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Coexistence through and in Institutions: How International Organizations Handle the China-Taiwan Sovereignty Challenge

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ABBREVIATIONS

ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
ARATS	China's Association for Relations Across the Taiwan Straits
ARSIWA	Articles on the Responsibility of States for Internationally Wrongful Acts
CARU	Comisión Administradora del Río Uruguay
CCP	Chinese Communist Party
DPP	Democratic Progressive Party
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EU	European Union
FAO	Food and Agriculture Organization
GATT	General Agreement on Tariffs and Trade
GPA	Government Procurement Agreement
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IGOs	Intergovernmental Organizations
ILC	International Law Commission
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organization
IOC	International Olympic Commitee
IOs	International Organizations
ISO	International Organization for Standardization
KMD	Kuomingdang (Chinese Nationalist Party led by Chiang Kai-shek)
MFA	Multi-Fibre Arrangement
MFN	Most-Favored-Nation (clause of the WTO)
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NT	National Treatment (obligation of the WTO)

OECD	Organization for Economic Cooperation and Development
PARLACEN	Central American Parliament
PCIJ	Permanent Court of International Justice
PLO	Palestine Liberation Organization
PRC	People's Republic of China
ROC	Republic of China
SAR	Special Administrative Region (of the PRC)
SARS	Severe Acute Respiratory Syndrome
SEF	Taiwan's Straits Exchange Foundation
SFRY	Socialist Federal Republic of Yugoslavia
TECRO	Taipei Economic and Cultural Representative Office
TEU	Treaty on European Union
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNMIK	United Nations Interim Administration Mission in Kosovo
UNO	United Nations Organization
UNSC	United Nations Security Council
VCLT	Vienna Convention on the Law of Treaties
WHA	World Health Assembly
WHO	World Health Organization

INTRODUCTION

天下大势，分久必合，合久必分。[1] "The great trend of 'All under Heaven (Tianxia)'[2] is that prolonged division inevitably leads to unity, and prolonged unity inevitably leads to division." This celebrated phrase opens *The Romance of the Three Kingdoms* (三国演义), the fourteenth-century historical novel by Luo Guanzhong, and has since entered the Chinese collective consciousness as a proverb of enduring significance. Originally employed to narrate the rise and fall of dynasties, it conveys a cyclical vision of history in which unity and division follow one another as part of an unstoppable process. Its philosophical resonance extends beyond its literary context: it reflects a perception of political order as dynamic and ever-changing, shaped by forces of cohesion and fragmentation. In Chinese culture, the phrase is often invoked not as a comment on any specific political dispute, but as a broader reflection on the dialectical interplay between integration and disintegration. Seen in this cultural and historical perspective, the quotation reminds us that sovereignty and legitimacy are not immutable, but subject to continuous transformation. It thus provides a meaningful point of departure for examining one of the most delicate issues in contemporary international law: the legal and institutional relationship between the People's Republic of China (PRC) and the territory governed by the authorities in Taipei.

While the One-China principle advanced by the PRC has gained widespread recognition among states and within the United Nations system, Taiwan has nonetheless sought meaningful participation in various international organizations, often under specific designations or frameworks that attempt to balance political sensitivities with functional cooperation. This coexistence – marked by contested sovereignty, differentiated levels of recognition, and varying institutional arrangements – raises important legal questions concerning representation, statehood, and the capacity of international organizations to manage challenges of this nature. To what extent have international organizations contributed – if at all – to addressing or managing the coexistence between the People's Republic of China and Taiwan, and what legal strategies or institutional mechanisms have been developed to accommodate both within multilateral frameworks, without formally resolving the underlying questions of sovereignty and recognition?

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[1] G. Luo (罗贯中), *三国演义* (*Romance of the Three Kingdoms*), Ming dynasty, Chapter 1.

[2] The original expression uses the term 天下 (*tiānxià*), literally "under heaven", a classical Chinese concept that refers to the world as a whole understood in political and moral terms. Unlike "heaven" in the Christian tradition, *tiān* denotes the cosmic order and natural authority, not a religious realm. However, the standard english translation is "All under Heaven".

International organizations, shaped by their founding treaties, constitute a heterogeneous category of actors whose institutional design determines whether they function as arenas for coexistence or tools of exclusion. Their contribution to the PRC-Taiwan sovereignty dispute cannot be assessed in terms of resolution: they have neither eliminated the ambiguity of Taiwan's international status nor produced a universally accepted legal settlement. Instead, they have structured how the confrontation is expressed within the international system, creating arrangements that – though uneven, unstable, and exposed to political asymmetries – have contained the dispute and prevented open destabilization. These institutional practices demonstrate the capacity of international organizations to manage contested statehood pragmatically, providing flexible solutions to reach a political equilibrium while simultaneously shaping the evolution of international law. In this process, they could generate a new conceptual space of "institutional subjectivity", whereby contested entities like Taiwan can engage internationally without formal recognition of sovereignty.

This thesis approaches the subject with a strict commitment to objectivity. Its aim is not to advance political claims or to endorse particular positions regarding sovereignty, but rather to analyze, in legal and institutional terms, how international organizations have addressed and may continue to address the China-Taiwan sovereignty challenge. For this reason, the terminology employed throughout carries no political meaning. The term "China" is used interchangeably with "the People's Republic of China (PRC)", the state exercising effective control over the Chinese mainland with its capital in Beijing (Peking). The term "Republic of China (ROC)" is used exclusively when referring to the historical republic established in 1912, and not to its claim of continuity after 1949. In general, the term "Taiwan" is used to designate the territory and institutions administered by the government in Taipei, without implying recognition of sovereignty. Building on this methodological foundation, the thesis develops its argument in three substantive chapters.

The first chapter situates the China-Taiwan dispute within the broader framework of international law, introducing the central concepts of sovereignty, recognition, and international legal personality, and analyzing how membership, representation, and legitimacy operate within international organizations. It then reconstructs the historical and legal evolution of the dispute, paying attention to the adoption of United Nations General Assembly Resolution 2758 in 1971 and to the systemic impact of the One-China policy on Taiwan's international standing.

The second chapter turns to practice by examining Taiwan's experience within international organizations. It highlights the precedents of other contested entities, outlines the institutional compromises devised to enable Taiwan's limited participation, and compares two emblematic case studies: the World Trade Organization, where Taiwan participates as a "Separate Customs Territory", and the World Health Organization, where its involvement has been highly constrained.

Finally, the third and last chapter considers the future. It explores how international organizations can function as arenas of coexistence or tools of exclusion and assesses possible trajectories for Taiwan's engagement in multilateral institutions. By drawing on the contributions of both Taiwanese and Chinese scholarship, it reflects on the potential role of international organizations in shaping the evolution of international law and in defining new forms of participation for entities with contested sovereignty.

In sum, by approaching the China-Taiwan dispute through the lens of international organizations, this thesis seeks not only to clarify the legal and institutional mechanisms that have shaped Taiwan's contested participation but also to illuminate how these mechanisms reveal the evolving capacity of international law to accommodate division and unity within the international system.

CHAPTER I
SOVEREIGNTY, RECOGNITION, AND INTERNATIONAL LEGAL PERSONALITY: THE CHINA-TAIWAN DISPUTE IN CONTEXT

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1.1. Core concepts of international law relevant to the China-Taiwan case

International law constitutes the framework within which relations among states, international organizations, and other entities unfold. It is generally understood to be the set of guidelines that regulate how subjects acknowledged as members of the international community behave. According to the taxonomy of Article 38(1) of the Statute of the International Court of Justice (ICJ), it can be defined as a body of legally binding standards derived from: "international conventions […], international custom […], (and) the general principles of law recognized by civilized nations".[3]

The international legal system is essentially decentralized, meaning it does not have a single legislative, executive branch, or mandatory court with general jurisdiction, as is the case in domestic legal systems. The international community is not a community of subordination but rather one of coordination.[4] All states participate on an equal footing, in conformity with the principle of sovereign equality. Indeed, the existence of a "superior state" would contradict the very foundational logic of international law. This explains why consent (most notably in treaties), consistent state practice

[3] *Statute of the International Court of Justice*, in *Charter of the United Nations and Statute of the International Court of Justice*, San Francisco, United Nations, 1945, Art.38(1).
[4] N. Ronzitti, *Diritto internazionale*, 6ª ed., Torino, Giappichelli, 2019, p. 9.

complemented by a sense of legal responsibility (custom), and the systemic need for order and predictability in a globalized society are the sources of international law.

Rules governing relations between political communities existed long before the modern state. Nonetheless, many academics believe that the early modern era saw the emergence of a state-centered legal system, frequently connecting it to the 1648 Peace of Westphalia. However, some writers emphasize that the beginnings of international law cannot be simplified to a single event, instead citing previous customs and more gradual advancements.[5] In any case, it is important to note that international law has progressively solidified into a normative framework that offers the terminology and classifications through which issues of sovereignty, legal personality, and recognition – such as those raised by the China-Taiwan dispute – are understood and debated.

In examining the China-Taiwan sovereignty challenge, several threshold questions inevitably arise: who (or what) qualifies as a subject of international law and to what degree; how status is attributed and demonstrated within the international legal order; and, above all, how conflicting claims to sovereignty are managed in practice through institutional mechanisms. International organizations, in particular, function as arenas where representation and legitimacy are constantly negotiated, and where states must find ways to coexist despite unresolved disputes. Without a clear conceptual framework, it is impossible to make sense of the ways in which sovereignty disputes are mediated within the international legal order. The case of China and Taiwan illustrates this dynamic with clarity, but the deeper concern lies in how international organizations serve as the institutional arenas where contested claims are managed, accommodated, or constrained. Accordingly, the subsections that follow establish the analytical foundations necessary for the later discussion. They do not address the merits of competing claims; rather, they set out the legal categories – sovereignty, legal personality, recognition, and representation – through which international law and international organizations structure the terms of coexistence. By laying this groundwork, the section provides the basis for understanding not only Taiwan's contested status, but more broadly the institutional and legal mechanisms through which international organizations handle sovereignty challenges in practice.

1.1.1. Sovereignty and legal personality in international law

State sovereignty constitutes the fundamental constitutional principle of international law, which regulates a community made up primarily of states that, in principle, share a uniform legal personality.[6] To speak of sovereignty is to speak of the state as the primary and original subject of

[5] *Ibidem*.
[6] J. Crawford, *Brownlie's Principles of Public International Law*, 8th ed., Oxford, Oxford University Press, 2012, p. 447.

international law, endowed with legal personality, and thereby capable of bearing rights and obligations on the international plane. If international law presupposes the existence of states, then sovereignty is the organizing principle that ensures both their independence and their formal equality. Since the seventeenth century, sovereignty has been invoked to denote the supreme authority of the state both within its territory and in its external relations. At its core, sovereignty entails the existence of a government that exercises exclusive control over a defined territory and population, free from subordination to any higher authority. The idea has been essential to the constitution of the modern international system, for it assumes that all states are formally equal, regardless of their differences in power, wealth, or political organization. The principle of sovereign equality, enshrined in Article 2(1) of the United Nations Charter,[7] remains one of the fundamental tenets of contemporary international law.

Sovereignty performs a dual function. Internally, it designates the authority of the state to govern without external interference, to legislate, and to administer justice within its borders. Externally, it entails independence in the conduct of foreign relations, including the capacity to enter treaties, establish diplomatic relations, and defend territorial integrity. Both dimensions are mutually reinforcing, with internal authority providing the basis for external independence and external recognition sustaining the legitimacy of internal authority. It is precisely this interplay that explains why sovereignty has been both a shield against foreign intervention and a prerequisite for participation in international life.

From a historical perspective, sovereignty was not born as a single, immutable concept. The Peace of Westphalia in 1648 codified the principle of territorial sovereignty and the rejection of supranational political authority within Europe.[8] Yet, scholars rightly caution against attributing too much causal significance to Westphalia alone. The consolidation of sovereignty was a gradual and contested process, shaped by doctrinal debates, state practice, and geopolitical struggles. By the nineteenth century, sovereignty had become a foundational assumption of international law, albeit one often applied selectively in a Eurocentric world that denied equal status to colonized peoples. The twentieth century brought significant refinements. After the two World Wars, sovereignty was reaffirmed but also subjected to new constraints. The UN Charter not only recognized the sovereign equality of states but also established limits, most notably the prohibition of the use of force except in self-defense or under Security Council authorization.[9] Sovereignty thus came to be understood not as unlimited freedom but as independence exercised within the framework of international obligations.

[7] *Charter of the United Nations*, 26 June 1945, 1 U.N.T.S. XVI, Art. 2(1).
[8] Avalon Project, Yale Law School, *Treaty of Westphalia. Peace Treaty between the Holy Roman Emperor and the King of France and Their Respective Allies*.
[9] Charter of the United Nations, cit., Art. 2(1), Art. 2(4), Art. 51 and Arts. 39-42.

Closely connected to sovereignty is the notion of international legal personality. Legal personality in international law refers to the capacity of an entity to possess rights and obligations under international law and to act upon them.[10] States are considered the primary and original subjects of international law.[11] They enjoy plenary legal personality, encompassing the ability to enter into treaties, bring claims before international tribunals, and exercise diplomatic protection on behalf of their nationals. The centrality of states reflects the state-centric origins of international law; however, as international law has evolved, entities other than states have been acknowledged as subjects of the law.[12] International organizations (IOs), for instance, have been acknowledged as possessing international legal personality to the extent necessary to fulfill their functions. The ICJ, in its 1949 Reparations for Injuries advisory opinion, famously stated that "subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights",[13] and conferred international legal personality upon the United Nations, thereby enabling it to bring claims and to enter into agreements. This recognition was groundbreaking, as it established that legal personality is not confined to states but can extend to institutions created by states, insofar as the functions conferred upon them require such status. Similarly, certain non-state entities – such as national liberation movements during the decolonization era – were recognized as having limited international legal personality, enabling them to represent peoples entitled to self-determination. The status of individuals within international law has likewise evolved in complex ways. They have progressively become subjects of international law, though in a restricted sense. Traditionally, individuals were objects of international law, with their rights and duties mediated entirely through their states. The development of international criminal law, human rights law, and international humanitarian law altered this paradigm. Individuals now hold direct rights (such as those protected under the International Covenant on Civil and Political Rights)[14] and may bear direct obligations, as in the case of international crimes prosecuted before tribunals such as the International Criminal Court. Although this form of legal personality is limited compared to that of states, it illustrates the pluralization of actors within the international legal order. It must be emphasized that the subject of international legal personality is vast, and a comprehensive treatment would extend far beyond the scope of this thesis. The aim here is not to survey every category of international actor, but to highlight those most relevant for the analysis that follows. Among them, particular importance attaches to *de facto* regimes[15] –

[10] F. Johns, *International Legal Personality*, 1st ed., Routledge, 2017, p. 5.
[11] N. Ronzitti, *Diritto internazionale*, cit., p. 15.
[12] A. Kaczorowska-Ireland, *Public International Law*, 6th ed., London, Routledge, 2024, p. 162.
[13] ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *ICJ Reports* 1949.
[14] *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171, entered into force 23 March 1976.
[15] A. Kaczorowska-Ireland, *Public International Law*, cit., p. 165.

entities that exercise effective control over a defined territory and population for a prolonged period, often claiming statehood or governmental authority but lacking broad international recognition. Their status depends on the circumstances of each case and raises difficult questions for international law. Some argue that Taiwan provides the most prominent example,[16] maintaining that it fulfills the criteria of statehood set out in Art. 1 of the 1933 Montevideo Convention[17] ("The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states. The federal state shall constitute a sole person in the eyes of international law."). Yet its international legal personality remains contested, largely because the People's Republic of China insists on being the sole representative of "China", while most states, bound by the One-China policy, refrain from granting Taiwan formal recognition. Taiwan's situation thus illustrates the tension between factual sovereignty and recognition as the gatekeeper of full legal personality in the international system. Comparable dilemmas exist in other cases, such as the Turkish Republic of Northern Cyprus and the Republic of Somaliland, but Taiwan's geopolitical weight and institutional implications make it uniquely central to contemporary debates.

Sovereignty and international legal personality, therefore, cannot be understood as mere abstractions but also as instruments of political struggle. States and international organizations play a decisive role in conferring, denying, or limiting personality, thereby shaping the contours of sovereignty in practice. For entities like Taiwan, participation in international organizations becomes a measure of their ability to function as international legal persons. Where membership is denied, sovereignty is symbolically and practically constrained; where participation is granted – even in limited or observer form – international personality acquires recognition and legitimacy.

In conclusion, sovereignty and legal personality are foundational yet contested notions of international law. While sovereignty and legal personality provide the conceptual framework, their practical significance is conditioned by recognition. The following section turns to recognition – not as a creator of states *ex nihilo*, but as the practice through which the international community acknowledges or denies claims of sovereignty and personality, thereby shaping their legal consequences and their expression within international institutions.

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[16] *Ibidem.*
V.W.-c. Wang, "Taiwan's Participation in International Organizations", in E. Friedman (ed.), *China's Rise, Taiwan's Dilemmas and International Peace*, London, Routledge, 2006, p. 178.
[17] *Montevideo Convention on the Rights and Duties of States*, 26 December 1933, 165 L.N.T.S. 19, Art. 1.

1.1.2. The doctrine, practice, and meaning of recognition

Recognition occupies a central position in international law, but its nature and consequences remain subject to significant doctrinal debate and divergent state practice. José Maria Ruda, former judge and president of the ICJ, aptly describes recognition of a new state as: "a unilateral act whereby one or more States admit, whether expressly or tacitly, that they regard the […] political entity as a State; consequently, they also admit that the […] entity is an international legal personality, and as such is capable of acquiring international rights and contracting international obligations."[18] However, recognition is not limited to states. It may concern governments, insurgent movements, situations of belligerency, or even specific legal circumstances. Precisely because of this variety, it is important to delimit the scope of the present discussion. For the purposes of this thesis, the focus will be on the recognition of states and governments, insofar as these categories are directly implicated in the China-Taiwan sovereignty challenge. Other forms, such as recognition of belligerency or of particular legal situations, will be mentioned only in passing.

At the doctrinal level, two main theories of recognition must be distinguished.[19] The constitutive theory (as adopted by Oppenheim, Lauterpacht, and others) maintains that a state becomes a subject of international law only through recognition by other states, thus attributing to recognition a creative, law-constituting effect. Lauterpacht, in particular, refined the constitutive position by emphasizing that the full international personality of new communities cannot be automatic. Since the ascertainment of statehood requires the prior determination of difficult circumstances of fact and law, some organ must perform that task. In the absence of a neutral international institution, recognition by existing states fulfills this function, thereby transforming recognition into a constitutive act of legal significance rather than a matter of arbitrary political discretion.[20] This view has doctrinal appeal insofar as it seeks to introduce order and stability into an otherwise fluid process of state formation. However, its weaknesses have been extensively noted. The first difficulty is that if recognition were truly constitutive, the legal existence of states would have a relative character, with the paradoxical consequence that an entity might exist as a state in relation to some recognizing states but not in relation to others. Kelsen sharply criticized this relativism as a violation of common sense,[21] casting doubt on the coherence of international law. A second difficulty arises from the fact that recognition can be unlawful or invalid, for instance in cases of recognition contrary to peremptory norms. The nullity of such recognitions, accepted in practice, undermines the

[18] J. Ruda, "Recognition of States and Governments", in M. Bedjaoui (ed.), *International Law: Achievements and Prospects*, Dordrecht, Martinus Nijhoff, 1991, pp. 449–468.
[19] J. Crawford, *Brownlie's Principles of Public International Law*, 9th ed., Oxford, Oxford University Press, 2019, p. 135.
[20] H. Lauterpacht, *Recognition in International Law*, Cambridge, Cambridge University Press, 2013, p. 55.
[21] J. Crawford, *The Creation of States in International Law*, 2nd ed., Oxford, Clarendon Press, 2007, p. 21.

claim that recognition itself can be the constitutive criterion of statehood. In sum, while the constitutive theory has played an important role in the doctrinal debate, both its relativistic implications and its inconsistency with state practice have led to its gradual decline.

The declaratory theory, by contrast, holds that statehood depends on the fulfillment of the 1933 Montevideo Convention objective criteria and that recognition merely acknowledges an already existing reality. Contemporary practice, as reflected, for instance, in Article 13 of the Charter of the Organization of American States, which explicitly provides that "the political existence of the State is independent of recognition by other States",[22] confirms the predominance of the declaratory theory as the approach most consistent with both legal principles and empirical reality. This position was reaffirmed by the Arbitration Commission of the Peace Conference on the former Yugoslavia (the so-called Badinter Commission), which in Opinion No. 1 of 29 November 1991[23] affirmed that the state is commonly defined as a community which consists of a territory and a population subject to an organized political authority and that the existence of the state is a question of fact. In Opinion No. 8[24] of 4 July 1992, and again in Opinion No. 10[25] of the same date, the Commission reiterated that recognition does not have a constitutive but only a declaratory effect. These authoritative pronouncements reflect a consistent understanding: whether an entity is a state is determined by objective criteria, not by the discretionary choices of third states.

At the same time, recognition retains immense importance. Although it does not create statehood *ex nihilo*, it represents the act that allows the new entity to enter into normal relations with the other members of the international community.[26] Recognition is thus rightly described as the foundation of the social life of states, for without it a state may find itself isolated, excluded from treaties, denied access to diplomatic relations, and unable to participate in international organizations. In this sense, recognition acts as a bridge between factual statehood and effective international personality. It is true that, under the declaratory theory, recognition does not determine whether an entity is or is not a state. Yet, the already mentioned Montevideo Convention of 1933 expressly includes among the criteria of statehood the "capacity to enter into relations with the other states",[27] a requirement that in practice cannot be fulfilled without some form of recognition. In this way, recognition – though formally a political act – remains intrinsically connected to both international

[22] *Charter of the Organization of American States*, 30 April 1948, 119 U.N.T.S. 3, art. 13.
[23] Arbitration Commission of the Peace Conference on the Former Yugoslavia, *Opinion No. 1*, 29 November 1991, 92 *International Law Reports* 162 (1993).
[24] Arbitration Commission of the Peace Conference on the Former Yugoslavia, *Opinion No. 8*, 4 July 1992, 92 *International Law Reports* 199 (1993).
[25] Arbitration Commission of the Peace Conference on the Former Yugoslavia, *Opinion No. 10*, 4 July 1992, 92 *International Law Reports* 208 (1993).
[26] N. Ronzitti, *Diritto internazionale*, cit., p. 47.
[27] *Montevideo Convention on the Rights and Duties of States*, cit., Art. 1(d).

legal personality and statehood, producing legal consequences that condition the effectiveness of sovereignty in the international system.

Recognition is also characterized by its discretionary nature.[28] Each state decides whether and when to extend recognition, guided by political, strategic, or normative considerations. This discretion explains the variety of recognitions that exist in practice. A classic distinction is drawn between recognition *de jure* and recognition *de facto*. The former grants full and definitive acknowledgment of statehood, with all the legal consequences that follow. The latter, by contrast, is a more cautious form, acknowledging that an entity exercises effective authority without granting it the full legitimacy of statehood. Recognition can also be explicit, through formal declarations or the establishment of diplomatic relations, or implicit, inferred from conduct such as treaty-making or voting in favor of admission to an international organization.

Beyond states, recognition may extend to new governments – particularly after unconstitutional changes of power. Although some scholars have considered the recognition of governments to be of limited relevance,[29] the distinction between recognizing a state and recognizing its government remains widely accepted in international law. A state continues to exist as a subject of international law regardless of internal upheavals, including revolutionary or unconstitutional changes of power. Its international legal personality is not extinguished by the fall of one regime and the rise of another. What may be in question, rather, is whether other states are willing to treat the new authorities as the legitimate representatives of that same state. Recognition of a government is therefore understood as the expression of a willingness to maintain with the new rulers the same relations that had previously existed with their predecessors.[30] It remains, like recognition of states, a discretionary act grounded in political evaluation. State practice illustrates the variability of this institution. Some states, such as the United Kingdom since 1980, have officially abandoned the practice of issuing formal recognition of governments (the so-called Estrada approach),[31] preferring instead to treat the question pragmatically and to decide in each case whether normal relations can in fact be conducted. Others have continued to use recognition – or its denial – as a diplomatic tool of approval or condemnation. A prominent example is the refusal of many Western states to recognize the Afghan government installed after the Soviet intervention of 1979-1980, a denial meant to delegitimize an externally imposed regime.[32] Importantly, the non-recognition of a government does not entail the non-recognition of the state itself. In fact, bilateral treaties remain in force and certain

[28] N. Ronzitti, *Diritto internazionale*, cit., p. 48.
[29] T. Treves, *Diritto internazionale. Problemi fondamentali*, Milano, Giuffrè Editore, 2005, p. 63.
[30] N. Ronzitti, *Diritto internazionale*, cit., pp. 51-52.
[31] Viscount Amory, *House of Lords Debates*, vol. 408, col. 5, United Kingdom Parliament, 28 April 1980, *Recognition of Governments: Policy and Practice*.
[32] N. Ronzitti, *Diritto internazionale*, cit., p. 52.

relations may be maintained even in the absence of formal acknowledgment of the new authorities. The significance of government recognition is heightened in cases where rival authorities simultaneously claim to represent the same state. Here, international recognition often determines who is entitled to exercise rights of representation in international organizations, to conclude treaties, and to control state assets abroad. This dynamic is directly relevant to the China-Taiwan context. When the Chinese Civil War ended in 1949, the Communist authorities established the People's Republic of China in Beijing, while the Nationalist government (Republic of China) retreated to Taiwan. At that stage, the issue was primarily framed as one of recognition of governments, which was whether other states would continue to regard the ROC as the legitimate government of China or extend recognition to the new Communist authorities. The matter later evolved into a broader controversy over state representation within international institutions, most notably the United Nations, where General Assembly Resolution 2758 of 1971 awarded China's seat to the PRC. The institutional implications of that shift will be examined in the following sections. What is important here is to note how the recognition or non-recognition of a government (or of a state), though formally political, produces far-reaching legal consequences in terms of representation, institutional participation, and the very configuration of international legal personality.

