such a policy.*

First, the Treaty of San Francisco binds the UN, in which “Japan renounces all right, title and claim to Formosa and the Pescadores.”⁴² The treaty did not, however, *transfer* title to another state. Neither did the peace treaty that the ROC ultimately signed with Japan.⁴³ Article II of the ROC-Japan treaty simply notes: “it is recognized that under Article 2 of the [Treaty of San Francisco], Japan has renounced all right, title and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratly Islands and the Paracel Islands.”⁴⁴ This treaty makes no additional territorial dispositions and, given that Japan had already renounced title to Taiwan in the Treaty of San Francisco, it could not have transferred title to the ROC in their own bilateral treaty.⁴⁵

Although the terms of a treaty are not typically binding for third parties, territorial treaties bind them even when they are not signatories. There is, thus, an obligation for the UN to respect the territorial dispositions made in the Treaty of San Francisco, limited though they may be.⁴⁶

Second, the UN is institutionally incapable of making territorial dispositions. The UN Charter does not provide the UN with this power, nor does international law recognize a vote within the UN as a legitimate means by which territorial dispositions may be made.⁴⁷ (The five traditional means of acquiring territory, according to international law, are cession, occupation, accretion, conquest,

and prescription; and conquest is no longer recognized as a legal means of acquiring title to territory.)

Third, even if the UN *could* make territorial dispositions (or wanted to assert a power to do so), it has taken no steps that reasonably could be construed as making a determination on the status of Taiwan. As Y. Frank Chiang notes, “the only way for the United Nations to express its position is by voting either in the General Assembly or in the Security Council.”⁴⁸ There has never been a vote on title to Taiwan in either UN body.

Finally, UN leaders are wrong to describe the UN as having a “One China policy.” That supposed policy, which has gone entirely undefined, “could only derive from UN Resolution No. 2758 of 1971 because, after that Resolution, no debate or any other resolution has been made either in the General Assembly or in the Security Council concerning the ROC government or Taiwan.”⁴⁹ Given that neither body has ever spoken, via vote, on how or whether the UN should engage with the ROC or on the question of sovereignty over Taiwan, the UN cannot legitimately claim to have a “One China policy.” Kofi Annan and successive UN leaders have spoken out of turn in stating otherwise.

The Case for Taiwan's Inclusion

A Globalized World

Taiwan exists in a globalized world and has been a major beneficiary and contributor to that globalized environment – especially, but not solely, in the economic realm. Whatever the particular downsides of globalization, over the past three decades, it has resulted in pulling hundreds of millions out of poverty and illiteracy and improved the health and well-being of those millions. Globalization has been spurred on by factors such as reduced tariffs, multilateral trading blocs, the expansion of global capital and international businesses, and information and shipping technology. But the fundamental enabling element was the expansion of the number of liberal democracies, their shared principles, and the resulting underlying trust between them that allowed the kind of exchanges – economic, social, and political – that defined what became known as the liberal world order.

Today, revisionist powers, in particular the PRC, are challenging that order. Having taken full advantage of globalization to generate the wealth and resources needed to achieve its ambition of a return to great power status, China is now attempting to use that power to set new international rules of the road. Put simply, it seeks to reshape the global order as much as it can in order to consolidate its own power, expand its global influence and, in that context, exclude Taiwan as much as possible from participating in or enjoying the benefits of that global order. *In an ironic twist, authoritarian Beijing is now using the very institutions that helped define globalization – and whose existence and effectiveness is due principally to the efforts of the world's leading democracies – to limit the island democracy's participation in those institutions.*

Despite its marginalization, of course, Taiwan is no pariah state. It is a vibrant and important player in the world's economy. Taiwan has significant trading relations with the United States, Japan, Europe, South Korea, and even China. Taiwan has also signed free-trade agreements with Singapore and New Zealand. It is the largest supplier of computer chips in the world and has been a leading exporter of high-tech goods such as networking equipment, electronics, and dynamic random-access memory semiconductors. Indeed, as the shortage of computer chips over the past year has shown, Taiwan's role in a globalized economy is not only important, but critical.