Although not central to the present inquiry, other forms of recognition deserve at least a brief mention. A first case is the recognition of insurgency, which expresses the willingness of third states not to treat insurgent groups simply as criminals under the domestic law of the parent state, but as actors with a certain status under international law. While it does not confer full international personality, such recognition can entail limited rights and duties, for instance regarding the conduct of hostilities or the protection of foreign nationals. A different category is the recognition of belligerency, which goes further in legal terms. Here, third states formally acknowledge that an internal conflict has reached such intensity and organization that the parties must be treated as if they were participants in an international armed conflict. This recognition is legally binding, as it triggers the application of the law of armed conflict (*ius in bello*) and obliges third states to respect the rights and duties associated with neutrality. Another relevant form concerns the recognition of legal situations, such as territorial changes or secessions. In this domain, the key principle is the doctrine of non-recognition of unlawful acts, according to which states are legally bound not to acknowledge as valid territorial acquisitions (or any other situation) obtained by force or in violation of fundamental norms of international law.[33] This principle is codified in Art. 41(2) of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts

[33] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 53rd session, 23 April–1 June and 2 July–10 August 2001, UN Doc. A/56/10, New York, United Nations, 2001, Art. 41(2).

(ARSIWA). The International Court of Justice provided authoritative confirmation of this principle in its 1971 Namibia Advisory Opinion.[34] Confronted with South Africa's continued presence in Namibia despite the revocation of its mandate by the United Nations, the Court held that the situation created by South Africa was illegal and that UN member states had a corresponding duty not to recognize its legality. More specifically, the Court declared that states were under an obligation not to enter treaty relations or any acts which might imply recognition of South Africa's authority over Namibia. This opinion thus established the now-classic precedent that the international community must withhold recognition from situations created in violation of peremptory norms, thereby giving legal force to the doctrine of non-recognition. The Court revisited related issues in the East Timor (Portugal v. Australia) case of 1995.[35] Although the Court ultimately declined jurisdiction due to the absence of Indonesia's consent, it nevertheless underscored the fundamental character of the right to self-determination, describing it as an obligation *erga omnes*. By elevating self-determination to this status, the Court reinforced the principle that legal situations arising from its denial – such as territorial control obtained in disregard of this right – cannot be regarded as valid within international law.

Recognition of belligerency and of legal situations stand out because they are not merely political acts with indirect legal consequences, but inherently legal acts that carry binding obligations.

The other aspect of recognition is its denial or withdrawal, often used as a tool of political pressure.[36] It can serve to isolate an entity, delegitimize a government, or signal disapproval of a particular course of action. Such practices underscore the fact that, although recognition is not constitutive of statehood, it can decisively shape the international standing and institutional participation of the entities concerned.

It is important to emphasize that recognition may also occur through international organizations, which have become crucial arenas for legitimization.[37] Recognition by such bodies carries particular relevance, as it highlights not only their role within international law but also their broader influence in structuring interstate relations and the international order as a whole. The League of Nations offered one of the earliest examples of collective recognition, conditioning admission on guarantees of compliance with international obligations and requiring a two-thirds majority of the Assembly.[38] Membership was, in effect, a form of recognition by the international community,

[34] ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 21 June 1971, ICJ Reports 1971, p. 16.
[35] ICJ, *East Timor (Portugal v. Australia)*, Judgment, 30 June 1995, ICJ Reports 1995, p. 90.
[36] N. Ronzitti, *Diritto internazionale*, cit., pp. 55-58.
[37] T.H. Slagter – J.D. Van Doorn, *Fundamental Perspectives on International Law*, 7th ed., Boston, Cengage Learning, 2022, p. 81.
[38] *Ibidem.*
League of Nations, *The Covenant of the League of Nations*, 28 June 1919, Art. 1(2).

though limited to states accepted by that organization. By contrast, the United Nations deliberately refrained from treating membership as equivalent to recognition: as early as 1950, the Secretary-General clarified that the UN "does not possess any authority to recognize either a new State or a new government of an existing State".[39] Admission to the UN is a political decision by the General Assembly, on the recommendation of the Security Council, but individual member states retain discretion to withhold recognition even if admission is granted. This distinction explains why the UN has a more universal character than its predecessor, but also why contested entities like Taiwan – although regarded by some as fulfilling the objective criteria of statehood – have been excluded from membership due to political opposition.

The European Union provides a more complex case. While the EU does not formally recognize states, its collective positions – whether through Council statements or coordinated external action – often function as a form of political guidance for its members and as signals to the wider international community.[40] In practice, the EU has sometimes opted for collective endorsement, as in its insistence on compliance with international human rights standards as a precondition for recognition, while in other cases, such as Kosovo in 2008, it left the matter to the discretion of each member state.[41] This selective approach underscores the dual character of organizational involvement in recognition: while not formally constitutive, it can decisively shape the legitimacy and viability of contested entities.

In conclusion, recognition is best understood as a discretionary political act with profound legal consequences. It does not determine whether an entity is a state, but it determines whether that state can fully participate in the international community. Recognition thus bridges the gap between factual sovereignty and legal personality. In fact, it does not create the former, but it allows the latter to be exercised in practice.

1.1.3 Membership, representation, and legitimacy within international organizations

Among the concepts of international law considered in this chapter, none is more directly connected to the institutional focus of this thesis than that of membership, representation, and legitimacy within international organizations. These notions determine not only the formal inclusion of entities in collective bodies, but also their capacity to act, to be heard, and to shape decisions within them. Understanding how IOs regulate admission, allocate seats, and confer authority is therefore

[39] United Nations, *Memorandum on the Legal Aspects of the Problem of Representation in the United Nations*, UN Doc. S/1466, 9 March 1950, p. 2.
[40] E. Newman – G. Visoka, "The European Union's Practice of State Recognition: Between Norms and Interest", *Review of International Studies*, vol. 44, no. 4, 2018, p. 772.
[41] Council of the European Union, *Council Conclusions on Kosovo*, 2851st General Affairs Council Meeting, Brussels, 18 February 2008.

indispensable for grasping how situations of contested statehood are managed and how entities such as Taiwan are positioned within the international legal order.

International organizations occupy a distinctive place within international law. As previously noted, they are now regarded as subjects of international law, endowed with legal personality "to the extent necessary for the fulfillment of their functions". Four main theories have been elaborated in doctrine to explain the basis and scope of their powers.[42]

According to the treaty interpretation approach, justifying IOs' powers is only a matter of treaty interpretation, insofar as their constitutive instruments are treaties and, in principle, do not differ in nature from other treaties.[43]

Closely connected is the attributed powers doctrine, which maintains that international organizations may exercise only those competences that have been expressly conferred upon them by the founding treaty (the principle of conferral).[44] This view, still based on treaty interpretation, acknowledges the special nature of the IOs' founding treaties.

A more flexible position is represented by the implied powers doctrine, which holds that, beyond their expressly conferred powers, international organizations also possess those powers that are necessary to ensure the effective performance of their functions. A strict version grounds these powers in the principle of *effet utile* or effective interpretation (*ut res magis valeat quam pereat*), ensuring that treaty provisions are given full effect.[45] A wider version, however, links implied powers not to specific clauses, but to the overall functions and objectives of the organization, allowing broader competences where essential for its proper operation.[46]

Finally, the inherent powers doctrine offers the most expansive account, positing that IOs, by their very nature as international institutions, possess certain essential powers that flow directly from their existence, independent of attribution or implication.[47] This theory is less widely accepted but has been invoked to justify actions not clearly grounded in treaty provisions.

Regardless of which doctrinal approach one adopts to justify the powers of international organizations, the constituent treaties stand as the legal cornerstone of international organizations. Whether

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[42] J. Klabbers, *An Introduction to International Organizations Law*, 4th ed., Cambridge, Cambridge University Press, 2022, pp. 50-68.

[43] Permanent Court of International Justice, *Competence of the International Labour Organization to Regulate the Conditions of Labour of Persons Employed in Agriculture*, Advisory Opinion, [1922] PCIJ, Series B, Nos. 2 and 3, p. 23.

[44] An example is contained in European Union, *Treaty on European Union*, 26 October 2012, 2012 O.J. (C 326) 13, Art. 5.

[45] ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *ICJ Reports* 1949, Hackworth J., dissenting opinion, p.198.

[46] ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, cit., majority opinion, p. 182.

[47] F. Seyersted, *Objective International Personality of Intergovernmental Organizations: Do Their Capacities Really Depend upon the Conventions Establishing Them?*, Copenhagen, 1963, p. 28.
F. Seyersted, *Common Law of International Organizations*, Leiden, Martinus Nijhoff, 2008, pp. 65-70.

considered ordinary treaties or acknowledged as having a special character, these texts define the organization's scope of authority and regulate the essential matters of membership and participation. They determine who can join, under what conditions, and through which procedures – a framework that, in principle, reflects a functionalist logic.[48]

From a legal perspective, therefore, membership is governed by the admission clauses contained in the founding instrument. In the case of the United Nations, Article 4 provides that membership is open to "peace-loving states" willing and able to carry out the obligations of the Charter, with admission requiring a Security Council (UNSC) recommendation and a two-thirds majority vote in the General Assembly (UNGA).[49] This provision illustrates the dual nature of membership: it is framed as a legal process, but in practice it is subject to political calculation, particularly within the Security Council, where the five permanent members exercise veto power. An example is the case of Palestine, which applied for UN membership in September 2011.[50] The UNSC, however, did not reach a consensus on recommending admission to the UNGA, effectively blocking the process at the preliminary stage. More recently, in April 2024, a renewed request for full membership was again rejected when the United States exercised its veto, despite twelve members voting in favor and only two abstaining.[51] This episode underscores how membership, while grounded in legal criteria set by the UN Charter, is in practice conditioned by political considerations within the Security Council. As a consequence, Palestine has remained a Permanent Observer since 2012, thereby excluded from the rights and prerogatives that full membership entails, despite widespread recognition of its statehood by individual UN members. While formally governed by the Charter, decisions on admission are inevitably bound up with questions of recognition. Yet it is crucial to underline that these two concepts, though closely related in practice, are not equivalent. Admission is not conceived as a collective act of recognition by the organization itself.[52] Recognition remains the prerogative of individual states, exercised according to their own political and legal assessments. That said, the process of admission necessarily presupposes that those members voting in favor consider the applicant to meet the criteria of statehood, particularly in organizations such as the UN, where statehood is a prerequisite for membership.[53] In this sense, while the decision of the organization as such does not create or confirm statehood, the aggregation of individual votes reflects the recognition practices of its members. Conversely, exclusion does not amount to formal non-

[48] J. Klabbers, *An Introduction to International Organizations Law*, cit., p. 91.
[49] Charter of the United Nations, cit., Art. 4.
[50] United Nations, *Admission of New Members to the United Nations*, UN Doc. A/66/371–S/2011/592, 23 September 2011.
[51] United Nations, "US Vetoes Palestine's Request for Full UN Membership", *UN News*, 18 April 2024.
[52] United Nations, *Memorandum on the Legal Aspects of the Problem of Representation in the United Nations*, cit., p. 2.
[53] Charter of the United Nations, cit., Art. 4(1).

recognition, but it can signal the unwillingness of key states to extend recognition, confining the entity to a marginal position within the institutional framework of international law.

Closely connected to membership is the issue of representation. International law assumes that states speak with one voice, but in practice, rival authorities may claim to represent the same state. International organizations, particularly the United Nations General Assembly, have had to resolve such disputes through the credentials process. Although couched as a technical procedure, the decision to seat one delegation rather than another is tantamount to collective endorsement of a government's legitimacy. This was evident in the China case. After the Chinese Civil War, the Republic of China retained China's UN seat for over two decades, even though the People's Republic of China exercised effective control over the mainland. The matter was resolved not through bilateral recognition but through an institutional act: General Assembly Resolution 2758 of 1971, which recognized the representatives of the PRC as "the only legitimate representatives of China"[54] and expelled the ROC's delegation. The resolution did not formally adjudicate Taiwan's statehood, but it settled the question of who would represent "China" within the UN system, with lasting consequences for Taiwan's international participation. Here, the legal category of representation within an IO functioned as a decisive instrument of legitimacy, shaping not only the diplomatic environment but also the very contours of international legal personality. Given the centrality of Resolution 2758 to the issues addressed in this thesis, its content and implications will be examined in detail in section 1.2.2.

In this framework, legitimacy emerges as the consequence of membership and representation. Once an entity is admitted or a delegation is seated, it is thereby recognized as entitled to act and speak within the organization. This confers legitimacy in the functional sense, as it enables the organization to operate effectively by identifying who is authorized to participate in collective decision-making, thereby ensuring continuity and stability in its institutional practice.

In the China-Taiwan context, the interplay of membership, representation, and legitimacy has been decisive. Taiwan has been excluded from UN membership and its exclusion from most IOs demonstrates how institutional practices of admission and representation condition recognition and legal personality in practice. Where participation is possible, it is the product of complex political compromise rather than the straightforward application of legal criteria. The denial of UN and other IOs membership and representation has thus become the central mechanism through which Taiwan's international personality is constrained. What emerges is that international organizations, through their rules on membership and representation, function as gatekeepers of legitimacy. They do not

[54] United Nations General Assembly, *Resolution 2758 (XXVI). Restoration of the Lawful Rights of the People's Republic of China in the United Nations*, 25 October 1971.

create states, but they determine which actors may exercise international legal personality within the institutional framework of the international community.

To conclude, a final clarification is necessary regarding the scope of this subsection. While the questions of membership, representation, and legitimacy could in principle be examined across a variety of international organizations, the analysis has concentrated on the United Nations. This choice is not incidental, since with its near-universal membership and its unique authority in shaping the practice and discourse of international law, the UN provides the most relevant and illustrative framework. Its decisions often set precedents that reverberate across the broader institutional landscape (as will be clear from analyzing the UNGA Resolution 2758 of 1971), thereby offering the clearest vantage point from which to grasp the dynamics under consideration. The conclusions drawn here are therefore of general application, even though specific organizations may at times present variations. For present purposes, however, focusing on the UN has allowed the core notions at stake to emerge with greater clarity and coherence.

1.2. The China-Taiwan dispute: contested sovereignty and fragmented recognition

The preceding section has clarified the core concepts of international law that are indispensable to understanding the China-Taiwan case. Each of these concepts, though general in scope, acquires particular significance when applied to the complex relationship between the People's Republic of China and Taiwan. As outlined in the Introduction, the present thesis does not aim to resolve the normative or political debates over Taiwan's statehood or over the legitimacy of Chinese claims to sovereignty. The purpose is instead to analyze, through the lens of international law, how (and if) international organizations have contributed to managing the coexistence of the PRC and Taiwan, and, where they have, what mechanisms have been developed to accommodate both without formally resolving the underlying sovereignty dispute.

To approach these questions, it is necessary to reconstruct the main elements that define the legal and institutional dimensions of the China-Taiwan issue. This will be done in three steps. First, an account will be provided of the historical and legal evolution of the relationship between the PRC and Taiwan. This is essential to clarify how, since 1949, two rival authorities have claimed to represent "China", how their status has evolved, and how international law has grappled with the duality. Second, particular attention will be given to United Nations General Assembly Resolution 2758 of 1971. This institutional act, which recognized the PRC as the only legitimate representative of China, is a turning point in the dispute and remains the cornerstone of the UN's approach to the matter. Third, the analysis will turn to the One-China policy and Taiwan's legal status in the

international arena, examining the complex interplay between bilateral recognition practices, multilateral diplomacy, and Taiwan's participation – or exclusion – from international organizations.

Throughout this work, the narrative will be presented as objectively as possible. The aim is not to endorse any political claim, but to map the legal categories, institutional practices, and doctrinal debates that structure the dispute. Whether Taiwan is or should be considered a state, or whether it should one day achieve formal independence, are questions that fall outside the objective of this thesis. What matters here is to understand how membership, representation, sovereignty, and recognition have been addressed in practice, and how international organizations have become the key arenas in which the PRC-Taiwan coexistence has been managed.

1.2.1. Historical and legal evolution in the China-Taiwan relationship

The evolution of the China-Taiwan relationship cannot be understood without a brief reconstruction of its historical and legal background. While 1949 marked a decisive moment, the roots of the dispute stretch further back, from the Qing dynasty's incorporation of Taiwan to Japanese colonial rule and the turbulent decades that followed.

Taiwan was inhabited for centuries by indigenous Austronesian peoples,[55] who lived in distinct communities with their own social and political structures. Before sustained foreign involvement, the island was not integrated into a centralized state system but maintained patterns of interaction with neighboring regions. From the early seventeenth century, Taiwan became a site of competing colonial interests. The Dutch East India Company established a presence in the southwest between 1624 and 1662, while the Spanish briefly occupied parts of the north from 1626 to 1642.[56] In 1662, the Zheng family, loyalists of the fallen (Chinese) Ming dynasty, expelled the Dutch and established control over large parts of the island. The Zheng rule lasted until 1683, when Qing forces defeated the regime and formally incorporated Taiwan into the Confucian-based imperial regime.[57]

Under Qing administration, Taiwan was initially treated as a frontier territory and governed as part of Fujian province. Only in 1886, in recognition of its growing strategic and economic importance, was it elevated to the status of a separate province.[58] The Qing encouraged Han Chinese migration, especially into the western plains, which gradually displaced indigenous populations from fertile lowland areas. By the end of Qing rule, most aboriginal groups had lost control of their ancestral lands in the plains, though many mountain territories remained under their control. The

[55] R. Ye, *The Colonisation and Settlement of Taiwan, 1684–1945: Land Tenure, Law and Qing and Japanese Policies*, London, Routledge, 2018, p. 1.
[56] *Ibidem.*
[57] M.J. Brown, *Is Taiwan Chinese? The Impact of Culture, Power, and Migration on Changing Identities*, Berkeley, University of California Press, 2004, pp. 40-42.
[58] X. Li, *The History of Taiwan*, Santa Barbara, CA, Greenwood Publishing Group, 2019, p.74.

Qing administration did not adopt a systematic policy of land dispossession, but the steady expansion of Chinese settlers transformed Taiwan's demographic and cultural landscape.[59]

Tensions with Japan soon revealed the fragility of Qing authority. The Mudan Incident of 1871,[60] in which shipwrecked sailors from Okinawa were killed by indigenous tribes, prompted a Japanese punitive expedition to Taiwan in 1874. Although the crisis ended with Japan recognizing Chinese sovereignty over the island, it underscored the limits of Qing control and encouraged stronger administrative integration. In the following decades, rivalry with Japan intensified, particularly over Korea, where China sought to preserve its traditional suzerainty while Japan pressed for independence and reform. This contest eventually escalated into the First Sino-Japanese War of 1894–95, in which China's outdated forces were decisively defeated by Japan's modernized military.

The defeat of the Qing in the First Sino-Japanese War led to the Treaty of Shimonoseki of April 17, 1895, under which Taiwan and other territories were ceded to Japan "in perpetuity and full sovereignty".[61] From a legal perspective, this marked an unambiguous transfer of sovereignty, recognized by treaty and accepted by the major powers of the time. Yet, the cession immediately provoked resistance within Taiwan. On May 25, 1895, Governor Tang Jingsong proclaimed the short-lived "Taiwan Republic", the first attempt to establish an independent polity on the island.[62] Tang, supported by local militias and Hakka volunteers, sought to prevent Japanese annexation rather than to break away from the Qing dynasty. However, the Japanese landing at present-day New Taipei on May 29, with 70,000 soldiers and 10,000 sailors, rapidly overwhelmed the defenders. Despite the efforts of Tang's troops, the Black Flag Army under Liu Yongfu and Hakka guerrilla fighters, the resistance was crushed after heavy fighting. By October, Japanese reinforcements captured Tainan, and the Taiwan Republic collapsed on October 21, 1895. More than 14,000 Taiwanese were killed, while Japanese casualties amounted to fewer than 300.[63] This initial episode set the stage for fifty years of Japanese colonial administration. Over this time, Japanese rule evolved through four phases.[64] The initial period, from 1895 to 1902, was marked by harsh military repression aimed at consolidating control. This was followed, between 1902 and 1919, by a reformist phase under civilian governors who introduced infrastructure projects, land reforms, and measures of economic

[59] *Idem*, p. 79.
[60] L. Chen, *The US—Taiwan–China Relationship in International Law and Policy*, Oxford, Oxford University Press, 2016, pp. 10-11.
[61] "The World and Japan" Database (Project Leader: A. Tanaka), *Treaty of Peace between the Empire of Japan and the Empire of China (Treaty of Shimonoseki)*, Shimonoseki, 17 April 1895, Database of Japanese Politics and International Relations, National Graduate Institute for Policy Studies (GRIPS) and Institute for Advanced Studies on Asia (IASA), The University of Tokyo, *Nihongaikoubunsyo, Dai 28 ken*, Art. II.
[62] L. Li, "Political Establishment of Japanese Colonial Rule", in G. Min-shi (ed.), *Taiwan shi* [*History of Taiwan*], 2nd ed., Taipei, Wunan tushu [Wunan Books], 2015, p. 169.
[63] G. Su, *Meiguo duihua zhengce yu Taiwan wenti* [U.S. China Policy and the Issue of Taiwan], Beijing, Shijie zhishi chubanshe [World Knowledge Publishing], 1998.
[64] X. Li, *The History of Taiwan*, cit., pp. 95-96.

modernization. From 1919 to 1937, colonial policy shifted toward cultural assimilation and Japanization, seeking to integrate Taiwanese society more closely into the Japanese imperial framework. Finally, after 1937, Taiwan entered a phase of wartime mobilization, during which it was fully incorporated into Japan's war effort and subjected to the demands of imperial expansion. These policies displaced indigenous peoples from most of their ancestral lands, confined them to small reserves, and deeply transformed Taiwan's legal order, economy, and social fabric. By 1945, after half a century of colonial rule, Taiwan had been profoundly reshaped by its incorporation into the Japanese empire.

Japan's control of Taiwan lasted until the end of the Second World War, but to understand what followed it is essential to consider the domestic situation in China at that time. After the fall of the Qing dynasty in 1911, the Republic of China was established in 1912, but the new state was quickly undermined by internal fragmentation, regional warlordism, and external pressures.[65] The Nationalist Party (Kuomintang, or KMT), under Chiang Kai-shek, consolidated power and unified the country, while the Chinese Communist Party (CCP), founded in 1921,[66] emerged as a rival political force. This tension led to the first phase of the Chinese Civil War (1927-1937), marked by intermittent but fierce conflict between the KMT and CCP. The outbreak of the Second Sino-Japanese War (1937-1945) forced a temporary truce,[67] Both the Nationalists and Communists fought against Japanese occupation, though coordination between them was uneasy and marred by mutual suspicion. This fragile wartime alliance was largely one of necessity rather than trust, and it disintegrated almost immediately after Japan's defeat in 1945. The Chinese Civil War resumed in 1946, escalating into a total fight for control of China.[68] Despite initial advantages in numbers and international recognition, the Nationalist forces suffered from corruption, economic crisis, and declining popular support. The Communists, under Mao Zedong, gained strength through effective military strategy and peasant mobilization. By 1949, the CCP had secured victory on the mainland. On 1st October 1949, Mao proclaimed the establishment of the People's Republic of China in Beijing.[69] The Nationalist government, led by Chiang Kai-shek, retreated to Taiwan with approximately two million soldiers, officials, and civilians. From Taipei, it continued to operate under the constitutional framework of the ROC, asserting that it remained the sole legitimate government of China and that its displacement was only temporary.

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[65] D.C. Wright, *The History of China*, 3rd ed., Santa Barbara, CA, Greenwood (ABC-CLIO), 2020, pp. 128-130.
[66] "资料：中国共产党" [Information: The Communist Party of China], Central People's Government of the People's Republic of China (中华人民共和国中央人民政府), last modified 27 June 2005, accessed 4 September 2025.
[67] D.C. Wright, *The History of China*, cit., p. 147.
[68] *Idem*, pp. 151-153.
[69] "百年瞬间｜中华人民共和国中央人民政府成立" [Centennial Moment | The Founding of the Central People's Government of the People's Republic of China], Communist Party Members' Website (共产党员网), accessed 4 September 2025.

While the fate of China itself was being determined on the battlefield, the status of Taiwan was simultaneously addressed in the diplomatic instruments of the end of the Second World War. The first step came with the Cairo Declaration of December 1943,[70] issued by Roosevelt, Churchill, and Chiang Kai-shek. It proclaimed that territories "stolen from the Chinese by Japan", including "Formosa" (Taiwan) and the Pescadores, would be restored to the Republic of China. This was reiterated in the Potsdam Proclamation of July 1945,[71] later accepted by Japan in its act of surrender. From a legal perspective, however, both Cairo and Potsdam were political declarations of intent, not binding treaties under international law. They expressed the Allies' war aims but did not themselves effect a formal transfer of sovereignty.

Following Japan's surrender in August 1945, Taiwan was placed under the administrative authority of the Republic of China, then recognized internationally as the legitimate government of China. ROC's troops formally accepted the Japanese surrender in Taipei in October 1945,[72] and Chiang Kai-shek's government began to administer the island as part of China. This administrative takeover was widely accepted in practice, yet in strict legal terms, it was not accompanied by a treaty of cession. Taiwan's sovereignty, therefore, remained in a kind of legal limbo, administered by the ROC but without a definitive instrument transferring title. The legal settlement with Japan came later. In 1951, the San Francisco Peace Treaty was signed between Japan and 48 Allied powers. Article 2(b) declared that "Japan renounces all right, title and claim to Formosa and the Pescadores".[73] Crucially, the treaty did not specify the recipient of sovereignty. This deliberate omission left Taiwan's status unresolved in formal legal terms. Moreover, neither the ROC nor the PRC was a party to the treaty: the PRC was excluded due to Cold War politics, and the ROC was not invited because many states questioned which Chinese government should sign. To address the bilateral relationship, Japan concluded a separate treaty with the ROC in 1952, namely the Treaty of Taipei.[74] This treaty formally ended hostilities and mirrored the San Francisco terms, with Japan again renouncing sovereignty over Taiwan. However, like the earlier treaty, it did not explicitly transfer sovereignty to the ROC. The Treaty of Taipei thus consolidated the ROC's *de facto* administration but did not amount to a *de jure* cession under international law. Importantly, Japan never signed a parallel treaty with the PRC. Diplomatic relations with Beijing were not established until 1972, when

[70] B.A. Elleman, *The US Navy and the South China Sea: American, Chinese, and Vietnamese Maritime Relations, 1945–2023*, London, Routledge, 2024 (see Document 2: Cairo Declaration, 1 December 1943), p. 176.
[71] *Potsdam Declaration (Proclamation Defining Terms for Japanese Surrender, Potsdam, 26 July 1945)*, edited and introduced by J.D. Keene, *Teaching American History*, para. 8.
[72] Kuomintang (KMT), "October 25: Taiwan Retrocession Day & Anniversary of the Battle of Kuningtou", *Kuomintang Official Website*, 25 October 2019, accessed 4 September 2025.
[73] *Treaty of Peace with Japan*, signed at San Francisco, 8 September 1951, 136 United Nations Treaty Series 45 (entered into force 1952), Art. 2 (b).
[74] *Treaty of Peace between the Republic of China and Japan*, signed at Taipei, 28 April 1952, Taiwan Documents Project.

Tokyo switched recognition from Taipei to the PRC. By the early 1950s, the legal and political picture was set. The PRC claimed to be the sole legitimate government of China, inheriting sovereignty over all Chinese territory, including Taiwan. The ROC, entrenched on the island, maintained that it remained the government of all China, displaced from the mainland but preserving continuity of the Chinese state. Each denied the other's legitimacy, with the PRC considering that the ROC had ceased to exist and the ROC regarding the PRC as an illegitimate regime. This unresolved duality – sovereignty renounced by Japan but not formally transferred, compounded by competing claims of representation – created one of the most enduring and contentious problems in contemporary international law.

In the early Cold War years, the ROC retained widespread recognition as the government of China, holding China's seat at the United Nations and in the Security Council. This situation persisted for over two decades, despite the PRC exercising effective control over the vast majority of Chinese territory and population. Gradually, however, diplomatic practice shifted. By the late 1960s, an increasing number of states switched recognition to the PRC, acknowledging it as the sole legitimate representative of China.[75] This culminated in the adoption of General Assembly Resolution 2758 in 1971. Resolution 2758 did not explicitly determine Taiwan's statehood, but it had far-reaching implications explained in the next section.

The legal debate over Taiwan's status did not end with Resolution 2758 but instead entered a new phase. In the 1970s, the majority of states gradually changed diplomatic recognition from Taipei to Beijing, aligning with the PRC's position that it alone represented China. The United States normalized relations with the PRC in 1979,[76] adopting its own version of the One-China policy while simultaneously enacting the Taiwan Relations Act,[77] which provided for continued substantive ties and defensive support for Taiwan without formal recognition. This dual approach, followed in different forms by many other states, institutionalized a pattern of formal recognition of the PRC combined with informal engagement with Taiwan.

This unresolved ambiguity was further illustrated by the so-called "1992 Consensus", reached between semi-official representatives of the PRC and the ROC in Hong Kong.[78] The understanding was indeed negotiated not by governments directly but by two authorized intermediary organizations: Taiwan's Straits Exchange Foundation (SEF) and China's Association for Relations Across the

[75] J.F. Copper, *Taiwan: Nation-State or Province?*, 7th ed., New York, Routledge, 2019, p. 67.
[76] United States and People's Republic of China, *Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China*, 1 January 1979, CIA Declassified Document, CIA-RDP84B00049R001303190013-6, accessed 4 September 2025.
[77] American Institute in Taiwan (AIT), *The Taiwan Relations Act*, American Institute in Taiwan – Policy History, accessed 4 September 2025.
[78] State Council Taiwan Affairs Office – State Council Information Office of the PRC, *Yi ge Zhongguo de Yuanze yu Taiwan Wenti* [The One-China Principle and the Taiwan Issue], White Paper, Beijing, 21 February 2000.

Taiwan Straits (ARATS). According to the commonly cited formula, both sides affirmed that there is "one China", but allowed for "different interpretations" (一中各表). For the PRC, this meant that the People's Republic was the sole legitimate government of China, with Taiwan as an inalienable part of its territory. For the ROC, then governed by the KMT, it meant that the Republic of China continued to exist as a sovereign state, albeit temporarily displaced to Taiwan. From a legal standpoint, the 1992 Consensus was not a treaty or a binding international agreement but rather a political understanding, or *modus vivendi*, that enabled cross-Strait dialogue and practical cooperation in the 1990s. Its ambiguous nature has been both its strength and its weakness: it facilitated communication without resolving the underlying dispute, but also left the door open to contestation, particularly as Taiwan's domestic politics evolved. The Consensus has since become a central reference point in the PRC's discourse, often described as the indispensable basis for dialogue. In Taiwan, by contrast, interpretations have diverged. Under KMT governments, it was understood as "one China, different interpretations", whereas the Democratic Progressive Party (DPP) has consistently denied that any genuine consensus was ever reached.[79]

The Consensus, however, remained a political understanding rather than a legal solution. The unresolved status of Taiwan continued to raise fundamental questions under international law, particularly regarding self-determination and the island's emerging political identity. The principle of self-determination of peoples in international law is defined as the right of all peoples "to freely determine, without external interference, their political status and to pursue their economic, social and cultural development".[80] Supporters of Taiwan's independence have claimed that the people of Taiwan, having developed a distinct political and cultural identity, have the right to determine their own political future.[81] By contrast, the PRC has consistently rejected the applicability of self-determination, framing Taiwan not as a colony but as an inalienable part of China. Chinese government official documents, including the 1993 White Paper[82] and subsequent statements, affirm this position, while the 2005 Anti-Secession Law explicitly authorized the use of "non-peaceful means"[83] should Taiwan attempt formal secession. At the same time, Taiwan has developed as a

[79] A.H.-E. Wang – Y.-Y. Yeh – C.K.S. Wu – F.-Y. Chen, "The Non-Consensus 1992 Consensus", *Asian Politics & Policy*, 13, no. 2 (2021), pp. 212–227.
[80] United Nations General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, GA Res. 2625 (XXV), 24 October 1970.
[81] F. Hamacher, "Taiwan Has the Right to Be Free and 'Preserve Self-Determination', Senior U.S. Senator Says", *Reuters*, 29 August 2025.
[82] State Council Taiwan Affairs Office – State Council Information Office of the PRC, *Taiwan Wenti yu Zhongguo de Tongyi* [The Taiwan Question and China's Reunification], White Paper, Beijing, 31 August 1993.
State Council Taiwan Affairs Office – State Council Information Office of the PRC, *The Taiwan Question and Reunification of China*, White Paper, Beijing, 31 August 1993, reprinted in J.-M. Henckaerts, *The International Status of Taiwan in the New World Order*, London, Kluwer Law International, 1996, pp. 275–276.
[83] National People's Congress, *Anti-Secession Law* (English translation), adopted at the Third Session of the Tenth National People's Congress, 14 March 2005, European Parliament, accessed 4 September 2025, Art. 8.

functioning political entity. Since 1949, it has maintained its own government, armed forces, and constitution, and it conducts foreign relations through a network of unofficial representations, such as the Taipei Economic and Cultural Representative Offices (TECRO). [84] Its democratic transformation in the late 1980s and 1990s further consolidated a distinct Taiwanese political identity. Yet, in legal terms, Taiwan's participation in the international community remains heavily constrained. It is excluded from the United Nations and most specialized agencies, and where participation is allowed – such as in the World Trade Organization (WTO) or the Asia-Pacific Economic Cooperation (APEC) – it takes place under special designations. These arrangements reflect pragmatic compromises. They preserve the PRC's insistence on the One-China principle while enabling Taiwan to contribute to specific functional areas. Today, fewer than 15 states maintain official diplomatic relations with Taiwan,[85] while the overwhelming majority recognize the PRC. At the same time, Taiwan enjoys extensive unofficial ties, including robust economic, cultural, and security relations with major powers.[86] Its *de facto* existence is acknowledged in practice, but its *de jure* status remains contested, also because of United Nations General Assembly Resolution 2758.

1.2.2. United Nations General Assembly Resolution 2758 of 1971 and its systemic impact

United Nations General Assembly Resolution 2758, titled "Restoration of the lawful rights of the People's Republic of China in the United Nations" adopted on 25 October 1971, during the 1976th plenary meeting, reads as follows:

> *The General Assembly*,
>
> *Recalling* the principles of the Charter of the United Nations,
>
> *Considering* that the restoration of the lawful rights of the People's Republic of China is essential both for the protection of the Charter of the United Nations and for the cause that 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.[87]

[84] Taipei Economic and Cultural Representative Office in the United States, *Official Website*, accessed 4 September 2025.
[85] Ministry of Foreign Affairs of the Republic of China (Taiwan), *Diplomatic Allies*, accessed 5 September 2025.
[86] Ministry of Foreign Affairs of the Republic of China (Taiwan), *Embassies & Missions*, accessed 5 September 2025.
[87] United Nations General Assembly, *Resolution 2758 (XXVI). Restoration of the Lawful Rights of the People's Republic of China in the United Nations*, cit.

The resolution is striking in its brevity, but its implications have been profound and enduring. The General Assembly formally resolved the "China representation question" within the UN system by a vote of 76 in favor, 35 against, and 17 abstentions.[88] Indeed, Resolution 2758 was adopted in accordance with General Assembly Resolution 1668 of 1961,[89] which required that any change in China's representation be decided by a two-thirds majority under Article 18 of the UN Charter.[90] This procedural safeguard underlines that the vote of October 1971 was not an ordinary decision, but a matter of institutional weight and legitimacy.

The resolution is noteworthy for both what it says and what it omits. Its operative clause does two things: it "restores" the PRC's rights within the UN, including its permanent seat on the Security Council, and it "expels" the representatives of Chiang Kai-shek. The ROC is not mentioned as a state, nor is Taiwan named as a territory. The dispute is thus framed in institutional terms – a matter of credentials and representation – rather than as a judgment on sovereignty or statehood. The deliberate silence of the text regarding both Taiwan and the Republic of China is important. In legal interpretation, such silence (*argumentum ex silentio*) acquires significance. It confirms that the UNGA confined itself to the issue of representation, without pronouncing on Taiwan's international legal status. The resolution expelled the representatives of Chiang Kai-shek, not a state as such, thereby avoiding any *ipso jure* exclusion of Taiwan from the United Nations.

The legal nature of Resolution 2758 has been widely debated. Under Articles 10-11 of the UN Charter, [91] the General Assembly is empowered to discuss and make recommendations on international issues, but it does not generally adopt binding decisions in the way the Security Council does under Chapter VII. On this view, Resolution 2758 is not a legally binding act in the sense of creating new international obligations for member states. Instead, it was a political decision with binding effect within the UN system itself. Once adopted, all UN organs and specialized agencies were required to treat the PRC as the only lawful representative of China, excluding the ROC delegation from further participation. In this sense, while not binding *erga omnes* under international law, the resolution is institutionally binding, establishing an internal precedent that continues to govern the UN's practice. From a doctrinal perspective, this reflects the classic distinction – prominently explained in the Simma Commentary[92] – between the external and internal legal effects

[88] United Nations General Assembly, *Resolution 2758 (XXVI). Restoration of the Lawful Rights of the People's Republic of China in the United Nations*, cit., Vote Summary.
[89] United Nations General Assembly, *Resolution on Representation of China in the United Nations*, GA Res. 1668 (XVI), 15 December 1961, available via UN Digital Library.
[90] Charter of the United Nations, cit., Art. 18.
[91] *Idem*, Arts. 10-11.
[92] B. Simma – D.-E. Khan – G. Nolte – A. Paulus (eds.), *Charter of the United Nations: A Commentary*, 3rd ed., Oxford, Oxford University Press, 2012, Volume I, Art. 10 and Art. 11.

of General Assembly resolutions. Externally, under Articles 10-14 of the Charter, the Assembly is empowered to "discuss" and make "recommendations"; it was not endowed with legislative competence. The ICJ has repeatedly characterized UNGA resolutions as recommendatory rather than binding *stricto sensu* on states.[93] Consistently, in the *Nuclear Weapons* Advisory Opinion (1996) the Court recognized that UNGA resolutions may have normative value – they can guide and inform – but they do not, by themselves, impose legal obligations on States.[94] That said, UNGA resolutions, while not legally binding, can nevertheless carry considerable evidentiary weight in the identification and development of customary international law – a point that will be examined in greater detail later in this thesis. Internally, by contrast, certain Assembly decisions are binding within the UN's own legal order. As the Simma Commentary underscores, resolutions on representation and credentials operate as organizational acts that all UN organs and specialized agencies must apply in their institutional practice. Read in this light, Resolution 2758 did not legislate for States or determine Taiwan's *de jure* international status; rather, it established an internally binding settlement of who occupies the "China" seat across the UN system. Externally, its significance is primarily evidentiary and political as it records, and has since reinforced, the international acceptance of the PRC as the government entitled to represent "China", without itself creating *erga omnes* obligations or resolving the separate question of Taiwan's statehood.[95]

This institutional dimension is crucial to understanding the systemic impact of Resolution 2758. The General Assembly, by voting as it did, provided a definitive answer to the representation of China, and this decision became self-executing across the UN family of organizations. Agencies linked to the UN, such as the World Health Organization (WHO), the International Civil Aviation Organization (ICAO), and others, adopted the same position, citing the authority of Resolution 2758. In practice, this meant that "the representatives of Chiang Kai-shek" were excluded not only from the United Nations itself but also from the vast network of international organizations attached to it.

The way the resolution was drafted – avoiding explicit mention of Taiwan or a ruling on its statehood – left unresolved the deeper legal questions. The ambiguity has generated long-lasting debate. On one reading, Resolution 2758 settled once and for all the question of who represents China at the UN, thereby implicitly confirming that Taiwan is not entitled to separate representation. This

[93] ICJ, *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, Advisory Opinion, 20 July 1962, ICJ Reports 1962, pp. 163-168.
ICJ, *Namibia Advisory Opinion*, cit., pp. 49-50.
[94] ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports 1996, p. 354, para. 70.
[95] United Nations General Assembly, *Recognition by the United Nations of the Representation of a Member State*, A/RES/396 (V), 14 December 1950, UN General Assembly, accessed 5 September 2025, Refworld.

interpretation, advanced consistently by the PRC[96] and described by some commentators as a distortion of the resolution's original scope,[97] treats the resolution as a comprehensive settlement of the Taiwan issue within the United Nations framework. On another reading, favored by Taiwan and some scholars,[98] the resolution should be read narrowly as a decision on China's representation, leaving open the possibility that Taiwan could apply for membership as a separate entity. The fact that Taiwan was not named, nor its statehood explicitly denied, sustains this line of argument, although in practice the PRC's veto power in the Security Council has blocked any such attempt.

The impact of Resolution 2758 can thus be understood along three main dimensions. First, it conclusively determined the issue of China's representation within the United Nations by institutionalizing the PRC as the sole government entitled to exercise the membership rights of "China" under the UN Charter. From that moment, the ROC was excluded from the UN framework, not as a state per se, but as a government no longer recognized to represent China. Second, it created a framework of exclusion for Taiwan, not through any express legal prohibition on its membership, but as a structural consequence of recognizing the PRC as the sole representative of China, including its permanent seat on the Security Council. In practice, this configuration constrains any hypothetical Taiwanese application for UN membership, since it would almost certainly be vetoed by the PRC. The exclusion is therefore indirect and institutional. While the resolution did not pronounce on Taiwan's statehood, it deprived Taipei of any feasible pathway to join the UN system. Finally, Resolution 2758 provided the normative and political basis for the subsequent development of the One-China policy at both bilateral and multilateral levels. Most states, aligning with the resolution, adopted policies recognizing Beijing as the sole legitimate government of China while limiting relations with Taipei to unofficial or functional channels.

In sum, Resolution 2758 did not settle the Taiwan question in international law, but it entrenched an institutional reality that continues to shape the island's external relations. What followed was not only the consolidation of the PRC's position within the UN, but also the gradual diffusion of the One-China policy into the bilateral and multilateral practice of states. To understand how this institutional decision became a global diplomatic framework, it is necessary to turn to the evolution of the One-China policy and its impact on Taiwan's legal status in the international arena.

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[96] State Council Taiwan Affairs Office – State Council Information Office of the PRC, *Taiwan Wenti yu Xin Shidai Zhongguo Tongyi Shiye* [The Taiwan Issue and China's Reunification in the New Era], White Paper, Beijing, 10 August 2022, Xinhua, Part I, para. 5.

[97] J. Drun and B. Glaser, *The Distortion of UN Resolution 2758 to Limit Taiwan's Access to the United Nations*, Washington D.C., The German Marshall Fund of the United States, March 2022, p. 7.

[98] L. Kuangyu [Z. Kuangyu], "How Glaser Misinterprets UNGA Resolution 2758", *Global Times*, 11 June 2024.

1.2.3. The One-China policy and Taiwan's legal status in the international arena

"世界上只有一个中国，台湾是中国的一部分，中华人民共和国政府是代表全中国的唯一合法政府。"[99] ("There is only one China in the world, Taiwan is part of China, and the government of the People's Republic of China is the sole legal government representing the whole of China."). This statement encapsulates the doctrinal foundation of the One-China principle. In fact, the principle rests on three interlocking claims. It affirms, first, the existence of a single sovereign entity entitled to represent "China"; it further asserts that Taiwan constitutes an inalienable part of this entity; and it concludes by recognizing the government seated in Beijing, namely the People's Republic of China, as the sole legitimate representative of China as a whole.

This tripartite structure has been consistently reaffirmed in official Chinese documents and functions as the baseline condition for diplomatic engagement with Beijing. Although this principle has already been introduced in the preceding sections, it deserves detailed treatment here for at least two reasons. First, its normative and political weight within international relations is unique. Indeed, unlike most foreign policy doctrines, it has achieved near-universal acceptance in practice, shaping the conduct of states and international organizations for over five decades. Second, Taiwan's legal status cannot be disentangled from the systemic consequences of the One-China policy. In effect, Taiwan's marginalization in international fora, its peculiar diplomatic arrangements, and its reliance on unofficial relations are all products of the diffusion and institutionalization of this principle. To understand Taiwan's international position, one must examine not only the UNGA Resolution 2758 but also the broader diplomatic architecture sustained by the One-China policy. The following analysis will therefore first examine the content and evolution of the One-China policy, before turning to the implications for Taiwan's legal status in the international arena.

First and foremost, it is essential to distinguish carefully between the One-China principle (一个中国原则) and the One-China policy (一个中国政策). The principle is Beijing's doctrinal position, rooted in its constitutional order[100] and diplomatic doctrine, and presented as non-negotiable. The policy, by contrast, denotes the approach adopted by other states and international organizations in response to this principle. This asymmetry highlights that the One-China principle is a unilateral doctrine of the PRC, whereas foreign One-China policies operate as legal fictions that allow states to maintain a delicate balance in their external relations. By adopting policies that nominally endorse the PRC's position, while simultaneously sustaining extensive – albeit formally non-diplomatic –

[99] State Council Taiwan Affairs Office – State Council Information Office of the PRC, *Taiwan Wenti yu Zhongguo de Tongyi* [The Taiwan Question and China's Reunification], White Paper, cit.

[100] People's Republic of China, *Constitution of the People's Republic of China*, adopted 4 December 1982, as amended 11 March 2018, National People's Congress, Preamble and Art. 31.

relations with Taiwan, other states create a space for pragmatic engagement that avoids direct legal or political confrontation. This device enables them to reconcile the formal acceptance of Beijing's claim with the functional need to interact with Taipei across areas such as trade, investment, culture, and even security cooperation. From a legal perspective, such policies do not amount to recognition of Taiwan as a state, but they carefully stretch the boundaries of non-recognition to preserve a wide range of substantive relations. While nearly all states have adopted some version of a One-China policy, the precise wording and scope vary. For example, the United States "acknowledges" the PRC's claim that Taiwan is part of China, but does not itself recognize Chinese sovereignty over Taiwan, thereby preserving a degree of strategic ambiguity.[101] The European Union recognizes the government of the PRC as the sole legal government of China but merely takes note of Beijing's position on Taiwan.[102] These nuances reveal that the One-China principle is not simply transplanted into international practice as such but rather refracted into multiple One-China policies reflecting the balancing act of states seeking relations with Beijing while preserving unofficial engagement with Taipei.

The PRC grounds its principle in a mixture of historical arguments and references to international law. Chinese official documents, notably *The Taiwan Question and China's Reunification* (1993),[103] *The One-China Principle and the Taiwan Issue* (2000),[104] and subsequent white papers,[105] rely on the UN Charter's principles of sovereignty, territorial integrity, and non-interference in domestic affairs. They stress that "safeguarding national unity and territorial integrity is the sacred right of all sovereign states",[106] and they situate Taiwan firmly within China's domestic jurisdiction. Historically, the argument traces Taiwan's incorporation into China under the Qing dynasty, the restitution of Taiwan after World War II under the Cairo Declaration and the Potsdam Proclamation, and Japan's subsequent renunciation of sovereignty in the San Francisco Treaty and the Treaty of Taipei. These texts are presented by the PRC to demonstrate that Taiwan has never been a sovereign state but rather has always remained an integral part of Chinese territory, temporarily separated because of civil war.