Nor is it the case that Taiwan, historically, has not been accepted on the world stage, under one name or another, as a distinct entity. As noted above, just two years before its expulsion from the UN, the ROC had diplomatic relations with nearly 70 states, including such diverse countries as the United States, Japan, the United Kingdom, West Germany, Spain, Argentina, Turkey, Brazil, Saudi Arabia, Canada, Italy, Lebanon, and Australia. Lest anyone forget, the ROC was a founding member of the WHO in 1948 and remained a member until 1972. Similarly, the country was a founding member of the ICAO and remained a member until 1971. And, finally, the ROC was a member in good standing with INTERPOL, the International Criminal Police Organization, from 1923 to 1984, long after the expulsion from the UN of the “representatives of Chiang Kai-shek.” In all three cases, at least for a time, the ROC participated in both its China-based and Taiwan-based iterations.

Even today, 14 states, in addition to Vatican City, still recognize the ROC diplomatically, nearly 60 countries host Taiwan representative offices, and nearly 70 countries have offices in Taiwan. Moreover, Taiwan is a member in good standing of non-UN bodies, such as the World Trade Organization, the Asia-Pacific Economic Cooperation forum, and the Asian Development Bank. It has unilaterally adopted policies that conform with the UN-sanctioned trade embargo on North Korea and is part of the global coalition to counter the Islamic State. Taiwan also sends a team of athletes to the Olympic games and even participated in the 2008 Summer Olympics in Beijing. In fine, international and multilateral bodies have long accepted and continue to accept Taiwan as a distinct polity. The disjunction between this fact and Beijing and the UN's insistence that Taiwan does not exist other than as a province of the PRC is impossible to ignore.

Taiwan's participation in international organizations matters to both Taiwan and the international community. To state the most obvious facts, Taiwan's commercial activity means the island nation is a significant hub for air and maritime shipping, with connections across the globe. What happens in Taiwan and what happens in the vicinity of Taiwan matters to all engaged in global commerce. It is difficult to see how, for example, the ICAO can fully carry out its mission – “to serve as the global forum” for aviation policies, standards, and compliance – and exclude a major air traffic center positioned so centrally in the region and where national boundaries are in dispute. Similarly, INTERPOL, which bills itself as enabling “police to work directly with their counterparts, even between countries which do not have diplomatic relations” as they combat crimes that are “increasingly international,”⁵⁰ is undoubtedly less effective in meeting its mission by excluding Taiwan, which has had to deal with organized crime and gangs that operate both on the island and off and, as a result, has information to share with police around the world.

As the events of the past year have shown, refusing membership of any nation in the World Health Organization is to invite disaster. Viruses, in this age of interconnectedness, can readily escape the boundaries of the nation from which they originate. Or, as the U.S.-China Economic and Security Review Commission pointedly puts it: “Taiwan's exclusion from the WHO imperils the health of the island's 23 million people and limits WHO members' access to crucial public health information, jeopardizing global health.” Indeed, chastened by its experience with SARS in 2003⁵¹ when the WHO and China were slow to offer information or assistance on the virus, Taiwan moved quickly when reports of unique pneumonia-like cases were turning up in Wuhan and patients were being isolated for treatment. Taiwan started by screening individuals traveling to Taiwan from Wuhan in late December 2019 and then activated its Central Epidemic Command Center three weeks later.⁵² Taiwan's requests both to China and the WHO in late December 2019 for information on these cases and, critically, regarding whether the virus could be transmitted by humans, were ignored. Equally problematic, information about the virus provided by Taiwan to the WHO's forum for the exchange of information on epidemic prevention and responses – a forum to which nearly 200 countries have access – was also repeatedly ignored. Needless to say, such behavior was dramatically at odds with current WHO Director-General Tedros' vision of “a world in which everyone can live healthy, productive lives, regardless of who they are or where they live.”⁵³

U.S. Policy & the Taiwan Relations Act

When most policymakers and analysts think about the United States' obligations under the 1979 Taiwan Relations Act (TRA),⁵⁴ they focus on the statute's mandate that Washington provide Taiwan with military capabilities to defend itself and that, in turn, the United States maintain sufficient forces of its own to fend off a resort to force by the PRC against the island. Under the TRA, however, the United States must maintain "the capacity... to resist any resort to force *or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.*" (Emphasis added.) In other words, coercion doesn't have to be military coercion. Julian Ku notes that "The most important way that China has exercised non-military coercion on the international stage is by working to systematically bar Taiwan's official and unofficial participation in any and all international organizations."⁵⁵