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[101] United States and People's Republic of China, *Joint Communiqué (Shanghai Communiqué)*, 28 February 1972.
[102] European External Action Service, *The European Union and Taiwan*, European Union External Action, Delegation to Taiwan, accessed 5 September 2025.
[103] State Council Taiwan Affairs Office – State Council Information Office of the PRC, *Taiwan Wenti yu Zhongguo de Tongyi* [The Taiwan Question and China's Reunification], White Paper, cit.
[104] State Council Taiwan Affairs Office – State Council Information Office of the PRC, *Yi ge Zhongguo de Yuanze yu Taiwan Wenti* [The One-China Principle and the Taiwan Issue], White Paper, cit.
[105] State Council Taiwan Affairs Office – State Council Information Office of the PRC, *Taiwan Wenti yu Xin Shidai Zhongguo Tongyi Shiye* [The Taiwan Issue and China's Reunification in the New Era], White Paper, cit.
[106] Original (mandarin Chinese): "维护国家统一和领土完整，是每个主权国家的神圣权利，也是国际法的基本原则。" contained in State Council Taiwan Affairs Office – State Council Information Office of the PRC, *Taiwan Wenti yu Zhongguo de Tongyi* [The Taiwan Question and China's Reunification], White Paper, cit.

A central institutional anchor of the One-China framework is United Nations General Assembly Resolution 2758 of 1971. While the resolution was formally confined to the matter of representation, Beijing has consistently interpreted it as an authoritative and definitive confirmation of the One-China principle.

On the bilateral level, the One-China principle has been institutionalized through diplomatic communiqués. The most prominent examples are the three U.S.-PRC Joint Communiqués of 1972 (Shanghai Communiqué), [107] 1979 (Normalization Communiqué), [108] and 1982 (August 17 Communiqué). [109] In these documents, Washington acknowledged the PRC as the sole legal government of China, while carefully calibrating its language on Taiwan. The United States, while severing formal diplomatic ties with Taipei, maintained substantive relations under domestic law, notably through the Taiwan Relations Act. This statute provided for continued arms sales and informal but robust economic, cultural, and security ties with Taiwan, creating a dual track approach that combined non-recognition at the official level with substantive engagement at the practical level. Other states have adopted similar models.[110] Japan, for instance, recognized the PRC in 1972 and concluded the Sino-Japanese Joint Communiqué,[111] affirming its adherence to the One-China policy, while continuing extensive unofficial relations with Taiwan through the Japan-Taiwan Exchange Association.[112] The European Community, later the European Union, likewise recognized Beijing as the sole government of China in 1975, yet has maintained broad unofficial relations with Taiwan, including trade, technology, and cultural cooperation.

The spread of the One-China principle has resulted in near-universal diplomatic alignment with Beijing. Today, fewer than 15 states – primarily small nations in Latin America, the Caribbean, and the Pacific – maintain official diplomatic ties with Taipei, while more than 180 states recognize the PRC. Over the past decades, Taiwan has lost successive allies in what is often described as diplomatic competition. The PRC has used both incentives (economic aid, trade agreements, infrastructure projects) and pressures to persuade states to switch recognition. High-profile examples

[107] United States and People's Republic of China, *Joint Communiqué (Shanghai Communiqué)*, cit.
[108] United States and People's Republic of China, *Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China*, cit.
[109] United States and People's Republic of China, *Joint Communiqué of the United States of America and the People's Republic of China (August 17 Communiqué)*, 17 August 1982.
[110] R.C. Bush, *Uncharted Strait: The Future of China–Taiwan Relations*, Washington, DC, Brookings Institution Press, 2013, p. 213.
[111] *Joint Communiqué of the Government of Japan and the Government of the People's Republic of China*, 29 September 1972, Ministry of Foreign Affairs of Japan.
[112] Japan–Taiwan Exchange Association, *Overview of Japan–Taiwan Exchange Association*, accessed 5 September 2025.

include Panama (2017),[113] El Salvador (2018),[114] Nicaragua (2021),[115] and Honduras (2023).[116] Each of these switches has been celebrated in Beijing as proof of the growing consolidation of the One-China consensus and of Taiwan's shrinking international space.[117]

While the consolidation of the One-China framework has clarified the position of the People's Republic of China within the international community, it has simultaneously constrained the scope of participation available to the authorities in Taipei. Taiwan is today a self-governing polity exercising effective control over its territory and population, and it maintains stable institutions and extensive international exchanges. Yet, the absence of widespread diplomatic recognition means that this reality does not translate into a corresponding status within the formal structures of international law and international organizations.

The most visible effect is the exclusion from the United Nations and its specialized agencies. At the same time, the One-China framework has also shaped the architecture of multilateral institutions. Under Article 4 of the UN Charter,[118] only "states" are eligible for admission, and any application from Taipei would face the obstacle of the PRC's permanent seat and veto power in the Security Council. As the Simma Commentary on Articles 4 and 18 emphasizes,[119] the Charter itself does not exclude Taiwan *ex lege*; rather, the decisive hurdle lies in the admission procedure. Membership requires both a Security Council recommendation and a General Assembly decision, and the Council's negative vote – inevitable considering the PRC's position as a permanent member with veto power – precludes even the possibility of Assembly consideration. Taiwan's exclusion is thus not the result of a legal prohibition under the Charter, but of the political dynamics embedded in its institutional design. Where participation has been possible, it has taken the form of carefully negotiated arrangements that balance functional needs with political sensitivities. In APEC, Taiwan is represented under the name "Chinese Taipei"[120] by non-presidential envoys; in the WTO it acceded in 2002 as the "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu";[121] and in the Asian Development Bank it is listed under the formula "Taipei, China".[122] These designations reflect

[113] C. Horton – S.L. Myers, "Panama Establishes Ties With China, Further Isolating Taiwan", *The New York Times*, 13 June 2017.
[114] C. Horton – S.L. Myers, "El Salvador Establishes Diplomatic Relations With China, Ending Ties With Taiwan", *The New York Times*, 21 August 2018.
[115] H. Davidson, "Nicaragua Cuts Ties with Taiwan and Pivots to China", *The Guardian*, 10 December 2021.
[116] Al Jazeera, "Honduras Opens Embassy in China after Cutting Ties with Taiwan", *Al Jazeera*, 11 June 2023.
[117] Xinhua News Agency, "国际观察：巴拿马与中国建交有何考量" [International Observations: What Considerations Got Panama to Establish Diplomatic Relations with China], *Xinhua*, 13 June 2017.
[118] Charter of the United Nations, cit., Art. 4.
[119] B. Simma – D.-E. Khan – G. Nolte – A. Paulus (eds.), *Charter of the United Nations: A Commentary*, cit., Art. 4 and Art. 18.
[120] Asia-Pacific Economic Cooperation (APEC), *Non-Tariff Measures (NTMs) – Remanufacturing: Chinese Taipei*, Market Access Group, Committee on Trade and Investment, last updated August 2025, accessed 5 September 2025.
[121] World Trade Organization (WTO), *Chinese Taipei — Member Information*, accessed 5 September 2025.
[122] Asian Development Bank, *Taipei, China: Fact Sheet*, 31 December 2024, accessed 5 September 2025.

pragmatic compromises, as they allow for substantive engagement in trade, development, or regional cooperation, while avoiding implications of sovereign equality with recognized states. On the bilateral level, Taiwan sustains a dense network of informal relations. Instead of embassies, it operates TECROs, which carry out many functions typical of diplomatic missions but without formal diplomatic status.

This pattern has led scholars to describe Taiwan's condition as one of international liminality,[123] as it possesses many of the attributes associated with statehood in practice, yet its international legal personality is limited by the nearly universal acceptance of the One-China principle. In this context, international organizations function as decisive gatekeepers. In fact, they may exclude Taiwan altogether, admit it only under restricted formulas, or enable functional participation while denying formal status. In each case, the institutional framework shapes the contours of Taiwan's international presence.

Viewed in this light, international organizations are not simply neutral arenas where legal concepts are applied, but the very sites where coexistence between the PRC and Taiwan is continuously negotiated. It is *in* and *through* these institutions that the balance between recognition, representation, and functional cooperation is constructed. The next chapter will therefore turn from the general legal and historical framework to the institutional level, examining how different organizations – starting with the United Nations and extending to bodies such as the WTO and WHO – have managed this delicate coexistence through specific rules, practices, and compromises.

[123] S. Corcuff, "'Subjectivity', 'Liminality' and the Ontology of Taiwan Studies vis-à-vis Sinology", paper presented at the 1st World Congress of Taiwan Studies, Session A3: *European Perspectives on Taiwan's Subjective*, Academia Sinica, Taipei, April 2012.

CHAPTER II
THE PRC AND TAIWAN IN THE FRAMEWORK OF INTERNATIONAL ORGANIZATIONS

2.1. Taiwan's participation under the One-China policy

2.1.1. Precedents of contested entities in international organizations and their relevance to Taiwan

2.1.2. Atypical forms of participation and institutional compromises: observer status, non-state entity, and neutral designations

2.2. Institutional models of participation: Taiwan in the WTO and WHO

2.2.1. The WTO model: participation as a "Separate Customs Territory"

2.2.2. The WHO model: from observer status to exclusion

2.2.3. Comparing institutional approaches to Taiwan's engagement

2.1. Taiwan's participation under the One-China policy

The system established by the One-China policy has exerted a profound influence on the participation of Taiwan in international organizations. While the previous chapter clarified the legal foundations and institutional mechanisms through which recognition, representation, and membership are managed in international law, this section turns to the practical question of how international organizations have responded to the existence of a *de facto* political entity – Taiwan – which exercises effective control over a defined population and territory, yet lacks broad recognition as a sovereign state due to the predominance of the One-China principle.

This framework has led to the emergence of a spectrum of institutional responses, often crafted through complex legal and political compromises. These arrangements reflect the tensions between the formal structure of international law – which ties membership and participation primarily to statehood – and the pragmatic needs of institutional cooperation in areas such as public health, international trade, or civil aviation.

Understanding Taiwan's participation or non-participation under the One-China policy, therefore, requires both a doctrinal and a functional analysis. Doctrinally, it involves examining how international organizations have interpreted and applied their own legal frameworks in the face of

contested claims. Functionally, it requires attention to the modalities through which Taiwan's presence has been accommodated, constrained, or excluded, depending on the institutional context and the political climate. These responses are not uniform; rather, they reveal the flexibility of international institutional practice in dealing with contested entities.

To approach this question, two lines of analysis will be developed. First, subsection 2.1.1 will examine the precedents of other contested entities and their participation in international organizations. The aim is to assess whether and how comparative practice may illuminate the treatment of Taiwan and help identify patterns or principles guiding institutional responses to entities with disputed or limited recognition. Particular attention will be given to cases such as Palestine, Kosovo, and the Holy See – each of which presents distinctive configurations of legal status, recognition, and participation – to better situate Taiwan's experience within a broader jurisprudential and institutional landscape. Second, subsection 2.1.2 will explore the specific modalities through which Taiwan has participated in selected international organizations despite the One-China policy. Such arrangements represent the core of what might be called "atypical institutional compromises" – strategies that aim to reconcile the legal formality of the One-China policy with the practical necessity of involving Taiwan in certain global governance mechanisms. These compromises are not mere technicalities; they reflect an underlying logic of coexistence, whereby international organizations function as sites of negotiated ambiguity, permitting a degree of participation without resolving the sovereignty question.

It is important to emphasize, once again, that the analysis in this chapter and in the whole thesis does not concern itself with the normative desirability of Taiwan's participation, nor does it seek to challenge the legitimacy of the One-China policy as adopted by the majority of the international community. Rather, the goal is to investigate how, within the constraints imposed by that policy, Taiwan has nonetheless managed to sustain a presence – however limited or indirect – in the international institutional order. In this sense, the inquiry returns to the central theme of this thesis: how international organizations have handled, and continue to handle, the challenge posed by the unresolved China-Taiwan dispute, not by adjudicating it, but by developing forms of procedural and functional accommodation that permit limited forms of coexistence.

2.1.1. Precedents of contested entities in international organizations and their relevance to Taiwan

The challenges surrounding Taiwan's participation in international organizations are not unique in the history of international law and diplomacy. Other contested entities, characterized by limited or disputed recognition, have encountered similar obstacles in seeking admission or participation within intergovernmental organizations (IGOs). Although each case is marked by

specific political, legal, and historical contexts, understanding the institutional approaches adopted in such scenarios is useful to navigate Taiwan's case. In particular, the cases of Palestine, Kosovo, and the Holy See merit close examination, as they illustrate distinct configurations of international legal personality, recognition, and participation. Together, they help to delineate the boundaries of current practice and shed light on how international organizations have developed mechanisms to manage contested sovereignty claims without necessarily resolving them.

The case of Palestine is one of the most instructive for understanding how IOs have accommodated an entity with contested statehood, in a context marked by prolonged political conflict and territorial fragmentation. Following the 1947 United Nations General Assembly Resolution 181,[124] which proposed the partition of the British Mandate of Palestine into Jewish and Arab states, the State of Israel was proclaimed in 1948[125] and subsequently admitted to the United Nations in 1949.[126] However, no independent Palestinian state emerged at that time, and the territories of the West Bank and Gaza came under the control of Jordan and Egypt, respectively. The Palestinian people, dispersed across these territories and in exile, lacked both a recognized sovereign state and institutional representation within the international system.

In this context, the Palestine Liberation Organization (PLO) was established in 1964[127] and gradually came to be regarded by Arab states and much of the international community as the legitimate representative of the Palestinian people. The PLO's role as a diplomatic actor was further strengthened after the 1974 Arab League Summit, which recognized it as the "sole legitimate representative of the Palestinian people".[128] Shortly thereafter, the UNGA granted the PLO observer status in 1974 by Resolution 3237 (XXIX).[129] This resolution invited the PLO "to participate in the sessions and the work of the General Assembly in the capacity of observer", without granting it membership or acknowledging it as a state. Importantly, the resolution referred to the PLO's right to represent the Palestinian people, marking the beginning of a gradual process of institutional recognition within the UN framework, despite the unresolved legal status of Palestine as a state.

A turning point occurred in 1988, when the Palestinian National Council unilaterally declared the establishment of the State of Palestine.[130] This declaration, issued in Algiers, was based on the

[124] United Nations General Assembly, *Resolution 181 (II). Future Government of Palestine*, A/RES/181(II), 29 November 1947.
[125] Provisional Government of Israel, *The Declaration of the Establishment of the State of Israel*, Official Gazette No. 1, Tel Aviv, 5 Iyar 5708 (14 May 1948).
[126] United Nations General Assembly, *Resolution 273 (III). Admission of Israel to Membership in the United Nations*, A/RES/273(III), 11 May 1949.
[127] Embassy of Palestine in Italy, "PLO", *Embassy of Palestine*, accessed 7 September 2025.
[128] Arab League, *Resolution on Palestine*, Seventh Arab League Summit Conference, Rabat, Morocco, 28 October 1974.
[129] United Nations General Assembly, *Resolution 3237 (XXIX). Observer Status for the Palestine Liberation Organization*, A/RES/3237(XXIX), 22 November 1974.
[130] Palestine National Council, *Palestinian Declaration of Independence*, 19th Session, Algiers, 15 November 1988.

notion of the Palestinian people's right to self-determination and was explicitly anchored in UN resolutions. The newly proclaimed State of Palestine was subsequently recognized by over 130 UN member states, though not by major Western powers. In response to this development, the UN General Assembly adopted Resolution 43/177 (1988),[131] which acknowledged the proclamation and decided that "the designation 'Palestine' should be used in place of 'Palestine Liberation Organization' within the United Nations system". However, this change in designation did not entail admission as a member state, which would have required Security Council approval.

A further evolution took place with General Assembly Resolution 67/19 of 29 November 2012,[132] which upgraded Palestine's status from "observer entity" to "non-member observer state". The resolution, adopted with 138 votes in favor, 9 against, and 41 abstentions,[133] explicitly reaffirmed the right of the Palestinian people to self-determination and independence in a State of Palestine within the pre-1967 borders. A significant strand of doctrine has interpreted this change in institutional status not merely as a symbolic gesture, but as a functional acknowledgment of Palestine's international legal capacity, in particular its ability to accede to multilateral treaties. Since participation in such treaties is ordinarily reserved to "states", Resolution 67/19 was seen as providing the institutional basis for treating Palestine as sufficiently state-like for treaty law.[134] This reading transforms the resolution from a declaratory affirmation of political aspirations into a legal development with concrete ramifications. The consequences have been tangible, as Palestine has since relied on its enhanced status to accede to numerous international instruments, thereby strengthening its position within the international legal order.

Among the most consequential developments was Palestine's accession to the Rome Statute of the International Criminal Court (ICC) in 2015,[135] a move that triggered significant debate over whether Palestine could validly accede to treaties. The ICC's acceptance of Palestine's accession, and its subsequent opening of preliminary investigations, underscored the growing functional legal personality of Palestine in the international legal system, based not on UN membership but on broader patterns of recognition and institutional engagement.

The case of Palestine illustrates that the UN General Assembly possesses broad discretion in granting observer status and in adopting designations that reflect political realities without

[131] United Nations General Assembly, *Resolution 43/177. Question of Palestine*, A/RES/43/177, 15 December 1988.
[132] United Nations General Assembly, *Resolution 67/19. Status of Palestine in the United Nations*, A/RES/67/19, 29 November 2012.
[133] United Nations General Assembly, *Resolution 67/19. Status of Palestine in the United Nations*, A/RES/67/19, cit., Vote summary.
[134] V. Kattan, *The Palestine Question in International Law*, London, British Institute of International and Comparative Law, 2008.
[135] International Criminal Court, *Rome Statute of the International Criminal Court*, adopted 17 July 1998, entered into force 1 July 2002; State of Palestine acceded 2 January 2015, entry into force 1 April 2015.

definitively resolving contested sovereignty claims. Moreover, Palestine's trajectory shows that political recognition by many states can translate into treaty-making capacity and functional participation in the absence of full membership.

The case of Kosovo presents a markedly different scenario from that of Palestine, as it stems from the breakup of the Socialist Federal Republic of Yugoslavia (SFRY)[136] and the ensuing conflict between ethnic communities in the region. Kosovo, an autonomous province within the former SFRY, became the focus of escalating tensions and violence during the 1990s, particularly between the ethnic Albanian majority and the Serb minority, culminating in a NATO military intervention in 1999[137] in response to a humanitarian crisis and allegations of ethnic cleansing. Following the NATO intervention and the adoption of United Nations Security Council Resolution 1244 (1999),[138] Kosovo was placed under international administration by the United Nations Interim Administration Mission in Kosovo (UNMIK), while formally remaining part of the Federal Republic of Yugoslavia (later Serbia and Montenegro, and eventually Serbia). Resolution 1244 authorized "substantial autonomy and self-government" for Kosovo but reaffirmed the territorial integrity of the Federal Republic of Yugoslavia, establishing a delicate legal and political balance.

In 2008, after nearly a decade of international administration and stalled negotiations on final status, the Kosovar Assembly unilaterally declared independence from Serbia.[139] This declaration was immediately recognized by several key states, including the United States, the United Kingdom, France, and Germany, but rejected by others – most notably Russia, China, and Serbia – all of whom maintain that Kosovo remains part of Serbian territory under international law. The legality of Kosovo's declaration of independence was referred to the International Court of Justice by the UN General Assembly (the sole secession case to date to have been debated by the Court). In its 2010 Advisory Opinion,[140] the ICJ concluded that the declaration did not violate international law, as there was no applicable prohibition on unilateral declarations of independence. However, the Court carefully avoided recognizing the existence of a general *ius secessionis* under international law, stressing that its task was confined to assessing the conformity of the declaration with international law as it stood. In doing so, the ICJ reinforced an important doctrinal point. It affirmed that unilateral declarations of independence are not *per se* illegal. They may be contrary to international law when

[136] M. Ljubovic – A. Jusic, "Kosovo's Membership of International Organisations", *Business Law International*, vol. 25, no. 2, 2024, p. 175.
[137] North Atlantic Treaty Organization, *Kosovo Air Campaign (March–June 1999): Operation Allied Force*, last updated 21 October 2024.
[138] United Nations Security Council, *Resolution 1244 (1999). On the Situation Relating to Kosovo*, S/RES/1244, 10 June 1999.
[139] Assembly of Kosovo, *Declaration of Independence*, Pristina, 17 February 2008.
[140] ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, *ICJ Reports* 2010.

connected with unlawful uses of force or other violations of peremptory norms, but absent such circumstances, international law remains neutral towards them.[141]

Despite lacking full membership in the United Nations – effectively blocked due to opposition from permanent members of the Security Council – Kosovo has nonetheless made significant strides in participating in international organizations. In 2009, it joined both the International Monetary Fund (IMF) and the World Bank,[142] following a vote among member states. Kosovo's accession to the IMF and the World Bank demonstrates that functional criteria – especially the capacity to participate in and benefit from financial cooperation – can prevail over political disputes in some institutional contexts. However, Kosovo's bids to join other organizations, particularly those with closer ties to the UN system or those requiring broader consensus, have met more resistance. For instance, Kosovo's 2015 application to the United Nations Educational, Scientific and Cultural Organization (UNESCO) narrowly failed to achieve the required two-thirds majority, and similar attempts to join the International Criminal Police Organization (INTERPOL) have also failed.[143] These setbacks highlight the persistent limits of partial recognition, especially in institutions where political sensitivities and geopolitical alignments significantly influence decision-making.

Kosovo's experience underscores that participation in international organizations is not contingent solely upon formal UN membership or universal recognition. Rather, it is shaped by the institutional design of the organization in question – including the degree of discretion afforded to its governing bodies – and by the political will of existing member states. Organizations with flexible admission rules, functional mandates, or weighted voting systems are more inclined to admit entities with disputed status, whereas those aligned with the UN's legal and political framework tend to reflect the veto dynamics and recognition politics of the broader international order. Kosovo also highlights the strategic importance of bilateral diplomacy and the role of powerful supporters. The backing of the United States and most EU member states has been instrumental in securing Kosovo's entry into several organizations and in promoting its international visibility. At the same time, the continued opposition of countries such as Russia, China, India, and several non-aligned states illustrates the enduring fragmentation of international recognition, which in turn constrains the full realization of Kosovo's international legal personality. Kosovo provides a compelling example of how state-like entities can functionally participate in international institutions even in the absence of universal recognition. The legal reasoning adopted by the IMF and the World Bank – rooted in the Montevideo criteria and supported by a sufficient number of member states – confirms that international

[141] J. Crawford, *The Creation of States in International Law*, cit., pp. 407-408.
[142] M. Ljubovic – A. Jusic, "Kosovo's Membership of International Organisations", cit., p. 180.
[143] *Ibidem.*

institutional practice can develop mechanisms of accommodation based on a pragmatic evaluation of facts on the ground, rather than a formal adjudication of sovereignty.

The Holy See (the supreme authority of the Catholic Church) occupies a unique position in international law and provides a valuable point of comparison for this analysis. Unlike the cases of Palestine and Kosovo, the Holy See is not a state in the conventional sense, although it exercises sovereignty over the Vatican City State[144] and is widely recognized as possessing international legal personality.[145] It has long-standing diplomatic relations with numerous states and is a party to many international treaties. Notably, the Holy See maintained its international legal personality even during the period between the dissolution of the Papal States and the establishment of the Vatican City State (1870-1929), despite the complete loss of territorial control – a key reason why it is considered a non-territorial entity under international law.[146]

In the United Nations context, the Holy See has enjoyed permanent observer status since 1964,[147] a position formalized in practice through resolutions and administrative arrangements. Although not a full UN member, the Holy See participates in General Assembly sessions, submits official communications, and is permitted to sign and ratify international treaties under the UN framework. The legal basis for the Holy See's participation lies in its long-standing subjectivity under international law, affirmed by customary practice and historical precedent. The 1933 Montevideo Convention is often inapplicable to the Holy See, given that it does not meet the traditional territorial criteria for statehood. However, its international personality has been recognized on the grounds of its diplomatic activity and its functional role in the international system, particularly in matters related to peace, humanitarian affairs, and human rights. The Holy See's participation illustrates that entities with unique legal characteristics can be integrated into the institutional framework of international law, even without conforming to the standard definition of statehood. It also underscores the flexibility of international organizations in admitting participants on *sui generis* grounds. Moreover, the Holy See's status demonstrates that observer roles can be structured in ways that enable substantial engagement without the full rights and obligations of membership. The Holy See thus exemplifies how institutional design and legal interpretation can accommodate atypical actors, offering a model – however imperfect – for partial inclusion under constrained circumstances.

Taken together, the cases of Palestine, Kosovo, and the Holy See offer illustrative examples through which Taiwan's position may be better understood. Each precedent reveals different aspects

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[144] Italy and the Holy See, *Patti Lateranensi*, signed 11 February 1929, ratified 7 June 1929, published in *Gazzetta Ufficiale del Regno d'Italia*, no. 99, 29 April 1929, Arts. 3-4.
[145] N. Ronzitti, *Diritto internazionale*, cit., p. 30.
[146] *Ibidem.*
[147] United Nations General Assembly, *Resolution A/58/314. Participation of the Holy See in the Work of the United Nations*, A/RES/58/314, 16 July 2004, Fifty-eighth Session.

of the international community's approach to contested or atypical entities, and each underscores the extent to which international legal personality, recognition, and institutional participation remain politically contingent and legally malleable. Three core patterns emerge from this analysis.