Beijing's weaponization of the WHO provides a clear example of "coercion that... jeopardize[s] the security, or the social or economic system" of Taiwan. When Taiwan's President was Ma Ying-jeou of the Chinese Nationalist Party (KMT), which has been open to closer ties with China, Beijing permitted the WHO to annually invite Taiwan to the World Health Assembly (WHA) as an observer. A year after the election of Tsai Ing-wen of the Democratic Progressive Party (DPP), which stands against a potential union with China, Beijing began blocking those invitations, making it clear that it will hold Taiwan's possible participation in international forums hostage to Taipei conceding to a "One China" framework. In doing so, Beijing not only put the public health of Taiwan at risk, thus harming Taiwan's national security and the well-being of its people, but also seeks to force Taiwan to accept a conceptualization of cross-Strait ties that comports neither with the policy preferences nor the long-term aspirations of the Taiwanese people.⁵⁶

Through this form of coercion, China intends to pressure Taiwan's democracy in an immediate sense: concede on "One China," and there will be benefits. But denying Taiwan membership in these international organizations also has a longer-term intent of trying to undermine the confidence of Taiwan's citizens about the future. The lack of recognition of Taiwan as a self-governing country by other democracies, combined with their seeming inability or unwillingness to check Chinese sway over global institutions, inevitably raises some doubts about Taiwan's ability to shape its external environment or even to rely on foreign partners. These are doubts China exploits regularly through its information warfare campaigns aimed at both the people of Taiwan and its diplomatic allies.

It is not in the United States' interest to continue allowing this to happen. As we and others have written elsewhere, Taiwan is too strategically important to the American position in East Asia to be left adrift. Moreover, it would be a blow to the reputation of U.S. statecraft to allow Taiwan, after having made the difficult transition from one-party rule to a liberal democracy, to face more or less alone authoritarian bullying at every diplomatic turn – particularly since the Biden Administration has made a point of arguing that the defining competition today is between democracies and authoritarian regimes.⁵⁷ Nor is it in the United States' interest to have Beijing believe that such bullying pays off. Xi Jinping, China's current Communist Party General-Secretary and PRC Chairman, has made abundantly clear that his ambitions for China include expanding PRC sovereignty over Taiwan – and sooner rather than later. Failure to deter and mitigate PRC bullying in international organizations can't help but fuel Beijing's view that

ostracizing Taiwan is a policy path that can be pursued, and perhaps even accelerated, without significant costs.

International Law

As Taiwan's Foreign Minister, Joseph Wu, has succinctly and pointedly noted: "We issue visas, we issue passports.... We have a military and a currency... Taiwan exists by itself; Taiwan is not a part of any other country."⁵⁸ His apparent frustration is well founded. Under the Montevideo Convention of 1933, which the United States and 18 other states signed, Taiwan meets the four core elements of statehood: distinct and substantial territory, a distinct and substantial population, a governing authority, and an ability to engage in relations with other states.

Importantly, the Convention reflects current customary international law⁵⁹ and marked a transition from what is known as the "constitutive theory of statehood." Under the previously presiding "constitutive theory," statehood for a country depended on its formal recognition by another state, which meant in practice that a great power or powers could withhold diplomatic recognition of a country and treat it without being bound by the tenets of international law. By disempowering the great powers from making statehood determinations, the Convention intended to disentangle the issue from the politically complex context of imperial powers deciding if previous colonial entities were to be treated as states once they had gained their independence and acquired the actual attributes of statehood. In key respects, much of the world and the PRC in particular is acting as though this change in international practice never happened. Under customary international law, reflected in the Convention, neither the PRC nor the United States nor any other country (or multilateral organization) can deny the ROC statehood.

Some might contend that the Republic of China's constitution claims sovereignty over the Chinese mainland, Hainan Island, and other former imperial territories – territories it obviously does not in fact control – and hence, that the constitution undermines a prerequisite of statehood: a settled, distinct territory. Article 4 of the current constitution, ratified in Nanjing in late 1946 and adopted in late 1947, states that "The territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly." The phrase "existing national boundaries" is often presumed to refer to territories the Republic of China then, and Imperial China, historically controlled. By 1947, however, the Nationalist government of the ROC was not in fact sovereign over large parts of China because of the civil war. In the decades since the ROC government lost control of the mainland to the communists and moved to Taiwan, moreover, subsequent amendments to the constitution referred to their application as extending only to the "Free Area of the Republic of China" and indicated they are intended to "meet the requisites of the nation prior to national unification."⁶⁰

So, on the one hand, one can argue that the governing constitution of Taiwan anticipates regaining sovereignty over China proper. On the other hand, the constitution explicitly recognizes that ROC sovereignty did not extend to China proper in the instances when Taiwan adopted the 12 constitutional amendments; moreover, the ROC does not now claim to be the legitimate government of China, and there is little expectation of a future union under ROC governance. Arguably, the use of the phrase "existing national boundaries" simply reflects that ROC governance extends no further than whatever the existing territorial situation is at a given

moment.⁶¹ Whether some in Taiwan hope for unification or not, the governing fact for the status of statehood is that its de facto territorial boundaries are currently well defined, which in Taiwan's case has been a fact for more than half a century. Indeed, if anticipation of unification and the potential shifting of boundaries prevent recognition of Taiwan's statehood, so too should the PRC's claim of sovereignty over Taiwan and associated islands prevent recognition of PRC statehood. After all, Beijing no more controls the island of Taiwan than Taipei controls the provinces under PRC rule. Put another way, if Taiwan does not have statehood because it may one day unite with China, then the reverse is true as well.

Moreover, even if Taiwan and the PRC each made maximalist claims to the other's territory, that would not diminish either's case for statehood or, more specifically, for a seat at the United Nations. Both South Korea and North Korea are recognized as states and have been members of the United Nations since 1991, even though both claim the totality of the Korean Peninsula and neither recognizes the other. Or consider the case of another formerly divided country: while both East Germany and West Germany had formal diplomatic ties with other states, neither recognized the other as a sovereign state – a position maintained even after both were admitted as members of the United Nations in 1973.⁶²

Nor does admittance to the United Nations confer statehood. Rather, the UN is an organization of states whose stated goal is to maintain international peace and security. But there have always been and continue to be states (e.g., Vatican City), that are not members of the United Nations. As noted above, the UN's charter does not empower it to make declarations about the status of whether a given territory is a state or not. The 1971 UN resolution placing the People's Republic in a UNSC seat and confirming its UN membership does not actually affirm or deny the status of the Republic of China as a state. And since neither the San Francisco Peace Treaty of 1951 (signed by Japan, the United States, and other allied powers) nor the Sino-Japanese Peace Treaty of 1952 (between the ROC and Japan) formally settled the question of China's sovereign status over Taiwan, it is beyond the UN Secretary General's writ or that of UN organizations, such as the WHO, to declare or describe Taiwan as a "province of China." As a matter of international law, as well as international practice, the ROC's (Taiwan's) claim to statehood is on firmer ground than most admit.

A New Approach

Taiwan's involvement in the UN system is manifestly in the interests of Washington, Taipei, and, more broadly, a global order in which international law should still prevail. Although many of Taiwan's international partners are sympathetic to its plight and regularly speak up on its behalf, there has been little if any progress in securing space for Taipei to engage with the UN or its subordinate organizations. Even a global pandemic, in which Taiwan's exclusion from the WHO arguably had a material effect on the pandemic's course, did not lead to a groundswell of international pressure for the country's inclusion in the WHO or even meaningful participation in its activities or meetings.

Securing Taiwan's engagement in the work of the United Nations requires a new and more muscular approach. The United States should clearly demonstrate to China that, absent far greater Chinese flexibility in having Taiwan participate in international organizations, Washington is prepared to undertake a full court press on full membership for Taiwan in the United Nations.