The first is that functional participation is possible even in the absence of full recognition. In all three cases, entities with disputed or non-standard status have participated in international organizations through observer roles, limited membership, or under special designations. This indicates that IOs can adapt their rules to allow for functional engagement, especially where the entity in question plays a relevant role in the field of activity (public health, humanitarian affairs, trade…).

A second pattern concerns the decisive role of recognition politics. While legal criteria, such as those codified in the Montevideo Convention, provide a framework for assessing claims to statehood, the actual participation of contested entities is often based on political support. In both Kosovo and Palestine, critical thresholds of state recognition facilitated increased participation. In contrast, while some argue that Taiwan meets the criteria of effective statehood, its marginalization has primarily resulted from the geopolitical effects of the One-China policy and the PRC's institutional leverage within the UN system and beyond.

Finally, a third pattern is the organizational autonomy and legal creativity displayed by IOs. The cases examined demonstrate that international organizations possess a certain degree of legal autonomy in interpreting their founding instruments and in developing participation modalities. Whether through observer status, *sui generis* arrangements, or alternative designations, organizations can craft solutions tailored to complex political realities. This flexibility, however, is constrained by the political will of member states and by institutional dependencies.

In sum, while each precedent reflects a distinct legal and political configuration, they collectively demonstrate that meaningful participation in international organizations is possible even in the absence of full recognition. Against this backdrop, the following section explores how Taiwan has navigated similar constraints to engage with international institutions in practice.

2.1.2. Atypical forms of participation and institutional compromises: observer status, non-state entity, and neutral designations

> Taiwan is unfairly excluded from many international organizations […]. Taiwan should commit itself, as a sovereign nation, to abide by the UN Charter and various international conventions, […]. Taiwan cannot afford to draw on isolationist, self-centered conservative thinking. Nor should Taiwan be obsessed with the issue of sovereignty […]. Rather, it should explore various channels to intensively open battlefields outside of the international mainstream establishment. The principle of 'new-internationalism' actually consists of pragmatic

> strategies such as the extensive participation in international activities, and the focus on establishing sustainable, long-term friendships.[148]

This quote from Taiwan's Democratic Progressive Party captures a strategic pragmatism that underpins much of Taiwan's international conduct. It reflects an understanding that the pursuit of sovereignty, however foundational, must often be mediated through innovative strategies that navigate geopolitical constraints. The reference to "various channels" and "battlefields outside of the international mainstream establishment" is not merely rhetorical. It reflects a recognition that Taiwan's engagement with the international community is constrained by more than legal considerations – it is shaped by the structural dominance of the People's Republic of China within the international system, especially under the One-China principle. Taiwan's diplomatic maneuvering, therefore, has not simply been a quest for recognition, but an exercise in institutional navigation – seeking visibility, participation, and relevance without triggering exclusion.

Taiwan's engagement with IGOs has evolved through different phases, shaped by changes in diplomatic strategy and global politics. Following the framework proposed by Björn Alexander Lindemann, four main periods can be identified.[149]

The first phase, which extends from 1949 to 1988, is described as the passage "from diplomatic competition to diplomatic isolation". Following the Chinese Civil War and the establishment of the PRC in 1949, Taiwan retained China's seat in most international organizations, including the UNO. A dual representation struggle emerged, with both Beijing and Taipei claiming to represent "China". Taiwan initially held its position thanks to Cold War dynamics and Western support. However, after the PRC's admission to the UN in 1971 and the normalization of U.S.-China ties, Taiwan faced increasing diplomatic isolation. It was gradually excluded from most IGOs as Beijing's international influence expanded – marking the start of Taiwan's marginalization in multilateral diplomacy. An important exception was the Asian Development Bank (ADB), which Taiwan joined as a founding member in 1966. When the PRC applied to join in the 1980s, the U.S. and Japan – holding most voting shares – backed dual representation based on capital contribution. A compromise was reached: Taiwan stayed on as "Taipei, China", and the PRC joined in 1986. Though Taipei withdrew in protest, it resumed participation in 1988, keeping its voting rights while objecting to the name change. The

[148] Democratic Progressive Party, *White Paper on Foreign Policy for the 21st Century*, Taiwan Documents Project, 28 November 1999.
[149] B.A. Lindemann, *Cross-Strait Relations and International Organizations: Taiwan's Participation in IGOs in the Context of Its Relationship with China*, 1st ed., Wiesbaden, Springer VS, 2014, pp. 69-93.

ADB thus became the first IGO to include both the PRC and Taiwan – a unique institutional compromise that Beijing refused to replicate elsewhere.[150]

A second period, from 1988 to 2002, coincides with Taiwan "gaining international space through flexible diplomacy". The lifting of martial law in 1987 marked Taiwan's turn toward democratization and pragmatic diplomacy. Under President Lee Teng-hui, it adopted "flexible diplomacy", seeking observer or non-member roles in IGOs to expand its "international space" without declaring independence. Though blocked by Beijing, Taiwan found openings in functional bodies, joining APEC in 1991 as "Chinese Taipei". Efforts to enter the WHO and WTO emphasized technical value over statehood, reflecting a shift toward legal pragmatism and institutional adaptability.

The third phase covers the years from 2002 to 2008, under the presidency of Chen Shui-bian. This period marked a more assertive moment in Taiwan's international strategy. Fueled by a pro-independence agenda and rising Taiwanese identity, the administration pursued formal applications to join IOs under the name "Taiwan" (because of the "one China, one Taiwan" emphasis posed by the DPP). These bids were politically symbolic and legally controversial, reinforcing PRC opposition. Nonetheless, the Chen administration continued to seek "substantial participation" in IGOs – a term used by Taiwanese scholars to describe meaningful involvement without formal membership. This strategy focused on expanding Taiwan's presence in technical bodies, academic forums, and civil society networks, thus bypassing state-centric barriers. While efforts to gain observer status in the World Health Organization and the International Civil Aviation Organization were consistently blocked, Taiwan succeeded in amplifying its visibility in global public health, transport, and development discussions. This period illustrated the limitations of legal formalism in the face of geopolitical opposition but also highlighted the growing importance of alternative, non-sovereign forms of engagement.

The years from 2008 to 2012 marked a fourth period, defined by President Ma Ying-jeou's more conciliatory approach to cross-Strait relations. His policy of a "diplomatic truce" prioritized economic cooperation and a reduction in confrontation, resulting in a partial thaw in hostilities. This political climate enabled informal understandings that facilitated limited institutional compromise. One of the most significant outcomes was Taiwan's invitation to participate in the World Health Assembly (WHA) – the decision-making body of the WHO – as an observer under the name "Chinese Taipei" from 2009 to 2016. Though the arrangement was not legally codified and depended on the goodwill of the PRC and the discretion of the WHO Director-General, it provided a concrete example of how atypical forms of participation could operate in practice. This episode demonstrated the potential of

[150] J. Sehnálková – O. Kučera, "Taiwan's Participation in International Organizations: Obstacles, Strategies, Patterns?", in J. Damm – P. Lim (eds.), *European Perspectives on Taiwan*, Wiesbaden, VS Verlag für Sozialwissenschaften | Springer Fachmedien, 2012, p. 154.

procedural innovation – such as Director-General invitations or side-meeting participation – to enable engagement without formal recognition. It also underscored the importance of political context in shaping the space for legal flexibility.

Although Lindemann's classification ends in 2012, it is possible to identify a further phase extending to the present day, marked by significant shifts and strategic adaptation in Taiwan's approach to international participation. Since 2012, Taiwan's participation in IGOs has been marked by renewed challenges and shifting strategies, shaped by worsening cross-Strait relations and broader global transformations. The 2016 election of President Tsai Ing-wen, who refused to endorse the "1992 Consensus",[151] led to a rapid deterioration in official channels of communication. From that moment, Taiwan lost its observer status in the WHA and faced increasing exclusion from multilateral fora under PRC pressure. Despite these setbacks, Taiwan adopted a multi-track strategy aimed at expanding its international presence through unofficial diplomacy (the so-called "paradiplomacy"),[152] civil society engagement, digital platforms, and normative appeals. The COVID-19 pandemic underscored Taiwan's exclusion from global health governance. It was once again barred from WHA participation, even as more than a hundred countries – including strong statements from G7 members – publicly voiced their support for its inclusion. In 2023, Taiwan's bid earned unprecedented international visibility, with diplomatic allies and like-minded governments calling for its meaningful participation on health grounds.[153] Taiwan responded by expanding development aid and scientific cooperation to strengthen its image as a responsible actor. These efforts signal a strategic adaptation. Taiwan now leverages functional, humanitarian, and normative arguments to justify its participation, rather than focusing solely on statehood claims.

The historical trajectory outlined above reveals a steady move from formal diplomatic competition toward legal and procedural innovation. In particular, the post-1988 period demonstrates how Taiwan's engagement with IGOs has increasingly relied on atypical modes of participation that circumvent the legal impasse posed by the One-China principle. These institutional compromises are the mechanisms through which international organizations have managed Taiwan's participation in the absence of state recognition. These mechanisms are not uniform; they vary across institutions, reflecting the political composition and legal frameworks of each IGO. However, three recurring modalities are worth analyzing: observer status, non-state participation, and neutral designations.

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[151] Republic of China (Taiwan), Office of the President, "President Tsai Issues Statement on China's President Xi's 'Message to Compatriots in Taiwan'", News Release, 2 January 2019.

[152] E. Pajtinka, "Between Diplomacy and Paradiplomacy: Taiwan's Foreign Relations in Current Practice", *Journal of Nationalism, Memory & Language Politics*, vol. 11, no. 1, 2017, p. 41.

[153] Ministry of Foreign Affairs of the Republic of China (Taiwan), "Taiwan's WHO Bid Receives Greater International Recognition and Support at 76th WHA", News Release, Department of International Organizations, 31 May 2023.

Observer status has served as a crucial mechanism for Taiwan's limited participation in IOs. While not conferring rights of membership, it provides access to meetings, documents, and technical discussions.[154] Taiwan has obtained observer status in entities such as the WHA,[155] different OECD Committees,[156] the Central American Parliament (PARLACEN),[157] and others. These arrangements are often time-limited and revocable, reflecting their fragile political foundations. In most cases, observer status is granted through executive discretion or *ad hoc* invitations, rather than treaty-based provisions. Consequently, Taiwan's observer participation remains vulnerable to changes in diplomatic climate, particularly Beijing's pressure on secretariats and host countries.

Another pathway has involved Taiwan's engagement as a technical or non-state actor.[158] In organizations where non-governmental or economic actors are allowed to participate – such as APEC,[159] the WTO,[160] or ISO (International Organization for Standardization)[161] – Taiwan has been able to join without statehood status. In APEC, for instance, Taiwan participates as an "economic entity",[162] represented by the Chinese Taipei Economic and Cultural Office rather than a Ministry. These arrangements draw on the functionalist tradition in international law, which privileges the technical nature of cooperation over political considerations.[163] While this approach limits Taiwan's influence on norm-setting, it ensures access to regulatory discussions and standard-setting bodies crucial to its export-driven economy.

Perhaps the most symbolically charged issue is the naming formula under which Taiwan participates in IOs.[164] The term "Chinese Taipei" has become the default compromise in organizations such as APEC, the WTO, and the WHA (when Taiwan has been allowed to join). This designation originated from the Nagoya Resolution (1979)[165] by the International Olympic Committee (IOC) and was later adopted across various institutions. It represents a deliberately

[154] J. Klabbers, *An Introduction to International Organizations Law*, p. 100.
[155] J. Herington – K. Lee, "The Limits of Global Health Diplomacy: Taiwan's Observer Status at the World Health Assembly", *Globalization and Health*, vol. 10, 2014.
[156] S. Charnovitz, "Taiwan's WTO Membership and Its International Implications", *Asian Journal of WTO & International Health Law & Policy*, vol. 1, no. 2, September 2006, p.421.
[157] C.-p. Li, "Taiwan's Participation in Inter-Governmental Organizations: An Overview of Its Initiatives", *Asian Survey*, vol. 46, no. 4, 2006, p. 612.
[158] T. Wang, "Taiwan's Memberships in International Organizations: A P.R.C. Perspective", *Willamette Journal of International Law and Dispute Resolution*, 27, no. 1/2 (2020), p.88.
[159] Asia-Pacific Economic Cooperation (APEC), *Seoul APEC Declaration*, adopted at the Third Ministerial Meeting, Seoul, Republic of Korea, 14–15 November 1991.
[160] World Trade Organization (WTO), *Agreement Establishing the World Trade Organization*, Marrakesh, 15 April 1994, 1867 U.N.T.S. 154, Art. XII(1).
[161] International Organization for Standardization, *Statutes and Rules of Procedure*, Geneva, ISO, Art. 3.
[162] Asia-Pacific Economic Cooperation (APEC), *Member Economies*, accessed 7 September 2025.
[163] J. Klabbers, *An Introduction to International Organizations Law*, cit. p. 3.
[164] P.Y. Lipscy, *Renegotiating the World Order: Institutional Change in International Relations*, Cambridge, Cambridge University Press, 2017, pp. 261-262.
T. Wang, "Taiwan's Memberships in International Organizations: A P.R.C. Perspective", cit., pp. 90-93.
[165] International Olympic Committee, *Resolution of the International Olympic Committee Executive Board*, Nagoya, 25 October 1979.

ambiguous nomenclature – denying explicit reference to statehood while avoiding derogatory labels. This approach has given rise to the so-called "dual representation formula",[166] allowing Taiwan to assert its presence and participate in international activities. Naming issues are often negotiated bilaterally between Taiwan and host institutions, and in some cases, they reflect the internal rules of the organizations, such as reliance on alphabetical listings, flag arrangements, or title cards during meetings. While seemingly symbolic, these practices carry significant political weight and are often the subject of intense negotiation.

Taiwanese academics and policymakers have categorized these strategies under the term "pragmatic diplomacy".[167] These concepts reflect a recognition that legal status is not binary in international law; rather, it can be graduated, procedural, and context-specific. The fact that Taiwan can participate, albeit in atypical forms, suggests that international institutions are more flexible than classical legal theory assumes. They can mediate contested sovereignties through procedural adaptations that serve institutional goals – like information sharing, standard harmonization, or regional security – without needing to resolve deeper legal disputes. Furthermore, these modalities highlight the legal creativity embedded in international practice.

The analysis of atypical forms of participation affirms the central argument of this thesis: that international organizations serve not merely as venues for cooperation among states, but as arenas of coexistence, capable of managing contested sovereignties through procedural innovation and legal flexibility. In the case of Taiwan, IOs have functioned as laboratories of institutional compromise, allowing a measure of participation without recognition, engagement without adjudication, and legitimacy without full membership. This reflects the broader function of IOs in a world where statehood is contested, recognition is fragmented, and political realities outpace legal doctrine. These institutional arrangements have not resolved the China-Taiwan dispute. Nor do they offer a stable long-term solution. Yet, they provide a modality of coexistence that is both politically pragmatic and legally significant. They show that international law, when channeled through institutional frameworks, can create space for engagement even where sovereignty is disputed and recognition denied.

In conclusion, atypical forms of participation are not anomalies but essential tools in the repertoire of international organizations. They demonstrate how IOs, through procedural ingenuity and legal flexibility, sustain the functional integration of contested entities like Taiwan into the global order. This capacity is especially vital in managing conflicts that defy easy resolution and where formal diplomacy reaches its limits. As such, the Taiwan case reveals not only the constraints of the

[166] J. Sehnálková – O. Kučera, "Taiwan's Participation in International Organizations: Obstacles, Strategies, Patterns?", in J. Damm – P. Lim (eds.), *European Perspectives on Taiwan*, cit., p. 151.
[167] C.-p. Li, "Taiwan's Participation in Inter-Governmental Organizations: An Overview of Its Initiatives", cit., p. 605.

international legal system but also its creative potential when mediated through the institutional architecture of multilateral diplomacy.

2.2. Institutional models of participation: Taiwan in the WTO and WHO

While the previous part of this second chapter has examined how international organizations allow or deny Taiwan's participation – thereby shaping the dynamics of coexistence between the PRC and Taiwan – this section focuses on two concrete case studies: the World Trade Organization and the World Health Organization. These two institutions have been selected not only for their global relevance and legal complexity, but also because they exemplify two opposed approaches to Taiwan's participation under the constraints of the One-China policy.

The WTO represents a unique model of functional inclusion. Taiwan participates as a "Separate Customs Territory", with full membership rights and obligations – a rare status for an entity lacking widespread diplomatic recognition. This arrangement was made possible by the WTO's emphasis on trade-related functionality over political sovereignty, and it demonstrates how flexible legal interpretation and institutional autonomy can facilitate inclusive participation. As such, the WTO offers a compelling example of how Taiwan can be integrated into the international system without resolving the sovereignty dispute.

In contrast, the WHO illustrates a more volatile and politically constrained model of engagement. Taiwan's observer status at the World Health Assembly – granted from 2009 to 2016 – was never institutionalized and was revoked following political shifts in cross-Strait relations. Despite strong technical justifications for Taiwan's involvement, particularly during the COVID-19 pandemic, the WHO has remained tightly aligned with the positions of its member states, especially the PRC. This case highlights the fragility of informal participation arrangements and the limits of legal pragmatism when confronted with geopolitical pressure.

By comparing these two models, this section aims to identify the institutional variables that influence Taiwan's ability to participate in international organizations. The analysis will consider legal foundations, decision-making processes, the role of other member states, and the impact of the political context. In doing so, it will offer insight into how different institutional architectures mediate – or fail to mediate – the sovereignty dispute between the PRC and Taiwan.

2.2.1. The WTO model: participation as a "Separate Customs Territory"

The World Trade Organization is an intergovernmental organization established in 1995, serving as the institutional successor to the General Agreement on Tariffs and Trade (GATT), signed

in 1947 and entered into force on 1 January 1948 on a provisional basis.[168] The WTO is the central multilateral body overseeing international trade law and governance. Its primary mission is to provide a rules-based system[169] to facilitate the smooth, predictable, and fair flow of goods, services, and intellectual property across borders. The WTO functions as a legal and institutional framework for administering trade agreements, monitoring national policies, offering a forum for negotiations,[170] and, crucially, settling disputes through a formalized procedure known as the Dispute Settlement Understanding (DSU),[171] often regarded as one of the organization's most effective tools[172] despite recent impasse.[173] The WTO's legal structure is grounded in core principles of non-discrimination, chiefly embodied in the Most-Favored-Nation (MFN)[174] clause – requiring members to extend any favorable treatment granted to one trading partner to all others – and the National Treatment (NT)[175] obligation, which prohibits members from favoring domestic over imported goods after border entry. These principles are intended to promote a level playing field and prevent protectionist discrimination.

Two distinctive features of the GATT/WTO system have played a key role in enabling Taiwan's accession and shaping cross-Strait dynamics within the organization.[176] The first is the fundamentally apolitical stance of the WTO, whose concern lies not with questions of political recognition or sovereignty, but rather with the capacity of applicants to manage their internal and external trade policies autonomously. This functionalist approach makes the organization uniquely suited to accommodate politically sensitive or disputed entities, as it assesses them solely based on trade competence rather than legal status. The second distinctive feature is the institutional structure of the WTO as a "member-driven" and consensus-based organization. The consensus principle means that all members must agree for decisions to be adopted,[177] allowing even small or politically marginalized members to exert influence or, in rare cases, block initiatives. While power asymmetries undoubtedly exist, this institutional design ensures that entities, once admitted, enjoy full participation and legal equality with all other members under WTO law.

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[168] For a comprehensive historical and institutional overview of the world trading system, including the GATT, the subsequent establishment of the WTO, and the major negotiation rounds, see B.M. Hoekman, *The Political Economy of the World Trading System: The WTO and Beyond*, Oxford, Oxford University Press, 2001.
[169] H. Gao – D. Raess – K. Zeng (eds.), *China and the WTO: A 20-Year Assessment*, World Trade Forum, 1st ed., Cambridge, Cambridge University Press, 2023, p. 1.
[170] World Trade Organization (WTO), *Agreement Establishing the World Trade Organization*, cit., Art. II.
[171] *Idem*, Art. III(3) and Annex II.
[172] D. Sarooshi, "The Future of the WTO and Its Dispute Settlement System", *International Organizations Law Review*, vol. 2, no. 1, 2005, p. 129.
[173] K.J. Pelc, "Institutional Innovation in Response to Backlash: How Members Are Circumventing the WTO Impasse", *Review of International Organizations*, 2024.
[174] World Trade Organization (WTO), *General Agreement on Tariffs and Trade (GATT) 1994*, WTO Publications, accessed 8 September 2025, Art. I.
[175] *Idem*, Art. III.
[176] B.A. Lindemann, *Cross-Strait Relations and International Organizations: Taiwan's Participation in IGOs in the Context of Its Relationship with China*, cit., pp. 95-97.
[177] World Trade Organization (WTO), *Agreement Establishing the World Trade Organization*, cit., Art. IX(1).

When the General Agreement on Tariffs and Trade was established in 1947 as a provisional multilateral framework for trade liberalization, the Republic of China was among its founding contracting parties[178] (having signed the Final Act of Havana).[179] At the time, the ROC was recognized internationally as the legitimate government of China and held China's seat in the United Nations. However, in 1949, the Chinese Civil War resulted in the establishment of the PRC on the mainland, while the ROC government retreated to the island of Taiwan. Despite this, the ROC continued to be recognized by many countries as the legitimate government of China. This diplomatic configuration allowed the ROC to maintain its position as a contracting party to GATT. On 6 March 1950, the ROC government on Taiwan communicated its decision to withdraw from the GATT.[180] This move was guided by several practical and political reasons. Most tariff concessions obtained within the GATT referred to goods produced in mainland China, not in Taiwan's territories, so staying in the agreement offered little direct benefit to the island's economy. In addition, Taipei was informed that other contracting parties were not prepared to extend favorable rates specifically to Taiwan. Given Taiwan's very limited trade volume at the time, the ROC believed that bilateral trade arrangements with its main partners would provide sufficient tariff reductions. Finally, remaining within GATT would have implied taking responsibility for obligations covering the entire Chinese mainland, a territory the ROC no longer administered. The decision was largely accepted, although Czechoslovakia challenged its validity in 1950, claiming to act on behalf of "China".[181] Beyond that, the PRC never acknowledged the withdrawal as legitimate, arguing that it had not been authorized by the government in Beijing. In 1965, the ROC tried to return, at least in part, by applying for observer status within the GATT. A group of countries[182] that had already recognized the PRC opposed Taiwan's request. The ROC, however, was granted observer status in the GATT until 1971,[183] when the UNGA adopted Resolution 2758. Since GATT declared it would "follow decisions of the United Nations on essentially political matters",[184] Taiwan simultaneously lost any claim to observer participation. The legal significance of the ROC's 1950 withdrawal has been a matter of controversy

[178] P.L. Hsieh, "Facing China: Taiwan's Status as a Separate Customs Territory in the World Trade Organization", *Research Collection Yong Pung How School of Law*, Singapore Management University, 2005, p. 1196.
[179] United Nations Conference on Trade and Employment, *Final Act of the United Nations Conference on Trade and Employment, Including the Havana Charter for an International Trade Organization*, Lake Success, NY, Interim Commission for the International Trade Organization, April 1948.
[180] United Nations Secretary-General, *Communication from Secretary-General Regarding China (GATT/CP/54)*, 6 March 1950, General Agreement on Tariffs and Trade.
The withdrawal took effect on 5 May 1950, 60 days after the notice, in accordance with World Trade Organization (WTO), *Provisional Application of the General Agreement. Analytical Index of the GATT*, Geneva, WTO, 1995, Art. 5.
[181] C.-c. Li, "Resumption of China's GATT Membership", *Journal of World Trade, vol. 21,* 1987, pp. 25-26.
[182] Czechoslovakia, Cuba, Yugoslavia, France, the United Kingdom, Sweden, the Netherlands, Denmark, Norway, the United Arab Republic (now Egypt), Poland, Indonesia and Pakistan.
[183] C.-c. Li, "Resumption of China's GATT Membership", cit., p. 27.
[184] World Trade Organization (WTO), *GATT Analytical Index: 1994, Article XXV – Joint Action by the Contracting Parties*, Geneva, WTO, 1995, p. 877.

ever since. Beijing maintained that the founding of the People's Republic of China did not interrupt the continuity of China's legal personality in international law and that the withdrawal initiated by the Taipei authorities was both unlawful and invalid. On that basis, China argued that it retained the right to resume its place as an original contracting party in the GATT rather than being treated as a new applicant.[185] In practice, however, the PRC remained completely outside the GATT framework for over thirty years. It was only in the early 1980s, a period of profound transformation in China's domestic and international orientation, that direct contacts were initiated. Under the leadership of Deng Xiaoping, the PRC embarked on a comprehensive program of economic reform and opening-up (改革开放).[186] Deng's approach emphasized modernization and integration into the global economy, moving away from Maoist self-reliance. In 1982, Beijing's representatives began to take part in trade-related mechanisms such as the Multi-Fibre Arrangement (MFA)[187] and, later that same year, attended for the first time a GATT meeting of the contracting parties as observers. On that occasion, the Chinese delegation openly asserted that China was to be considered one of the founding participants in the system.[188] This position reflected what became known as the "resumption approach",[189] through which the PRC insisted that its membership status had never been lost, but merely suspended, and that it should therefore re-enter GATT as a continuing party. At the same time, Chinese officials acknowledged that trade conditions and reciprocal commitments had changed significantly since 1950 and expressed willingness to negotiate the practical terms of renewed participation. This dual strategy – asserting legal continuity while accepting the need for new negotiations – shaped the early stages of China's interaction with the GATT and laid the groundwork for the intricate accession process that followed.