A full court press would proceed along a number of parallel lines of effort. First, the United States should *publicly* reject the UN's interpretation of Resolution 2758 and use bilateral and multilateral diplomacy to build support for a role in the UN for Taiwan. The Biden Administration deserves applause for putting Taiwan on the agenda for engagements with allies and partners. Joint statements issued with the leaders of Japan, Australia, and South Korea have all raised concerns about peace and stability in the Taiwan Strait. Last November, just before the U.S. presidential election, the Inter-Parliamentary Alliance on China called on the WHO "to accept Taiwan's participation in the upcoming World Health Assembly and full inclusion in WHO meetings, mechanisms and activities."⁶³ The Senate and the House of Representatives have each passed versions of a bill directing the Secretary of State "to develop a strategy to regain observer status for Taiwan in the [WHO]." But more ambitious efforts are necessary.

In July 2021, what the White House called "an unprecedented group of allies and partners" came together "in exposing and criticizing the PRC's malicious cyber activities."⁶⁴ Those allies and partners included Australia, Canada, the European Union, Japan, NATO, New Zealand, and the United Kingdom. The Biden Administration should pursue a similar approach in seeking to draw broad attention to – and display support for – a role for Taiwan in the UN. It is much easier for UN leaders to dismiss or simply ignore statements from individual countries than to do so with joint statements issued by major democratic states and bodies acting in concert. This is not a sufficient condition for making progress on Taiwanese participation, but it may be necessary.

Second, the United States should begin to make the legal case for Taiwan's inclusion publicly and aggressively. In meetings with counterparts, remarks before UN gatherings and before the press, and position papers circulated to diplomats in Turtle Bay and at UN hubs in Geneva, Vienna, and elsewhere, American representatives to the UN and its agencies should seek to expose the weak legal underpinnings of the ROC's expulsion and continued exclusion from the UN system. Put simply, the State Department should argue for Taiwan's membership in the UN, thus putting China on defense for a change.

Third, the United States should make clear that, as part of a full court press, it will introduce annual resolutions at the UNGA to bring Taiwan into the fold. Admittance of new members requires a recommendation from the UNSC, which will not be possible given China's veto. Instead, the United States should simply seek to reverse one aspect of Resolution 2758 and do so in such a way that avoids questioning the PRC's own standing in the UN or its relationship with Taiwan. Resolution language might go as follows:

THE GENERAL ASSEMBLY

Recalling the principles of the Charter of the United Nations,

Considering the restoration of the lawful rights of the 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 Republic of China are lawful representatives of the Republic of China to the United Nations,

Decides to restore to the Republic of China rights of membership in the United Nations General Assembly and in United Nations specialized agencies.

Other formulations may be possible as well. The goal of such a resolution should be to bring Taiwan back into the UN without raising questions about the UNSC "China" seat or about sovereignty claims. In committing to an annual fight, Washington will convey to Beijing that China risks losing ground in a battle Beijing thought it had already won.

Finally, the United States should be prepared to play diplomatic hardball in pursuit of growing support for Taiwan's inclusion. China certainly does. As Washington seeks support for the resolution suggested above, or simply for efforts to secure observership for Taiwan in UN agencies, it should first seek to persuade. But if and when persuasion fails, Washington should employ various points of leverage it has over UN budgets, appointments, and member state agendas to move a Taiwan agenda forward.

As Washington seeks to secure full UN membership for Taiwan, it should also launch a "mini-campaign" focused on the World Health Organization. Why place a special emphasis on the WHO? Participation, a perennial objective for Taiwan, would be wholly consistent with the WHO's own constitution and goals, and the current, COVID-shaped international environment is conducive to making progress. Importantly, membership in the WHO does not require UN membership, and admittance requires only a simple majority vote in the World Health Assembly.⁶⁵ A seat in the WHO, moreover, would also open the door to Taiwan's participation in a number of other specialized agencies, including the UN Industrial Development Organization (UNIDO) and the World Intellectual Property Organization (WIPO), whose charters or constitutions make allowances for admitting states that have membership in UN specialized agencies (even absent UN membership).⁶⁶ In a similar vein, WHO membership would set a precedent, making it legally and politically more difficult for the UN Secretary-General to refuse instruments of accession for other treaties Taiwan might want to ratify and deposit.

Within the broader full court press, the WHO arena provides a “proof of concept” opportunity for the United States to put diplomatic hardball to good use. Even as they make a positive case for Taiwan’s inclusion, Washington and allies should be willing to lean on voting members of the World Health Assembly and use their contributions to the WHO as leverage to realize Taiwan’s admittance.

Put simply, the PRC’s campaign to isolate Taiwan internationally is a national security issue for the United States – it is time to act like it. Such an approach would likely have an additional benefit: allied member states looking for ways to accommodate Washington’s wishes to open up organizations to Taiwan’s participation and to avoid taking sides in a major dispute between the United States and China. In other words, America’s friends might increase their own pressure on China and on other UN members to welcome Taiwan’s partial participation and thus avoid a larger conflagration about full membership within the UN system. But this will only come about if the United States has a more maximalist position from which a compromise can then be constructed.

What is more, Washington will need to convince both partners and foes that it is committed to pursuing that maximalist goal for the long-term. In a sense, the United States would be taking a page from the playbook of the former Communist bloc, which kept up a two-decade long effort to secure a seat for the PRC in the UN. Much as Beijing was able to take advantage of the increasingly prevalent international view during the first half of the Cold War that the PRC and its population should not be indefinitely excluded from the UN, the United States should today seek to make the most of burgeoning support for Taiwan in the global arena. A full court press is not going to achieve results overnight, but it could ultimately bear fruit if Washington sustains it. Moreover, sustaining such an effort would convey seriousness of purpose to Beijing about Taiwan’s UN participation (thus enhancing the American bargaining position) and demonstrate the lengths to which the United States will go when important interests are at stake.

Taiwan, for its part, should support this U.S. effort. Taipei should make use of its diplomatic allies to similarly advance within the UN legal reasoning undergirding its inclusion. It should match the proposed annual UN resolutions with its own annual petitions for admittance. Taipei would also do well to clarify its goals vis-à-vis UN participation. Even as it may aim for eventual full membership, it should have a set list of priority agencies in which it wishes to participate and well-developed policy and legal cases for that participation. A public facing website explaining Taiwan’s history with the UN, explaining its regular efforts to engage, and illuminating roadblocks to that engagement would be useful for foreign friends and partners looking to assist it in advancing its goals. A public, annual report from the foreign ministry providing updates on Taiwan’s experiences – good and bad – with the UN over the preceding year would likewise be valuable.

From China’s perspective, the risk of a full court press is less that it makes the case for Taiwan’s inclusion in the UN, and more that it essentially makes the case for diplomatic recognition of Taiwan. As the United States builds the legal rationale for Taiwan’s participation and seeks to bring it about, it may well introduce a trace of cognitive dissonance into U.S. policy.⁶⁷ The case for UN membership could easily be used to justify dual recognition, and some members of Congress and outside observers will certainly do so. In other words, as a U.S. campaign for Taiwan’s membership progresses, the United States will find it increasingly difficult to stick to the

One China policy as traditionally understood. Does Beijing want to see Washington go down that road? This, then, is why threatening Beijing with a full court press on membership may be effective at bringing Beijing to the table regarding Taiwan's participation.

If Beijing does express a willingness to compromise, what might such a compromise look like? To start, China would not object to the UN Secretariat "reviewing" its understanding of UN Resolution 2758 as precluding Taiwan from observer status in UN agencies that allow it. Beijing would not have to actively approve such participation but simply stop blocking Taiwan from having that role. China also would not object to new observership rules in agencies that currently lack such arrangements, opening a path for Taiwanese participation therein as well.⁶⁸ Washington and Taipei, for their part, would halt any efforts to secure full UN membership for Taiwan.

This would mark an unhappy middle ground for all concerned parties, but one which would preserve stability in the Taiwan Strait. Unfortunately, such an arrangement might also prove ephemeral. There would be no binding treaty to ensure adherence. At any point, for any reason, Beijing could once again begin blocking observership invitations to Taiwan. This would be particularly tempting for Beijing, as it will be much easier for China to exclude Taiwan once again than for Washington and Taipei to make progress on full membership.