In 1986, the PRC formally applied to resume its status as a contracting party to GATT,[190] initiating a long and politically sensitive negotiation process. The complexity of the negotiations stemmed not only from the scale of China's economy and the challenges of its transition to a market-based system, but also from geopolitical concerns tied to its unique political and legal structures. During this same period, Taiwan also began its attempt to re-enter the multilateral trading system. On

[185] P.L. Hsieh, "Facing China: Taiwan's Status as a Separate Customs Territory in the World Trade Organization", cit., p. 1198.
[186] People's Daily, "改革开放的伟大成就与深刻启示 [The Great Achievements and Profound Lessons of Reform and Opening-Up]", Gov.cn, 18 December 2023.
[187] The MFA was open to all countries, regardless of whether they were GATT members or not.
[188] P.L. Hsieh, "Facing China: Taiwan's Status as a Separate Customs Territory in the World Trade Organization", cit., footnote n. 24 at p. 1198.
[189] C.-c. Li, "Resumption of China's GATT Membership", cit., p. 29.
[190] World Trade Organization (WTO), "WTO Successfully Concludes Negotiations on China's Entry", Press Release No. PR243, 17 September 2001, Notes to editors, 1. History of China's accession to the WTO.

January 1st, 1990, Taiwan submitted a formal application to accede to the GATT,[191] followed by an application to join the WTO (which succeeded the GATT in 1995 with the adoption of the Marrakesh Agreement).[192] Taiwan's case was complicated by the geopolitical *status quo*. Under the One-China principle upheld by the PRC, Taiwan is regarded as an integral part of Chinese territory. This led the PRC to insist that Taiwan could not join the WTO as a sovereign state.[193] At the same time, Taiwan's economic significance could not be overlooked; by the 1990s, it was already a major industrial and trading economy. A compromise was eventually reached that allowed Taiwan to join the WTO not as a state, but under the designation "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu" (often abbreviated as Chinese Taipei). This nomenclature was modeled on a similar designation used in the Asia-Pacific Economic Cooperation and was grounded in Article XII of the Marrakesh Agreement, which permits accession by "separate customs territories possessing full autonomy in the conduct of their external commercial relations".[194] This clause, inherited from GATT Article XXVI:5(c),[195] provides the flexibility needed for Taiwan's accession without contradicting the PRC's One-China principle, while still granting Taiwan access to the rights and responsibilities of WTO membership. This mechanism had precedent in the participation of Hong Kong under British rule and later as a Special Administrative Region (SAR) of China.[196] China's accession to the WTO was finally concluded in December 2001,[197] while Taiwan officially became the 144th member of the WTO on 1st January 2002[198] (just one month after the PRC). This synchronized accession was no coincidence. it was designed to prevent Taiwan from joining before the PRC, which could have been interpreted as an affront to Beijing's sovereignty claims. Taiwan, by joining under this designation, became a full member of the WTO with all rights and obligations, including the ability to participate in trade negotiations, initiate and respond to disputes, and vote on matters requiring consensus. However, its participation remains constrained by geopolitical sensitivities, particularly those raised by the PRC, which insists that no Taiwanese representation may imply sovereignty or statehood. Thus, Taiwan's membership represents a delicate legal compromise, where formal equality within the WTO coexists with informal restrictions driven by political contestation. The solution reflects the WTO's functional

[191] H. Chiu, "Taiwan's Membership in the General Agreement on Tariffs and Trade", *Chinese Yearbook of International Law and Affairs*, vol. 10, 1990–91, p. 201.
[192] World Trade Organization (WTO), *Marrakesh Agreement Establishing the World Trade Organization*, Geneva, WTO, 1994.
[193] P.L. Hsieh, "Facing China: Taiwan's Status as a Separate Customs Territory in the World Trade Organization", cit., footnote n. 24 at p. 1200.
[194] World Trade Organization (WTO), *Marrakesh Agreement Establishing the World Trade Organization*, cit., Art. XII(1).
[195] World Trade Organization (WTO), *General Agreement on Tariffs and Trade (GATT) 1994*, cit., Art. XXVI:5(c).
[196] World Trade Organization (WTO), *Hong Kong, China — Member Information*, accessed 8 September 2025.
[197] J. Sehnálková – O. Kučera, "Taiwan's Participation in International Organizations: Obstacles, Strategies, Patterns?", in J. Damm – P. Lim (eds.), *European Perspectives on Taiwan*, cit., p. 158.
[198] World Trade Organization (WTO), *Chinese Taipei — Member Information*, cit.

approach to participation, where membership is not strictly tied to sovereign recognition but rather to trade-related autonomy and the capacity to comply with WTO rules.

While the WTO has made it possible for Taiwan and the PRC to participate within the same institutional structure despite their conflicting claims, it has not eliminated the political frictions surrounding their participation. Over the years, several episodes have exposed the tensions underlying Taiwan's membership, often stemming from symbolic or procedural issues that reignite geopolitical sensitivities.

One of the most significant controversies concerning Taiwan's participation in the WTO was the so-called "Blue Book Dispute" (2002–2005).[199] The term derives from the WTO's Blue Book, the organization's internal directory listing all members' delegations and their representatives. Unlike substantive trade issues, the dispute revolved around the official nomenclature and diplomatic titles used for Taiwan in the WTO's internal directory of missions. Following Beijing's pressure, the new Director-General Supachai Panitchpakdi[200] advanced proposals to alter Taiwan's representation – such as changing the name of its "Permanent Mission", downgrading the diplomatic ranks of its representatives, and ensuring that the Secretariat employed sovereignty-neutral terminology.[201] From a legal perspective, these measures had no bearing on Taiwan's rights and obligations as a WTO member, yet they carried clear political implications for the interpretation of the One-China principle within the organization. Taipei firmly rejected the demands,[202] arguing that they undermined its dignity and contradicted the equality of members under WTO law. The confrontation lasted for several years, with Taiwan insisting on the recognition of its mission and titles in line with existing WTO practice, while China continued to press for restrictions. A compromise was eventually reached in 2005, whereby some modifications were accepted,[203] but Taiwan's "Permanent Mission" status was retained. The controversy illustrates how even administrative and symbolic questions, formally outside the legal core of WTO rules, can escalate into politically charged disputes. It also highlights a broader structural tension. While the WTO is designed as a neutral, member-driven legal order, powerful states can use political leverage to shape institutional practices. In this sense, the Blue Book

[199] B.A. Lindemann, *Cross-Strait Relations and International Organizations: Taiwan's Participation in IGOs in the Context of Its Relationship with China*, cit., p. 119.
[200] World Trade Organization (WTO), *Supachai Panitchpakdi, WTO Director-General, 2002–2005*, accessed 8 September 2025.
[201] B.A. Lindemann, *Cross-Strait Relations and International Organizations: Taiwan's Participation in IGOs in the Context of Its Relationship with China*, cit., p. 120.
[202] S. Winkler, "Can Trade Make a Sovereign? Taiwan–China–EU Relations in the WTO", *Asia Europe Journal*, 6, no. 3–4 (2008), p. 477.
[203] Taiwan accepted the substitution of the term "Ambassador" for "Permanent Representative" and the term "Minister" for "Deputy Permanent Representative" as explained in S. Winkler, "Can Trade Make a Sovereign? Taiwan–China–EU Relations in the WTO", cit., p. 478.

Dispute exemplifies both the possibility and the fragility of coexistence within international organizations, where technical procedures may become arenas for sovereignty-related conflicts.

Similar tensions resurfaced in a more substantive context with Taiwan's accession to the Government Procurement Agreement (GPA). Negotiations began as early as 1995 (before Chinese Taipei entered the WTO) but soon stalled over the terminology used in Taiwan's accession documents, particularly the inclusion of government entities such as the "Office of the President" or the "Ministry of Foreign Affairs" in Annex I of the Agreement.[204] For Beijing, these references implied sovereign status and clashed with the WTO formula that defined Taiwan as a "separate customs territory". After years of stalemate, the GPA Committee adopted Decision GPA/87 in 2006, affirming that:

> With respect to the nomenclature and other terminology used in a decision of accession to the Agreement, including in appendices and annexes, that have been provided by any delegation representing a separate customs territory, the Parties note that the nomenclature and other terminology used have been provided only for the purpose of providing clarity in defining commitments in the framework of the accession to the Agreement. The Parties also note that none of the nomenclature and other terminology used have implications for sovereignty.[205]

This compromise laid the legal and procedural foundation for Taiwan's accession in 2009 under the designation "Chinese Taipei".[206] By then, a shift in Taiwan's domestic politics and a temporary easing of cross-Strait tensions helped to break the impasse, though the underlying sovereignty issue remained unresolved. The GPA case demonstrates how international organizations often resort to procedural neutrality and carefully crafted ambiguity to enable the coexistence of parties engaged in sovereignty disputes. Taiwan gained access to international procurement markets and full functional participation, while the PRC maintained its political stance. More broadly, the episode illustrates the role of international institutions in managing, rather than solving, deeply entrenched political conflicts, ensuring cooperation in technical fields despite unresolved questions of status and recognition.

Perhaps the most significant recent controversy surrounding Taiwan's WTO membership concerns a dispute over the nomination of judges to the Appellate Body, the WTO's highest adjudicatory organ established under the DSU. In 2007, Taiwan opposed the nomination of the Chinese candidate Zhang Yuejiao to the Appellate Body.[207] Officially, Taipei argued that Zhang lacked sufficient expertise in GATT/WTO law and raised concerns about her independence from Beijing. However, the decision was also rooted in broader political anxieties, as Taiwan feared that a

[204] S. Winkler, "A Question of Sovereignty? The EU's Policy on Taiwan's Participation in International Organisations", *Asia Europe Journal*, 11, no. 1 (2013), p. 7.
[205] Committee on Government Procurement, *Decision on the Modalities of Accession to the Agreement on Government Procurement (GPA/87)*, adopted 2 June 2006.
[206] Library of Congress, "Taiwan; World Trade Organization: Accession to Global Government Procurement Agreement", *Global Legal Monitor*, 2 July 2009.
[207] B.A. Lindemann, *Cross-Strait Relations and International Organizations: Taiwan's Participation in IGOs in the Context of Its Relationship with China*, cit., p. 146.

Chinese judge would strengthen Beijing's ability to limit its participation within the WTO, where cross-Strait disputes had already constrained Taipei's role in committees and expert groups. The decision created a deadlock in the selection process within the Dispute Settlement Body (DSB), the organ responsible for appointing Appellate Body members, and raised fears of an institutional crisis at the core of the WTO's dispute settlement system.[208] After weeks of consultations, Taiwan eventually agreed to withdraw its objection in exchange for diplomatic assurances that Appellate Body judges would act impartially and without political interference.[209] While the crisis was eventually resolved, the Judge Dispute, much like the Blue Book and GPA disputes, illustrates that international organizations are not only arenas for compromise but also potential battlegrounds where sovereignty conflicts are played out, either directly or through procedural disputes. The WTO, in this sense, demonstrated both the capacity of multilateral frameworks to accommodate coexistence and their vulnerability to being instrumentalized by rivalries that they are not designed to resolve.

Taiwan's case within the WTO illustrates the limits and possibilities of legal engineering in the service of international inclusion. The "Separate Customs Territory" model enables participation without requiring a resolution of the sovereignty dispute between Taiwan and the PRC. Taiwan's active participation – filing complaints, defending its trade interests, joining plurilateral agreements, and engaging constructively in negotiations – demonstrates that even under political constraints, the WTO can offer a meaningful platform for non-state or contested entities to engage in global governance. From a theoretical perspective, Taiwan's case raises questions about the meaning of sovereignty in a globalized legal order. It challenges the assumption that only states can be full actors in international law and suggests that functionality – rather than formal recognition – can sometimes serve as a sufficient basis for participation (depending on the IO). Yet, as seen in the Blue Book incident, the GPA controversies, and the Appellate Body judge dispute, functionality has limits. Where symbolic or normative stakes are high, politics can override law. Thus, Taiwan's WTO membership reflects both the creative adaptability and the inherent vulnerability of international legal frameworks when confronted with unresolved questions of sovereignty and recognition.

2.2.2. The WHO model: from observer status to exclusion

The World Health Organization is a specialized agency of the United Nations[210] established in 1948, whose constitutional mandate is to promote "the attainment by all peoples of the highest

[208] BBC News, "Taiwan Blocks Chinese WTO Judge", 19 November 2007.
[209] B.A. Lindemann, *Cross-Strait Relations and International Organizations: Taiwan's Participation in IGOs in the Context of Its Relationship with China*, cit., p. 150.
[210] World Health Organization (WHO), *Constitution of the World Health Organization*, adopted 22 July 1946, entered into force 7 April 1948, amended through 15 September 2005, Geneva, WHO, Preamble and Art. 69.

possible level of health".[211] Its legal framework, codified in the WHO Constitution, is strictly state-centric. Article 3 provides that "membership in the Organization shall be open to all States",[212] while Article 4 specifies that admission of new members is subject to approval by a simple majority vote of the World Health Assembly[213] (whereas in other UN organizations, a two-thirds majority is required).[214] This formulation leaves little room for entities that do not enjoy the status of a recognized sovereign state. The WHO, as part of the UN system, also follows the broader institutional practice of aligning with the decisions of the UNGA on questions of representation and recognition. These legal and institutional features have been decisive in shaping Taiwan's trajectory within the organization.

At the time of the WHO's establishment in 1948, the Republic of China was recognized as the legitimate government of China and held China's seat in the United Nations. Hence, the ROC became a founding member of the WHO and participated actively in its governance structures.[215] The Chinese Civil War of 1949, however, resulted in the retreat of the ROC government to Taiwan and the establishment of the People's Republic of China on the mainland. Despite this change in effective control, as already noted multiple times throughout this work, the ROC continued to occupy the "China" seat across the UN system, including its specialized agencies and, therefore, also the WHO, for more than two decades. The situation was sustained by the Cold War political alignment of the period, with several major powers, including the United States, recognizing Taipei rather than Beijing.

The balance shifted in the late 1960s and early 1970s, when an increasing number of states extended diplomatic recognition to the PRC. The decisive legal development came with the oft-cited UNGA Resolution 2758 of 1971. This resolution was binding for the UN and its specialized agencies, and the WHO acted accordingly. In May 1972, the World Health Assembly adopted Resolution WHA 25.1,[216] transferring China's seat in the WHO from Taipei to Beijing. From that moment, the ROC ceased to be a member of the WHO, and Taiwan's population was no longer represented in the organization. The legal effects of WHA Resolution 25.1 were clear: membership in the WHO, which is open only to states, was vested in the PRC as the sole representative of China. The ROC's representatives were excluded, and no provision was made for Taiwan's continued participation in

[211] *Idem*, Art. 1.
[212] *Idem*, Art. 3.
[213] *Idem*, Art. 4.
[214] Such as the UNGA under Charter of the United Nations, cit., Art. 18(2); the Food and Agriculture Organization (FAO) under Food and Agriculture Organization of the United Nations, *Constitution of the Food and Agriculture Organization of the United Nations*, Rome, FAO, Art. II(2); and the UNESCO under United Nations Educational, Scientific and Cultural Organization (UNESCO), *Constitution of the United Nations Educational, Scientific and Cultural Organization*, Art. II(2).
[215] World Health Organization (WHO), *The First Ten Years of the World Health Organization*, Geneva, WHO, 1958, p. 53.
[216] World Health Organization (WHO), *Representation of China in the World Health Organization*, Resolution WHA25.1, adopted by the Twenty-fifth World Health Assembly, Geneva, 16 May 1972.

any capacity. The WHO Secretariat, following the UNGA's determination, treated the question of representation as settled and outside its own discretion.[217] From 1972 onwards, therefore, Taiwan was excluded from the WHO not by an explicit judgment of its own legal status, but as a consequence of the institutional framework linking the WHO to the decisions of the United Nations on matters of representation. The legal and political logic of this exclusion was twofold. First, by recognizing the PRC as the sole representative of China, the WHO aligned itself with the UN principle of one seat per state, consistent with the broader international recognition of Beijing as the government of China. Second, because the WHO Constitution does not foresee intermediate categories of membership (as the APEC or the WTO), Taiwan could not appeal to functional or technical criteria to justify its continued participation. Therefore, for nearly two decades, Taiwan remained completely outside the WHO.

This situation began to change in the 1990s, when Taiwan launched a sustained diplomatic campaign to regain some form of access to the organization. Starting in 1997, Taiwan began requesting to "invite the Republic of China (Taiwan) to attend the WHA in the capacity of observer".[218] This initial line of action became known as the "two entities" approach,[219] as Taiwan sought to participate under the designation "Republic of China (Taiwan)", thereby presenting itself as a political entity distinct from the People's Republic of China. The formulation implicitly conveyed a claim to statehood and was strongly opposed by Beijing. The People's Republic of China objected to the initiatives based on the One-China principle, maintaining that Taiwan constituted an integral part of China and thus was already represented in the WHO through Beijing's membership.[220] Moreover, a significant number of member states, many of which had shifted diplomatic recognition from Taipei to Beijing in the preceding decades, either explicitly endorsed this position or chose not to challenge it. As a result, despite annual submissions at the WHA by Taiwan's diplomatic allies, these proposals were consistently rejected by the majority of WHA members.[221] Nonetheless, Taiwan maintained this approach, requesting invitations under the name "Republic of China (Taiwan)" or,

[217] The WHO Secretariat did not exercise independent discretion in the matter of China's representation. Under Arts. 3 and 4 of the WHO Constitution, decisions on membership rest with the World Health Assembly, and Art. 79 establishes the Organization's institutional relationship with the United Nations. Accordingly, once the UN General Assembly adopted Resolution 2758 (1971), and the World Health Assembly implemented it through Resolution 25.1 (1972), the Secretariat treated the issue as outside its authority.

[218] Y. Chiu, *Shijie weisheng zuzhi: tizhi, gongneng yu fazhan* [*The World Health Organization: Structure, Function and Development*], Taipei, 2008, pp. 351-415.

[219] J. Zhu, "Political Rivalry: Taiwan's Strategies for Participating in International Organizations and the Mainland's Response", in *Study on the Issue of Taiwan's Participation in the International Space*, Singapore, Springer, 2022, pp. 175-182.

[220] J. Sehnálková – O. Kučera, "Taiwan's Participation in International Organizations: Obstacles, Strategies, Patterns?", in J. Damm – P. Lim (eds.), *European Perspectives on Taiwan*, cit., p. 163.

[221] For example, in the 1997 vote, 128 members opposed Taiwan's inclusion, 19 supported it, and 5 countries abstained. See S. Winkler, "A Question of Sovereignty? The EU's Policy on Taiwan's Participation in International Organisations", cit., p. 9.

from 2002 to 2008 (with the only exception of 2003), simply "Taiwan";[222] both designations were treated as variations of the same "two entities" strategy and systematically blocked.[223]

A key point on the issue of observer status in the WHO must be highlighted. the term "observer" does not appear in any provision of the WHO Constitution.[224] Neither Article 18, which defines the powers of the World Health Assembly, nor Article 71, which allows the Organization to establish relations with other international bodies, provides any legal basis for observer status.[225] The only explicit references are contained in the Rules of Procedure of the WHA, where Rule 3 authorizes the Director-General to invite three categories of observers: "States having made application for membership", "territories on whose behalf application for associate membership has been made", and "States that have signed but not accepted the Constitution".[226] These provisions indicate that observer status is strictly limited to the categories expressly listed in the Rules of Procedure, and Taiwan does not correspond to any of these. Nevertheless, in practice, the WHA has extended invitations to a broader range of actors, including the Holy See, the Order of Malta, and the International Committee of the Red Cross (ICRC). These arrangements, however, have always rested on political agreement among WHO members and do not amount to a legally enforceable entitlement. Legal scholars have accordingly distinguished between "observers for a limited period", who enjoy a status grounded in Rule 3, and "quasi-permanent observers", who are invited regularly by the Director-General but whose position exists only *de facto*, not *de jure.*[227] The rights of the first group are set out in Article 47 of the WHA Rules of Procedure: they may attend open meetings of the Health Assembly and its committees, make statements with the President's consent, access non-confidential documents, and submit memoranda to the Director-General.[228] Yet observers have no voting rights, no entitlement to circulate documents independently, and no capacity to nominate candidates. For the second group, rights and obligations are based purely on practice and remain subject to the continuing consent of member States.

This clarification on the legal framework of observership also helps to explain why, after the adoption of WHA Resolution 25.1 in 1972, Taiwan's exclusion from the WHO was absolute and left almost no room for alternative arrangements. The consequences of this exclusion became particularly visible in 2003, during the outbreak of Severe Acute Respiratory Syndrome (SARS). WHO records

[222] B.A. Lindemann, *Cross-Strait Relations and International Organizations: Taiwan's Participation in IGOs in the Context of Its Relationship with China*, cit., p. 191.
[223] *Ibidem.*
[224] S.A. Solomon – C. Nannini, "Participation in the World Health Organization", *International Organizations Law Review*, vol. 17, no. 1, 2020, section 3.7 "Invited observers".
[225] World Health Organization (WHO), *Constitution of the World Health Organization*, cit., Arts. 18 and 71.
[226] World Health Organization (WHO), *Rules of Procedure of the World Health Assembly*, Geneva, WHO, Rule 3.
[227] B.A. Lindemann, *Cross-Strait Relations and International Organizations: Taiwan's Participation in IGOs in the Context of Its Relationship with China*, cit., p. 189.
[228] World Health Organization (WHO), *Rules of Procedure of the World Health Assembly*, cit., Rule 47.

show that between November 2002 and August 2003, the virus killed 916 individuals globally, infecting 8422 people in more than 30 countries.[229] Taiwan, which was geographically close to the epicenter of the epidemic in southern China (Guangdong province), was heavily affected by the disease. However, because it was not a member or observer of the WHO, Taiwan was initially denied timely access to critical information, early-warning data, and technical assistance.[230] Taiwan tried to be invited to the WHA of 2003 as "the health authorities of Taiwan",[231] but the bid was once again rejected.[232] Taiwanese health authorities could not communicate directly with the WHO's Global Outbreak Alert and Response Network because requests for help had to be routed through Beijing. The SARS crisis revealed the practical challenges posed by Taiwan's exclusion from global health governance. This exclusion affected both Taiwan's capacity to respond effectively and the broader international effort to contain the epidemic, given that the virus transcends political borders. At the time, several governments and international experts criticized the WHO for allowing political considerations to take precedence over its functional mandate.[233] This episode strengthened Taiwan's argument that its participation was necessary for global health security, regardless of the unresolved sovereignty dispute. In the aftermath of SARS, momentum built for some form of accommodation. The WHO Secretariat, under pressure from member states, began exploring ways to allow Taiwan limited technical participation without directly challenging the One-China principle. In 2005, the WHO and the PRC reached a Memorandum of Understanding (MoU) that established a framework for Taiwan's engagement.[234] The MoU permitted Taiwan's experts to participate as observers in certain WHO technical meetings and activities, but only under conditions tightly controlled by Beijing. Specifically, invitations had to be approved by the PRC, and communications between Taiwan and the WHO were to be routed through Beijing's channels.[235] From Taipei's perspective, the MoU represented at least a partial breakthrough, as it offered a pathway – albeit constrained – for interaction with the WHO. It allowed Taiwanese health professionals to attend some expert consultations and access certain information flows that had previously been blocked. At the same time, the arrangement underscored the continuing political obstacles. Indeed, Taiwan's participation remained conditional, limited, and subject to Beijing's approval. The MoU reflected the WHO's

[229] World Health Organization (WHO), "Summary Table of SARS Cases by Country, 1 November 2002–7 August 2003", *Weekly Epidemiological Record*, no. 35 (29 August 2003), pp. 310–311.
[230] J. Sehnálková – O. Kučera, "Taiwan's Participation in International Organizations: Obstacles, Strategies, Patterns?", in J. Damm – P. Lim (eds.), *European Perspectives on Taiwan*, cit., p. 164.
[231] B.A. Lindemann, *Cross-Strait Relations and International Organizations: Taiwan's Participation in IGOs in the Context of Its Relationship with China*, cit., p. 191.
[232] *Idem*, p. 205.
[233] *Idem*, pp. 206-207.
[234] World Health Organization Secretariat, *Memorandum on Implementation of the Memorandum of Understanding Between the WHO Secretariat and China (2005)*, Geneva, WHO, 12 July 2005, point 1.
[235] J. Sehnálková – O. Kučera, "Taiwan's Participation in International Organizations: Obstacles, Strategies, Patterns?", in J. Damm – P. Lim (eds.), *European Perspectives on Taiwan*, cit., p. 164.

attempt to reconcile its universal health mission with the political imperatives of its membership, but it also revealed the structural limitations of an organization bound by the principle of statehood. In legal terms, the MoU of 2005 did not create any recognized status for Taiwan within the WHO framework. It was not an institutional decision of the World Health Assembly but rather an administrative arrangement negotiated between the Secretariat and the PRC. As such, it had no binding effect on member states and could be modified or revoked at any time.