This is why the implicit but continuing threat to America's One China policy is so crucial: a fatal blow to the One China policy would arguably be far more damaging to Beijing's designs on Taiwan than would Taiwan's increased engagement in the UN system. Five decades ago, China was unwilling to entertain the notion of dual representation in the United Nations. It has sustained that uncompromising approach for a half-century, ensuring that Taiwan, one of the world's freest, most prosperous countries, would be treated like a pariah on the world stage. How ironic it would be if that approach ultimately opened the door to a far stronger, and far more normal, U.S.-Taiwan relationship.

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⁴⁸ *Ibid*, p. 72.

⁴⁹ *Ibid*, p. 77.

⁵⁰ “What is INTERPOL?” *The International Criminal Police Organization*, accessed October 19, 2021, at <https://www.interpol.int/en/Who-we-are/What-is-INTERPOL>.

⁵¹ Only Hong Kong and China suffered more from the SARS outbreak. Taipei’s efforts to receive information and support from the WHO went unheeded until Beijing eventually signaled the

WHO that it could send observers to Taiwan. The experience led the U.S. and Japan to support observer status in the World Health Assembly. This effort and Taiwan's requests appear to have, in turn, led Beijing and the WHO in 2005 to develop a secret set of rules for future WHO contact with Taiwan, with the key feature being no contact except in an emergency and only after approval from the Chinese Ministry of Health. See Sigrid Winkler, "Taiwan's UN Dilemma: To Be or Not To Be," *Brookings Institution*, June 20, 2012, at <https://www.brookings.edu/opinions/taiwans-un-dilemma-to-be-or-not-to-be/>.

⁵² C. Jason Wang, Chun Y. Ng, and Robert H. Brook, "Response to COVID-19 in Taiwan," *JAMA Network*, March 3, 2020, at [https://jamanetwork.com/journals/jama/fullarticle/2762689?guestAccessKey=2a3c6994-9e10-4a0b-9f32-cc2fb55b61a5&utm_source=For The Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tf1&utm_term=030320](https://jamanetwork.com/journals/jama/fullarticle/2762689?guestAccessKey=2a3c6994-9e10-4a0b-9f32-cc2fb55b61a5&utm_source=For%20The%20Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tf1&utm_term=030320).

⁵³ WHO's founding charter states as the organization's first objective under Chapter 1, Article 1: "the attainment by all peoples of the highest possible level of health." See "Constitution of the World Health Organization," *The World Health Organization*, at https://www.who.int/governance/eb/who_constitution_en.pdf.

⁵⁴ *Taiwan Relations Act of 1979*, Public Law 96–8, *U.S. Statutes at Large* 93 (1979): 14–21, at <https://www.govinfo.gov/content/pkg/STATUTE-93/pdf/STATUTE-93-Pg14.pdf>.

⁵⁵ Further supporting the broader reading of the Taiwan Relations Act is the statutes' explicit language that "Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization"; *Ibid*, p. 16.

⁵⁶ U.S. Congress, House, Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, *How Congress Can Help to Deter Chinese Coercion of Taiwan and Clarify U.S. Definitions of 'One China'*, 2016, at <https://www.congress.gov/115/meeting/house/108170/witnesses/HHRG-115-FA05-Wstate-KuJ-20180417.pdf>.

⁵⁷ See, for example, Joe Biden, "President Biden's speech before the Munich Security Conference," *The White House*, February 19, 2021, at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/19/remarks-by-president-biden-at-the-2021-virtual-munich-security-conference/>.

⁵⁸ Chris Horton, "Taiwan's Status Is a Geopolitical Absurdity," *The Atlantic*, July 7, 2019, at <https://www.theatlantic.com/international/archive/2019/07/taiwans-status-geopolitical-absurdity/593371/>.

⁵⁹ Reflecting the Convention's status as a statement of current customary international law was the 1991 findings of the European Union's Arbitration Commission of the Conference on Yugoslavia (also referred to as the Badinter Committee). The Commission addressed various questions and disputes concerned with statehood and borders between the several republics of

the Socialist Federal Republic of Yugoslavia. The Commission followed the Montevideo Convention in its definition of the attributes of statehood and noted that the existence of a state was a question of fact. Recognition by other states was only declaratory and not dispositive of a state's existence.

⁶⁰ As an example of this view, in the runup to the Montreal Olympics in 1976, the International Olympic Committee proposed that ROC athletes participate under the name "Taiwan" while still using the ROC national anthem and flag. The ROC government refused and pulled out of the games. Later, in the late 1970s, the name "Chinese Taipei" was developed, which allowed the ROC governing authorities to, in the words of one scholar, to sustain the idea that country's boundary "could exceed the ROC's actual territory of control... whenever the ROC government wished to assert it." Catherine K. Lin, "How 'Chinese Taipei' Came About," *Taipei Times*, August 5, 2008, at <http://www.taipetimes.com/News/editorials/archives/2008/08/05/2003419446>.

⁶¹ See Additional Article of the Constitution of the Republic of China, Article 4, at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0000002>.

⁶² In 1972, the two Germanys did sign an accord, "The Basic Treaty," which established quasi-official ties, with missions and "permanent representatives," serving as de facto ambassadors. And while West Germany posted its first representative to East Germany in early 1974, no formal recognition ever occurred.

⁶³ "Statement on Taiwan's participation in the World Health Assembly and World Health Organization," *Inter-Parliamentary Alliance on China*, November 2, 2020, at <https://ipac.global/statement-on-taiwans-participation-in-the-world-health-assembly-and-world-health-organization/>.

⁶⁴ "The United States, Joined by Allies and Partners, Attributes Malicious Cyber Activity and Irresponsible State Behavior to the People's Republic of China," *The White House*, July 19, 2021, at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/19/the-united-states-joined-by-allies-and-partners-attributes-malicious-cyber-activity-and-irresponsible-state-behavior-to-the-peoples-republic-of-china/>.

⁶⁵ The WHO's constitution, which notes that membership "shall be open to all States," identifies three means by which countries may become members. Per Article 4, UN members may become WHO members by accepting the constitution. Article 5 allows for states that were "invited to send observers to the International Health Conference held in New York, 1946," when the WHO constitution was adopted, to become members by likewise accepting the constitution. According to Article 6 of the WHO's constitution: "Subject to the conditions of any agreement between the United Nations and the Organization... States which do not become Members in accordance with Articles 4 and 5 may apply to become Members and shall be admitted as Members when their application has been approved by a simple majority vote of the Health Assembly." Given that neither the WHO constitution nor the UN Charter define what is meant by a "State," presiding international law, as reflected in the Montevideo Convention, applies. Constitution of

the World Health Organization, *The World Health Organization*, at https://www.who.int/governance/eb/who_constitution_en.pdf.

⁶⁶ See, for example, “Constitution of the United Nations Industrial Development Organization,” *The United Nations Industrial Development Organization*, at https://www.unido.org/sites/default/files/files/2020-11/19-12162_UNIDO_Constitution_ebook.pdf; and “Convention Establishing the World Intellectual Property Organization,” *World Intellectual Property Organization*, at <https://wipolex.wipo.int/en/text/283854>.

⁶⁷ It is noteworthy that supporting membership in the UN is not, strictly speaking, at odds with the 1979 decision to recognize the PRC and end recognition of the ROC. The United States stated at the time that the PRC was “the sole legal Government of China.” In doing so, however, the United States did not define “China” nor did it give in to Chinese demands that it recognize Chinese sovereignty over Taiwan. It is true that the 1982 U.S.-China communiqué stated that the United States had no intention of pursuing a policy of “two Chinas” or “one China, one Taiwan,” but a key element of the communiqué, which has no formal standing under domestic U.S. or international law as would a treaty, was implicitly tied to the “Chinese policy of striving for a peaceful resolution of the Taiwan question,” a policy China has objectively turned away from.

⁶⁸ For an explanation of this and other useful policy recommendations for deepening Taiwan’s engagement in international organizations, see Bonnie Glaser, “Taiwan’s Quest for Greater Participation in the International Community,” *The Center for Strategic and International Studies*, November 2013, at https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/131121_Glaser_TaiwansQuest_WEB.pdf.