The years between 2009 and 2016 marked a temporary but highly significant shift in Taiwan's relationship with the WHO. This period coincided with a broader *détente* in cross-Strait relations under the presidency of Ma Ying-jeou in Taiwan, who adopted a pragmatic approach aimed at reducing tensions with Beijing. Against this backdrop, the PRC agreed to relax its opposition to Taiwan's participation in the World Health Assembly, provided that such participation was framed in a way that did not contradict the One-China principle.[236] Beginning in 2009, Taiwan was invited by the WHO Director-General Margaret Chan to attend the WHA as an observer, under the designation "Chinese Taipei". The invitations were issued annually and were formally grounded in the authority of the Director-General to invite observers, but in practice, they depended on Beijing's political consent. This arrangement represented a carefully crafted compromise. It enabled Taiwan's health officials to be present in the central decision-making forum of the WHO, while preserving the PRC's claim that Taiwan remained part of China. The use of the "Chinese Taipei" nomenclature, already familiar from Taiwan's participation in other IOs such as the IOC and in the WTO, was essential to this formula, as it provided a sovereignty-neutral designation acceptable to both sides. For Taiwan, this observer status was of major symbolic and practical importance. It allowed its representatives to sit in the plenary sessions of the WHA, listen to debates, access WHO documents, and engage directly with the health ministers and officials of other countries. Although Taiwan did not enjoy voting rights or the capacity to table resolutions, its presence signaled international acknowledgment of its relevance in global health governance. Equally important, it gave Taiwan the opportunity to showcase its considerable public health achievements, such as its universal health coverage system and advanced epidemiological research, and to contribute its expertise to discussions on pressing health issues.

Nevertheless, the arrangement was fragile. It rested on annual invitations by the Director-General rather than on a WHA decision,[237] leaving Taiwan's participation dependent on Beijing's acquiescence and vulnerable to withdrawal. The scope of participation was carefully limited to avoid

[236] S.A. Solomon – C. Nannini, "Participation in the World Health Organization", cit., section 3.9 "Entities whose Status is Unsettled among WHO Member States".
[237] It is important to underline that the WHA had never voted in favor of Taiwan's participation. Taiwan participated in the World Health Assembly from 2009 to 2016 only because of the Director-General invitation (with the PRC's consent).

any implication of statehood or membership, and the opening was enabled more by a temporary easing of cross-Strait tensions than by any reinterpretation of the WHO Constitution. Taiwan sought to maximize this window by contributing to WHO activities and framing its inclusion as a matter of global health security. Legally, the episode illustrates both the discretion available within the WHO framework and its strict limits. Article 3 confines membership to states, while observer invitations remain a political tool rather than a legal entitlement. The 2009-2016 period thus represented a breakthrough in practice but underscored the structural fragility of Taiwan's position – an accommodation sustained by political will rather than institutional guarantees.

By the mid-2010s, as cross-Strait relations began to deteriorate again, the precariousness of this arrangement became increasingly evident. The 2016 presidential election in Taiwan, which brought Tsai Ing-wen to office, marked a turning point. As said, Tsai refused to endorse the "1992 Consensus", a position that led Beijing to suspend its tolerance of Taiwan's observer status.[238] From 2017 onward, the WHO ceased extending invitations to Taiwan to attend the World Health Assembly. In legal terms, the exclusion underscored the limits of discretionary mechanisms within the WHO framework, demonstrating how participation for contested entities remains conditional on shifting political circumstances rather than secure under institutional rules.

This return to exclusion was particularly controversial in the context of the COVID-19 pandemic. Taiwan, despite its proximity to the initial outbreak and its extensive contacts with mainland China, managed the crisis with notable effectiveness. Yet it was denied direct access to WHO meetings, information systems, and technical exchanges. Requests to participate in discussions were either rejected or redirected through Beijing, consistent with the 2005 MoU framework. The WHO Secretariat maintained that it could only act within the parameters established by its members and by prior agreements with the PRC. The absence of any binding legal instrument guaranteeing Taiwan's access meant that its exclusion persisted despite the evident public health stakes.

Debates over Taiwan's exclusion have not disappeared. Almost every year in May, when the World Health Assembly convenes, the issue resurfaces on the agenda through proposals and interventions by supportive member states, even if they do not lead to procedural outcomes. The persistence of these debates confirms that the question of Taiwan's participation remains politically salient despite the absence of any legal entitlement under the WHO framework. In May 2025, the matter once again drew particular attention, with renewed calls from several governments and international health experts stressing the importance of Taiwan's inclusion in global health

[238] *Ibidem.*

governance.[239] While these discussions did not alter the formal position of the WHO,[240] they underscored the enduring tension between the organization's state-based constitutional structure and Taiwan's aspirations to gain some form of contact with the WHO.

In sum, the WHO model is characterized by legal rigidity: membership is reserved only for states, representation is aligned with UN decisions, observer status is discretionary and politically contingent. Taiwan's trajectory in the WHO demonstrates the organization's limited capacity to accommodate contested entities. While other international organizations have employed functional categories such as "separate customs territory", the WHO has no comparable provision in its Constitution. Its strict state-based model, coupled with its dependence on UNGA determinations, leaves little scope for creative legal solutions. The result is a cycle of participation and exclusion that reflects political conditions rather than legal guarantees. Taiwan's exclusion is thus not the product of an express legal judgment on its status, but of the institutional design of the WHO and its alignment with the UN system.

2.2.3. Comparing institutional approaches to Taiwan's engagement

The contrasting outcomes of Taiwan's participation in the WTO and the WHO – full membership in the former versus an almost complete exclusion in the latter – cannot be explained by geopolitical context alone. They reflect the institutional variables that shape the capacity of international organizations to mediate sovereignty disputes. A closer comparison across two key dimensions makes it possible to identify the institutional variables that condition Taiwan's ability to engage in IOs and, more broadly, how such organizations mediate sovereignty disputes.

The first dimension concerns UN dependency and the legal basis of membership. In fact, the WHO is constitutionally anchored in the UN system, and its membership structure mirrors that of the UN. Consequently, only "states" are eligible as members. Once UNGA Resolution 2758 transferred the "China" seat to Beijing, the organization had no institutional room to accommodate Taiwan. The WTO, by contrast, is formally independent. Although the GATT declared it would "follow" UN decisions on political matters – and in 1971 aligned itself accordingly – the WTO rests on a treaty framework that preserved greater autonomy. Article XII of the Marrakesh Agreement introduced the category of "separate customs territories", a functional device that enabled entities like Taiwan to participate without sovereign recognition. The critical variable here is not simply UN dependency,

[239] Focus Taiwan (Central News Agency), "Taiwan Left Out of WHA for 9th Straight Year After Ally Proposal Fails", *Focus Taiwan*, 20 May 2025.
[240] Chinese Taipei is not listed among the observers of the World Health Organization (WHO), *List of Delegates and Other Participants: Seventy-eighth World Health Assembly (A78/DIV/1)*, Geneva, WHO, 2025.

but the extent to which an organization's membership rules reproduce a state-centric model or incorporate functional categories.

The second dimension relates to the procedural timing of accession. Institutional design interacts with temporal dynamics. Taiwan submitted its application to the GATT/WTO before the PRC secured membership, which created a procedural opening that could not be ignored. The 2001-2002 accession balanced the political imperative of avoiding Taiwan's entry ahead of China with the legal obligation to process its application. In the WHO, the situation was the reverse. In fact, the PRC had held the "China" seat since 1972, consolidating its exclusive representational claim long before Taiwan could mobilize any procedural route back in. This indicates that rules alone do not explain outcomes: sequencing and institutional timing shape whether flexibility can be exploited or foreclosed.

Beyond structural rules and timing, both the WTO and the WHO show that politics is never absent, but its expression is mediated through institutional forms. In the WTO, Taiwan's legal equality is preserved, yet symbolic battles emerge over the designation of its mission, the terminology in annexes, or the neutrality of judges. In the WHO, political discretion operates more directly, where Beijing's approval or refusal determines whether Taiwan can be invited at all. In addition, in both cases, language and representation are not marginal details but central arenas where the sovereignty dispute is played out. Designations such as "Chinese Taipei" demonstrate how terminology can function as a negotiated compromise, while procedural practices define the limits of participation. They also highlight the tension between formal participation, which depends on the name and status conferred, and effective participation, which depends on the extent to which that designation allows Taiwan to act meaningfully within the organization. In the WTO, a formally constrained name coexists with full functional rights, whereas in the WHO, the same designation enabled only limited and reversible access.

Ultimately, the WTO and WHO illustrate how the same sovereignty dispute can yield radically different outcomes depending on institutional design. One framework transforms it into a managed coexistence, the other into almost complete exclusion. This comparison sets the stage for the next chapter, which turns from past experiences to future prospects, asking how institutional practices and evolving legal frameworks might shape Taiwan's place in international organizations.

CHAPTER III
THE FUTURE OF TAIWAN IN INTERNATIONAL ORGANIZATIONS: INSTITUTIONAL PRACTICES AND THE EVOLUTION OF LEGAL FRAMEWORKS

3.1. Managing contested sovereignty through international organizations

3.1.1. Arenas for coexistence or tools of exclusion?

3.2. The future of Taiwan in International Organizations

3.2.1. The potential of international organizations in shaping international law

3.2.2. What future for Taiwan in IOs?

3.1. Managing contested sovereignty through international organizations

International law is premised on the sovereign equality of states. Yet, as demonstrated in earlier chapters, the practice of international organizations often reveals a marked flexibility in accommodating entities with contested statehood and limited recognition. This flexibility derives from the functional imperatives of institutions that are designed primarily to address global problems but operate within a fragmented political community. The comparison between the WHO and the WTO models of participation for Taiwan[241] has shown, *inter alia*, the persistent influence of politics on IOs. Indeed, to comprehend the role of international organizations in handling the China-Taiwan sovereignty challenge, it is necessary to begin from the recognition that these bodies do not exist in a political vacuum. This point becomes particularly evident by defining IOs, a task not previously undertaken in this thesis, but essential for the analysis.

International organizations have been proven to be very hard to define in a comprehensive way[242] since no single definition can capture the diversity of their membership structures, purposes, and normative systems. That being said, Jan Klabbers, while acknowledging that the concept of international organizations is a "highly fluid concept", identified three main characteristics that may be regarded as their constitutive elements.[243]

[241] See Chapter II, subsection 2.2.3 (pp. 61-62).
[242] A. El-Erian, "Preliminary Report on the Second Part of the Topic of Relations between States and International Organizations", *Yearbook of the International Law Commission* 1977, vol. II, part 1, pp. 139–155.
[243] J. Klabbers, *An Introduction to International Organizations Law*, cit., pp. 9-13.

First of all, "international organizations are usually created between states, or rather […] by duly authorized representatives of states". Even if there is no maximum number of states involved, two is the minimum. In this sense, the ICJ recognized the Comisión Administradora del Río Uruguay (CARU), established in 1975 between Argentina and Uruguay, as an IO.[244] Nonetheless, this constitutive element has two limitations. First, actors other than states are sometimes involved in IOs. For example, the European Union (EU) is a founding member of the WTO and a member of the FAO. Second, not every entity created between states is an IO. For instance, the Basle-Mulhouse airport authority, established between France and Switzerland, is regulated by French law and it is a legal person in that specific domestic legal system; hence, it is not an international organization.

The second constitutive element of IOs is that they are created "by means of a treaty", that, according to Art. 2 of the 1969 Vienna Convention on the Law of Treaties (VCLT), is: "[…] an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."[245] Even if Klabbers acknowledges exceptions to this constitutive element by noting that some IOs have been established by means of a resolution or another legal act of an already existing IO,[246] such instances are not regarded as exceptions in this thesis. That's because, as Art. 2 of the just cited 1969 VCLT explicitly states, "whatever its particular designation"; therefore, legal acts of IOs may be considered treaties between their member states.

Lastly, "international organizations must possess at least one organ which has a will distinct from that of its member states". This is the most disputed criterion. On the one hand, an IO should insist on having such a distinct will; otherwise, it would be indistinguishable from other forms of cooperation between states. On the other hand, IOs are tools in the hands of states to pursue certain goals and thus, their activity cannot be fully independent from the will of the states that established them. However, the *volonté distincte*, though a complex concept, is often mentioned as the quintessential element of international organizations.

While outlining these three constitutive elements, it becomes evident that politics is present in international organizations from the very moment of their establishment. First, since IOs are created between states, their very existence is rooted in political negotiations and compromises among sovereign actors with divergent interests. Second, the constitutive treaty, even if formally a legal text, inevitably reflects the political context in which it was negotiated, embodying the balance of power,

[244] ICJ, *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 20 April 2010, *ICJ Reports* 2010, para. 89.

[245] United Nations, *Vienna Convention on the Law of Treaties*, concluded 23 May 1969, entered into force 27 January 1980, 1155 U.N.T.S. 331, Art. 2(1)(a).

[246] Jan Klabbers cites to the United Nations Industrial Development Organization (UNIDO) and the United Nations Children's Fund (UNICEF) created by resolution of the UNGA.

concessions, and strategic calculations that made agreement possible. Third, the requirement that an IO possess at least one organ with a will distinct from that of its member states – or the mere collective will, resulting from consensus practices – reflects another political dimension. Such distinct will is necessary precisely because states seek to channel, coordinate, or restrain their competing political agendas through a common institutional framework. Thus, each constitutive element reveals that IOs, generally speaking, are not politically neutral creations but, rather, products and instruments of political choice. In this regard, Ian Hurd offers a particularly instructive observation in his *International Organizations: Politics, Law, Practice*:

> All international organizations exist in the conceptual and legal space between state sovereignty and legal obligation. They are built on a paradox: they are created out of the commitments that sovereign states make to each other, and at the same time their reason for existing is to limit the choices of those same governments. They make use of the sovereign prerogatives of states in order to shape how those states use their sovereignty in the future.[247]

It is precisely in this paradoxical space that IOs assume their central role in managing contested sovereignty.

Created by states through political negotiation, grounded in treaties that encapsulate political equilibrium, and endowed with organs whose autonomy is designed precisely to contain and balance divergent political agendas, IOs are simultaneously products of sovereign will and institutional frameworks that shape how sovereignty is exercised, displayed, and limited. As a result, sovereignty disputes are conveyed into institutional arenas of confrontation, where they are managed through procedures that give them structured and legally framed expression. Such management consists of allowing or denying coexistence by enabling or restricting participation of contested entities. Moreover, it also provides arenas where members can restate their policies before the international community. Indeed, international organizations provide the People's Republic of China with a platform to consistently reaffirm its position (encapsulated in the One-China principle), as illustrated by its stance within the WHO. By contrast, Taiwan tries to harness these same arenas to argue for its participation, at times on functional grounds linked to the effectiveness of institutional mandates, and at other times by seeking to be regarded as a sovereign entity in its own right. This capacity to allow for confrontation is what makes IOs indispensable in a fragmented international community. Yet it also raises the question of how to qualify their role: when faced with contested sovereignty, are IOs to be seen as arenas for coexistence, institutionalizing disagreement within procedural frameworks, or as tools of exclusion, reinforcing existing hierarchies of recognition? The following section

[247] I. Hurd, *International Organizations: Politics, Law, Practice*, 5th ed., Cambridge, Cambridge University Press, 2024, p. 1.

addresses this very dilemma by examining how international organizations have been conceptualized in legal scholarship and institutional practice. In particular, it explores whether they should be understood primarily as arenas of coexistence or, conversely, as instruments of exclusion, and how this duality has played out in the China-Taiwan context.

3.1.1. Arenas for coexistence or tools of exclusion?

With the development of the notion of the *volonté distincte*, "there has been an increasing recognition that international organizations are not mere passive instruments through which states make their voices heard".[248] Rather, they themselves are actors that acquire a limited but significant autonomy, becoming arenas where sovereignty is displayed, contested, and sometimes redefined. Nevertheless, this autonomy is never absolute. Instead, it remains conditioned by founding treaties, by the balance of power among members, and by the surrounding political environment. As already noted, "international organizations are a heterogeneous set of institutions that vary in size, rules, and issue mandate".[249] This heterogeneity explains why IOs can perform, depending on their institutional design, apparently opposed functions when confronted with contested sovereignty. The China-Taiwan case exemplifies this duality: in some organizations, the institutional framework has enabled coexistence by allowing Taiwan a form of participation alongside the PRC; in others, the same framework has been used as a tool of exclusion, systematically denying Taiwan almost any role. In both scenarios, however, IOs provided a forum for confrontation, ensuring that disputes are expressed and contained within institutional procedures rather than left to unmediated bilateral conflict.

When international organizations function as arenas for coexistence, they provide legally structured frameworks in which sovereignty disputes are expressed through regulated forms of engagement. Rather than seeking a definitive resolution, they channel competing claims into procedures that allow both sides to participate or, at least, confront each other's positions. The World Trade Organization is a striking example. The WTO is unusual among international organizations as it provides for full membership for "Separate Customs Territories". There is no legal distinction between the rights and obligations of states and "Separate Customs Territories" as both categories of membership are substantially equal.[250] This formula enabled Taiwan's accession as the "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)", while the PRC had joined one month before as a state. By adopting the category of "Separate Customs Territories", the WTO transformed a sovereignty dispute into a matter of trade autonomy, thereby institutionalizing

[248] Y. Xu – P. Weller, *The Politics of International Organizations*, London, Routledge, 2015, p. 4.
[249] C.L. Davis, *Discriminatory Clubs: The Geopolitics of International Organizations*, 1st ed., Princeton, NJ, Princeton University Press, 2023, p. 29.
[250] Y. Xu – P. Weller, *The Politics of International Organizations*, cit., p. 19.

coexistence without requiring a resolution of political status. This institutional choice resonates with functionalist theories of international organization, according to which IOs are designed to pursue practical cooperation in specific fields irrespective of unresolved political disputes.[251] APEC provides another example. Because it is composed of "economies" rather than "states",[252] both the PRC and Taiwan (under the designation "Chinese Taipei") participate. In both organizations, coexistence is achieved by employing functional or deliberately ambiguous legal categories, thereby permitting participation while avoiding direct challenges to recognition doctrines. Importantly, coexistence does not necessarily imply equality of participation. From 2009 to 2016, "Chinese Taipei" joined the WHA as an observer, while the PRC remained a full member, illustrating that coexistence may take asymmetrical forms without entailing equal standing.

By contrast, IOs can also operate as tools of exclusion, where the institutional design leaves no room for contested entities. As emphasized in subsection 1.1.3, membership is a central legal concept because it "defines legal status" as it presupposes formal equality and "establishes a forum for interaction"[253] through which actors engage internationally. States, therefore, have a strong incentive to be selective in granting membership and, for this end, they "design IGO accession rules to provide discretion over membership".[254] This dynamic is particularly evident in the PRC-Taiwan dynamics within the United Nations. Indeed, Resolution 2758 of 1971 recognized the PRC as the only legitimate representative of China, excluding Taiwan from the organization and its agencies. Similarly, the International Civil Aviation Organization has repeatedly denied Taiwan's participation,[255] despite its geographical and functional relevance to global air traffic. The same exclusionary pattern has occurred in INTERPOL, where Taiwan has not succeeded in participating as an observer and has accused Beijing of systematically blocking its applications.[256] Taiwan had participated in INTERPOL's activities before 1984, but following the PRC's admission that year, it was compelled to withdraw and has since been repeatedly denied re-entry.[257] In these cases, IOs do not permit mutual presence but instead consolidate the PRC's recognition policy, embedding it within institutional rules and denying Taiwan any meaningful involvement. Exclusion, here, becomes not

[251] J. Klabbers, "The Emergence of Functionalism in International Institutional Law: Colonial Inspirations", *European Journal of International Law*, vol. 25, no. 3, 2014, pp. 645–675.
[252] Asia-Pacific Economic Cooperation (APEC), *Seoul APEC Declaration*, cit., PARTICIPATION, point 7.
[253] C.L. Davis, *Discriminatory Clubs: The Geopolitics of International Organizations*, cit., pp. 17-18.
[254] *Idem*, p. 26.
[255] Ministry of Foreign Affairs of the Republic of China (Taiwan), "MOFA Thanks Diplomatic Allies, Friendly Nations for Voicing Support of Taiwan at ICAO Assembly, Condemns Erroneous 'One China' Narrative Peddled by China", Press release, 2 October 2019, accessed 9 September 2025.
[256] Ministry of Foreign Affairs of the Republic of China (Taiwan), "Working Together for a Safer World: In Support of Taiwan's Participation as an Observer in INTERPOL", Press release, 16 November 2018, accessed 9 September 2025.
Y. Chou, "Why the World Should Support Taiwan's Participation in Interpol as an Observer", *The Diplomat*, 2023.
[257] J.C. Hsiung, "Taiwan in 1984: Festivity, New Hope, and Caution", *Asian Survey*, vol. 25, no. 1, 1985, p. 90.

solely an incidental effect of legal categories but also the consequence of the deliberate use of organizational procedures to maintain existing recognition hierarchies.

The divergence between these two models provides insight into the central research question of this thesis: to what extent have international organizations contributed to addressing or managing the coexistence between the People's Republic of China and Taiwan? The analysis suggests that IOs have indeed contributed in a significant, though uneven, way. Their contribution cannot be measured in terms of resolving the sovereignty dispute: they have neither eliminated the ambiguity surrounding Taiwan's international status nor generated a universally accepted legal settlement. However, they have structured how the confrontation between the PRC and Taiwan is expressed within the international system. Both as arenas of coexistence and as tools of exclusion, IOs have contributed to achieving and maintaining a form of equilibrium. Although unstable and constantly exposed to political shifts and power asymmetries, this equilibrium has nevertheless contained the China-Taiwan dispute, preventing it from deteriorating into open and destabilizing confrontation. From the exclusion of Taiwan in 1971 under UN General Assembly Resolution 2758 to the more functionalist accommodations that later enabled its accession to the WTO or its temporary observer status in the WHA, international organizations have been the primary venues in which the sovereignty issue has been played out before the international community. If one considers the situation in 1949, at the outset of the split between the PRC and the ROC, or in 1971, when Beijing replaced Taipei in the United Nations, it is undeniable that international organizations have contributed to shaping a structured equilibrium. Even though Taiwan's international status remains contested and the One-China policy has entrenched its exclusion from the UN system, IOs have institutionalized a practice in which both the PRC and Taiwan can articulate their positions, perform their claims, and confront one another through established procedures. International organizations have contributed to addressing or managing the coexistence between the People's Republic of China and Taiwan by transforming what could otherwise be a destabilizing bilateral dispute into a multilateral practice.

What should also be clear after this section is that the role of IOs in managing contested sovereignty depends primarily on their founding treaties, which can be likened to constitutions of international organizations. As noted in Chapter I, there is scholarly debate over whether such treaties should be regarded as ordinary international agreements or as instruments of a distinct nature under the attributed powers doctrine. The China-Taiwan case illustrates why the latter interpretation is more convincing. By creating new institutional subjects of international law,[258] founding treaties acquire a specificity that goes beyond ordinary contractual arrangements. At the same time, IOs are not static

[258] M. Barnett – M. Finnemore, *Rules for the World: International Organizations in Global Politics*, 1st ed., Ithaca, NY, Cornell University Press, 2004; reprint 2012.

actors. They evolve through amendments, reinterpretations, and shifting practices. The periodic invitations extended to Taiwan to attend the World Health Assembly as an observer, though inconsistent, demonstrate how institutional practice can adapt to political circumstances. Similarly, the gradual recognition of Palestine within the UN system – from observer entity in 1974 to non-member observer state in 2012 – shows that exclusionary arrangements can be softened through institutional evolution.

In conclusion, international organizations have contributed substantially to managing the coexistence between China and Taiwan, though not by resolving the sovereignty dispute. Their contribution lies in offering institutional arenas where disagreement is contained, in creating adaptive mechanisms that allow partial participation, and in codifying exclusion in a way that clarifies the terms of confrontation. They are not passive instruments of state will, nor are they immutable structures. Their capacity to evolve means that their role can shift between exclusion and coexistence depending on political and institutional conditions. The extent of their contribution is therefore significant but not uniform. What is clear is that IOs have ensured that the PRC-Taiwan dispute has not been confined to bilateral relations but has instead been articulated and managed within structured multilateral frameworks.

3.2. The future of Taiwan in International Organizations

The question of Taiwan's future has attracted an extraordinary amount of scholarly attention across disciplines. Political scientists, historians, economists, and jurists have all tried to provide answers, often diverging sharply in their assessments. Some emphasize the inevitability of political confrontation between the People's Republic of China and Taiwan, reading current dynamics as part of a larger trajectory towards reunification, conflict, or *de facto* indefinite separation.[259] Others adopt a more pragmatic approach, highlighting the functional arrangements and economic interdependence that sustain Taiwan's continued international presence despite its contested statehood.[260] Still others frame the issue through the lens of security studies, pointing to the strategic calculations of the United States and other regional powers as the real determinants of Taiwan's future.[261]

Within this crowded field of interpretations, the present thesis deliberately narrows its perspective. Rather than offering predictions on cross-Strait political developments or speculating on military or geopolitical scenarios, its analysis is situated within the domain of international law and,

[259] Y.C. Wong, "Independence or Reunification? The Evolving PRC–Taiwan Relations", *Baltic Journal of European Studies*, 9, no. 2 (2019), pp. 98–122.
[260] D.F. Simon – M.Y.-M. Kav, "Part V—The Future of Taiwan-PRC Relations", in *Taiwan: Beyond the Economic Miracle*, London, Routledge, 1992, pp. 373-374.
[261] Y. Chen – M. Edmonds, "Defending Taiwan: Future Conditional", in *Defending Taiwan: The Future Vision of Taiwan's Defence Policy and Military Strategy*, London, Routledge, 2003, pp. 11-29.

more specifically, of the law of international organizations. The central line of inquiry of the thesis has been to examine how international organizations address the PRC-Taiwan coexistence and the mechanisms developed to accommodate both. Accordingly, when speaking of the future, this work is not concerned with broader political predictions, but with what forms of coexistence can realistically be sustained and possibly developed through the institutional frameworks of international organizations. This choice of perspective stems from the recognition that international organizations, though often underestimated in comparison to the sovereign power of states, have become essential components of contemporary international law. They do not simply reflect the balance of power among states; they structure it and sometimes reshape it. As shown in the previous sections, international organizations provide arenas where disputes are expressed, contained, or codified, thereby transforming potential bilateral confrontations into multilateral practices. In doing so, they perform a function that is neither marginal nor incidental. They manage contested sovereignty in ways that have long-term implications for how international law is interpreted and applied.

The future of Taiwan in international organizations must therefore be understood against this background. On the one hand, Taiwan's exclusion from many organizations, most prominently the United Nations and its specialized agencies, is unlikely to be reversed in the near term, given the entrenched nature of the One-China policy. On the other hand, the examples of the World Trade Organization, APEC, and the World Health Organization (between 2009 to 2016) show that institutional design and political negotiation can still create openings for participation, even if in limited or asymmetric forms. What is crucial is that these forms of participation – whether as "Chinese Taipei", as a "Separate Customs Territory", or as an observer – are not merely symbolic. They contribute to establishing a practice of coexistence that, while falling short of recognition as a sovereign state, nonetheless embeds Taiwan within the functioning of international institutions. Scholars have noted that such arrangements resonate with the doctrine of "earned sovereignty", which emerged in the early 2000s as a flexible approach to sovereignty-based conflicts.[262] According to this framework, partial and progressive allocations of sovereign authority – often tied to functional participation in international institutions – can provide a mechanism for managing contested statehood without precipitating either full independence or complete exclusion. In this light, Taiwan's incremental and conditional forms of engagement may be read as an instance of this broader trend in international practice, where sovereignty is not understood as absolute and indivisible, but as capable of being shared, devolved, or functionally exercised to accommodate political realities.

[262] P.R. Williams – M.P. Scharf – J.R. Hooper, "Resolving Sovereignty-Based Conflicts: The Emerging Approach of Earned Sovereignty", *Denver Journal of International Law and Policy*, vol. 31, no. 3, 2003.

At this point, the importance of international organizations as actors in the development of international law deserves particular attention. They are not sovereign states, nor do they possess the same legal capacity as states under classical international law. Yet, through their institutional practices, interpretative powers, and procedural innovations, they play a constitutive role in shaping and creating legal norms. A paradigmatic example is provided by the jurisprudence of the WTO Appellate Body, most famously in *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (1998). In that case, the Appellate Body interpreted Article XX of the GATT in a way that recognized the legitimacy of environmental protection as a policy objective under international trade law, while simultaneously constraining unilateral trade restrictions through the requirement of non-discrimination and good faith.[263] This landmark decision illustrates how IOs, through their adjudicative bodies, can move beyond the administration of existing treaty rules and actively shape the normative evolution of international law.

For Taiwan, this dynamic is particularly relevant. The evolution of IO practices shows that the binary opposition between full recognition as a sovereign state and total exclusion does not exhaust the possibilities. Between these two extremes lies a spectrum of arrangements that international organizations can and do employ to manage contested sovereignty. This spectrum is where Taiwan's future participation will likely unfold. Thus, while political scientists may debate the likelihood of conflict, reunification, or independence, the focus of this thesis is on the institutional middle ground where coexistence is already taking place and where it may or may not further develop.

Against this background, the discussion on Taiwan's future in international organizations should not be reduced to binary outcomes but understood as a continuing legal-institutional process shaped by treaty design, evolving practice, and the adaptive capacity of IOs. What matters is that international organizations, through their procedures, interpretative authority, and membership arrangements, actively shape the contours of international law. The next section will examine more closely the potential of IOs in shaping international law, highlighting how their practices contribute to redefining the boundaries of sovereignty and recognition. Building on this framework, the final section will return to the specific question of Taiwan, considering what forms of participation or exclusion might realistically be envisaged in the years ahead, and to what extent international organizations can continue to provide the institutional framework for managing the PRC-Taiwan dispute.

[263] WTO Appellate Body, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Appellate Body, adopted 6 November 1998, WT/DS58/AB/R.

3.2.1. The potential of international organizations in shaping international law

For many decades, IOs have been considered only as the "primary means by which States express their sovereignty",[264] a formulation that captures the classical, state-centric perception of the international legal order in which international organizations functioned merely as instruments or arenas for states to advance their interests and to give institutional form to their collective will. Over time, however, this conception has undergone a profound transformation, beginning with the landmark advisory opinion on Reparation for Injuries of the ICJ, in which the Court explicitly affirmed that international organizations possess international legal personality.[265] If IOs could hold rights and obligations distinct from those of their member states, then their role could no longer be confined to that of passive instruments. Rather, they had to be understood as actors with their own functional capacities, whose actions could influence the structure and development of the international legal order. Consequently, IOs came to be recognized as complex institutional actors endowed with a significant degree of autonomy, capable of shaping not only political processes but also international law.[266]

The debate is not merely theoretical. It has immediate implications for many sensitive issues, including, of particular interest for the present analysis, the participation of entities whose statehood is contested or politically fraught (such as Taiwan). The fact that IOs shape international law through their decisions and practice means that their role in the global order is far more than administrative. The decision whether to admit or exclude an entity, whether to allow participation under a particular designation, and whether to reinterpret procedural rules in consideration of political realities has direct consequences for the development of international law.[267] When the World Health Organization invited "Chinese Taipei" to participate in the World Health Assembly as an observer, or when the International Civil Aviation Organization decided not to extend invitations to Taiwan, these were not neutral acts of technical administration but normative decisions that affected the evolving interpretation of sovereignty, representation, and participation in the international community. As Rosalyn Higgins has argued, international law should be understood as "a continuing process of authoritative decisions" rather than the mere application of pre-existing rules.[268] In this sense, decisions of international organizations (subjects of international law) on the participation of contested entities such as Taiwan cannot be regarded as neutral acts of administration but as

[264] K. Raustiala, "Rethinking the Sovereignty Debate in International Law", *Journal of International Economic Law*, vol. 6, no. 4, 2003, pp. 841–860.
[265] ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, cit., p. 179.
[266] J. Barkholdt, "The Contribution of International Organizations to the Formation, Interpretation and Identification of International Law", *International Organizations Law Review*, vol. 18, no. 1, 2020, p. 2.
[267] J.E. Alvarez, *International Organizations as Law-Makers*, Oxford, Oxford University Press, 2010, p. 148.
[268] R. Higgins, *Problems and Process: International Law and How We Use It*, Oxford, Clarendon Press, 1994, p. 2.

normative determinations that contribute to shaping the evolving interpretation of sovereignty and representation. Thus, IOs are involved not only in administering rules but also in producing, contesting, and reconfiguring them.

From a doctrinal perspective, scholars have identified three primary functions through which IOs contribute to the development of international law.[269]

First, IOs play a role in the formation of customary international law. As codified in Article 38(1)(b) of the Statute of the International Court of Justice, custom is defined as "evidence of a general practice accepted as law".[270] This classical formulation highlights the two constituent elements of customary international law: *diuturnitas* (the material element), the constant and sufficiently general repetition of a given behavior by states; and *opinio juris ac necessitatis* (the psychological element), the conviction that such behavior is carried out of a sense of legal obligation.[271] Precisely because the identification of custom often raises questions about which practices and beliefs are relevant, the International Law Commission (ILC) undertook a systematic study that culminated in its Draft Conclusions on Identification of Customary International Law (2018).[272] These conclusions reaffirmed the two-element approach, while at the same time clarifying the sources of practice that may be considered – thereby opening the door to the controversial question of whether, and to what extent, the practice of international organizations can contribute to the formation of custom. The ILC cautiously recognized that "in certain cases, the practice of international organizations also contributes to the formation, or expression, of rules of customary international law".[273] This acknowledgement highlights that IOs can contribute to both elements of customary international law. On the one hand, their repeated practice – such as the adoption of resolutions, the establishment of procedures, or the issuance of guidelines – may amount to *diuturnitas*. On the other hand, the authority and consistency with which IOs frame such practice can provide evidence of *opinio juris*. "With the development of international organizations, the votes and views of states have come to have legal significance as evidence of customary law".[274] Examples such as the European Union in trade policy or ICAO in aviation safety demonstrate that, in areas where IOs exercise regulatory competences, their practice is not merely administrative but helps to create and shape international

[269] J. Barkholdt, "The Contribution of International Organizations to the Formation, Interpretation and Identification of International Law", cit.
[270] Statute of the International Court of Justice, in Charter of the United Nations and Statute of the International Court of Justice, cit., Art. 38(1)(b).
[271] N. Ronzitti, *Diritto internazionale*, cit., p. 178.
[272] International Law Commission, *Draft Conclusions on Identification of Customary International Law, with Commentaries*, *Yearbook of the International Law Commission*, vol. II, part two, New York, United Nations, 2018.
[273] *Idem*, Commentary to Conclusion 4, para. 3.
[274] R. Higgins, *The Development of International Law through the Political Organs of the United Nations*, Oxford, Oxford University Press, 1963, p. 2.

law. Ignoring IOs' practice in such domains would leave significant deficiencies, since it is precisely within IOs that both the repetition of conduct and its normative framing increasingly take place.

Second, IOs exert a crucial interpretative authority over their constituent treaties and the broader legal frameworks within which they operate. Interpretation, in international law, is not a neutral or mechanical exercise; rather, as some scholars argue, "law, at its core, is an interpretative concept".[275] Legal interpretation is less about uncovering a single, pre-existing meaning and more about advancing arguments within a shared framework of belief systems and practices. In this sense, "legal interpretation is largely a matter of argumentation".[276] IOs provide precisely such arenas of structured argumentation, where competing views are debated and gradually consolidated into authoritative understandings. The interpretative practices of IOs must also be situated within the general rules of treaty interpretation as codified in the Vienna Convention on the Law of Treaties. Article 31(3)(c) of the VCLT explicitly requires that treaties be interpreted in light of "any relevant rules of international law applicable in the relations between the parties".[277] This means that IOs are compelled to interpret their founding treaties dynamically, within the evolving normative context of international law. This general interpretative function takes on concrete shape within specific institutional settings. Among IOs, the UNO provides the clearest illustration of how interpretative authority is exerted in practice and how it evolves. The United Nations' interpretative authority is exercised in a decentralized way. Proposals to reserve exclusive authority to interpret the UN Charter to the ICJ or the General Assembly were never adopted.[278] Instead, each principal organ has developed its own interpretative practices. The ICJ, as the principal judicial organ, interprets the Charter through contentious cases and advisory opinions.[279] The General Assembly, as a plenary body, has influenced the Charter's interpretation in matters of institutional procedure, international legal concepts, and peace and security. The Security Council, entrusted with maintaining international peace and security, has been particularly influential. Its reading of Article 39 has broadened "threats to the peace" to include humanitarian crises, and its interpretation of Article 51 has extended "armed attack" to acts of terrorism.[280] Likewise, the UNSC has moved beyond the original textual design of Chapter VII by authorizing military action without the system of standing forces envisioned in Articles 42-47,[281] by

[275] I. Johnstone, "Law-Making through the Operational Activities of International Organizations", in E. Kwakwa (ed.), *Globalization and International Organizations*, London, Routledge, 2011, p. 385.
[276] *Idem*, p. 386.
[277] United Nations, *Vienna Convention on the Law of Treaties*, cit., Art. 31(3)(c).
[278] ICJ, *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, Advisory Opinion, cit.
[279] Statute of the International Court of Justice, in Charter of the United Nations and Statute of the International Court of Justice, cit., Art. 65.
[280] R. Higgins – P. Webb – D. Akande – S. Sivakumaran – J. Sloan – L. Oppenheim, *Oppenheim's International Law: United Nations*, Oxford, Oxford University Press, 2017, Chapter 12, para. 12.
[281] Statute of the International Court of Justice, in Charter of the United Nations and Statute of the International Court of Justice, cit., Arts. 42-47.

establishing *ad hoc* criminal tribunals and compensation commissions, and by engaging directly in territorial administration.[282] These developments show how interpretative practices can amount to institutional innovations with far-reaching normative effects. Beyond the UN, other IOs exercise similar authority. The WTO Appellate Body, through its jurisprudence, has engaged in authoritative interpretation of WTO agreements, creating a body of precedents that has shaped the substance of international trade law in ways not originally foreseen by member states.[283] These practices demonstrate how IOs blur the line between law-application and law-creation, functioning as engines of legal development. What begins as argumentation among actors within institutional settings is progressively sedimented into legal authority, producing precedents, expectations, and normative frameworks that shape state behavior and contribute to the evolution of international law.

Finally, IOs contribute to the identification and diffusion of norms and standards. Distinct from their contribution to the creation of customary international law, IOs play a crucial role in the identification and diffusion of international norms. In the absence of a global legislative body comparable to the domestic sphere, the international legal system requires institutional mechanisms capable of clarifying the existence of certain legal standards, including fundamental norms such as the peremptory norms of general international law (the so-called *jus cogens*). According to Art. 53 of the VCLT, these are norms "accepted and recognized by the international community of States as a whole as norms from which no derogation is permitted and which can be modified only by subsequent norms of general international law having the same character".[284] IOs often fulfil the task of giving visibility and circulation to such fundamental standards (as well as other norms) by serving as authoritative reference points through which principles are articulated and diffused across the international community.[285] The work of the International Law Commission illustrates this function particularly well. While the ILC does not legislate in a formal sense, its Draft Articles, Conclusions, and Commentaries provide structured guidance that enables states, courts, and other actors to recognize and apply rules with greater certainty. In addition, IOs contribute to the diffusion of norms by embedding them in monitoring and review mechanisms that shape expectations and practice. The Human Rights Council's Universal Periodic Review, the jurisprudence of the International Criminal Court, and the World Bank's Inspection Panel exemplify how institutional processes can reinforce and disseminate evolving standards, even in the absence of formally binding legislation. In this sense,

[282] R. Higgins – P. Webb – D. Akande – S. Sivakumaran – J. Sloan – L. Oppenheim, *Oppenheim's International Law: United Nations*, cit., Chapter 12, para. 12.
[283] Y. Fukunaga, "The Appellate Body's Power to Interpret the WTO Agreements and WTO Members' Power to Disagree with the Appellate Body", *The Journal of World Investment & Trade*, vol. 20, no. 6, 2019, p. 792.
[284] United Nations, *Vienna Convention on the Law of Treaties*, cit., Art. 53.
[285] J.E. Alvarez, "International Organizations: Then and Now", *American Journal of International Law*, vol. 100, 2006, p. 5.

IOs act not only as contributors to law-making, but also as agents of normative consolidation and diffusion, ensuring that international law – fragmented and decentralized by nature – is rendered visible, accessible, and progressively internalized within the practices of states and other actors.

Taken together, these three dimensions highlight the normative agency of IOs. They do not merely reflect state consent but actively shape the evolution of international law. Importantly, as subjects of international law, IOs contribute not only to the so-called "secondary legislation"[286] – the internal rules governing their own functioning – but also to the development of norms that operate within the broader international community. This is a direct consequence of acknowledging their role in the formation and consolidation of customary international law.

Nevertheless, the recognition of IOs' constitutive role raises a fundamental methodological dilemma: how can this role be reconciled with the principle of state consent, traditionally regarded as the cornerstone of international law? If states are bound only by what they have consented to, does the lawmaking influence of IOs undermine the legitimacy of the system?

Scholars largely agree that IOs' authority cannot be separated from the will of states: member states establish organizations, confer competences, and retain the capacity to contest or block their practice.[287] At the same time, however, once established, IOs develop a degree of autonomy. Their organs create procedures, issue interpretations, and engage in normative activities that may influence the legal order beyond the specific intentions of their founders. This dynamic reveals that IO lawmaking is at once derivative and autonomous. Derivative insofar as it rests on state consent, but autonomous insofar as institutional practice takes on an independent normative significance. Rather than undermining the legitimacy of the system, this paradox mirrors the very structure of international law, where authority is constantly negotiated between state sovereignty and the demands of collective governance. The China-Taiwan dispute demonstrates the stakes of this debate with particular clarity. If IOs are viewed merely as arenas for state consent, Taiwan's exclusion is nothing more than the reflection of political balances. But if IOs possess a measure of autonomy, then decisions on Taiwan's participation also represent normative choices with implications for international law. The use of categories such as "Chinese Taipei" or "Separate Customs Territory" reveals how IOs innovate legal formulas to manage contested sovereignty. Whether Taiwan is admitted, excluded, or granted observer status, these decisions shape not only Taiwan's international presence but also the legal understanding of sovereignty and recognition. The China-Taiwan case is thus a demonstration of the capacity of IOs to shape law under political constraints. Looking forward, the trajectory of

[286] J.E. Alvarez, *International Organizations as Law-Makers*, cit., p. 61.
[287] *Idem*, pp. 262-263.
J. Barkholdt, "The Contribution of International Organizations to the Formation, Interpretation and Identification of International Law", cit., Section 2.6.2 "Consensus Among States".

international law suggests that IOs will continue to play an essential constitutive role. The challenges of the twenty-first century – climate governance, pandemic preparedness, cybersecurity, migration – cannot be properly managed without IOs. Their institutional practices will inevitably influence the rules governing these domains.

In conclusion, the potential of international organizations in shaping international law lies in their ability to act as more than passive arenas of state will. Through their contributions to custom, their interpretative practices, and their capacity to identify and diffuse norms, IOs function as law-making actors in the global legal order. A book – or even several – could be written entirely on the theme of international organizations as law-maker actors, given the doctrinal, functional, and normative complexities it entails. This subsection has aimed merely to introduce this theme without exhausting its many dimensions. For the present purposes, the crucial point is to emphasize not only the international legal personality of IOs, but also their capacity to operate as sources of international law. This helps to explain how IOs, by shaping the legal order itself, have contributed to the evolution of the sovereignty challenge between China and Taiwan – providing institutional arenas for confrontation while fostering, over time, the elaboration of new categories of international actors and new criteria for the recognition of contested entities. As institutions that are themselves international legal persons, IOs are, in the words of the ICJ, "neither equivalent nor superior to states",[288] but within the scope of their charters, they can act as both lawmakers and law subjects. Admitting this potential is fundamental to understanding the possible future of Taiwan, both within and outside international organizations.

3.2.2. What future for Taiwan in IOs?

Taiwan's unsettled status has long stood as a prominent and complex issue within international law. Situated at the intersection of law, politics, and institutional design, it resists easy categorization and continues to generate debate. Unsurprisingly, Taiwan's future has become the subject of an extensive body of scholarship. Within this literature, Taiwan's ambiguous position has been examined both as a consequence of the ongoing geopolitical rivalries and as an example of how international law responds to contested sovereignty.

The central focus of this thesis has been the role of international organizations in handling the sovereignty challenge between the PRC and Taiwan, with particular attention to how institutional mechanisms have enabled, limited, or denied participation. The purpose of this last subsection, however, is different. It shifts from examining how IOs have managed the issue to considering what the future might hold for Taiwan within these institutions. In doing so, the same methodological

[288] ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, cit., p. 179.

commitment that has guided the rest of this work applies here. The aim is not to endorse or reject political claims, but to provide as objective an analysis as possible of the institutional practices that could shape Taiwan's participation or exclusion in IOs going forward.

With a view to maintaining objectivity, this subsection proceeds by engaging first with the perspective of a Taiwanese scholar and then with that of a scholar from the People's Republic of China. After outlining these two viewpoints, it presents the position advanced by the present thesis. International organizations possess the potential to sustain a form of coexistence between the PRC and Taiwan through functional participation in IOs with primarily technical mandates. This does not amount to political recognition of Taiwan as a sovereign state, nor does it imply a challenge to the One-China policy. Rather, it emphasizes the distinction between technical participation and political recognition, showing how IOs have, at times, succeeded in decoupling the two.

Vincent Wei-cheng Wang, a Taiwanese-born specializing in studying Chinese and Taiwanese foreign policy and domestic politics,[289] has developed a carefully calibrated approach for Taiwan's inclusion in intergovernmental organizations without forcing a definitive settlement of the sovereignty question. Wang's point of departure is that the cross-Strait impasse endures because Beijing and Taipei hold irreconcilable first-order preferences about Taiwan's status,[290] and most IGOs, given China's diplomatic weight, adhere in practice to a version of the One-China policy. At the same time, "the Republic of China*, judging from its ability to maintain 'substantive relations' with over 140 countries, is a *de facto* state".[291] In Wang's diagnosis, these facts render Taiwan a *sui generis* case – neither a conventional state in the full sense for recognition and general IGO membership, nor a mere dependency of the PRC.

From this premise, Wang reframes the membership problem as a problem of institutional design and preference-ordering rather than formal status determination. He identifies three options: "S" (Taiwan joins as a sovereign state), "O" (Taiwan participate as a *sui generis* entity, "other" than state), and "E" (Taiwan is excluded from participation). The payoffs of the three principal players – Taipei (Republic of China*), Beijing (People's Republic of China), and IGOs/international community – are modelled as follows: for the ROC*, $S > O > E$; for the PRC, $E > O > S$; for IGOs/international community, $O > E > S$.

[289] Ithaca College, "Getting to Know: School of H&S Dean Vincent Wei-Cheng Wang", *Ithaca College News*, 18 January 2017, accessed 12 September 2025.
[290] V.W.-c. Wang, "Taiwan's Participation in International Organizations", in E. Friedman (ed.), *China's Rise, Taiwan's Dilemmas and International Peace*, London, Routledge, 2006, p. 194.
[291] *Ibidem.*
* Professor Vincent Wei-cheng Wang referred to Taiwan as the "Republic of China", thereby revealing the normative orientation of his perspective: implicitly affirming Taiwan's statehood claim while simultaneously advancing a pragmatic analysis of its role in international organizations.

The result is that "O" is the only outcome that is simultaneously acceptable (if suboptimal) to both sides and positively attractive to IGOs. An equilibrium is therefore possible if institutional arrangements can be crafted to operationalize "O" credibly. Vincent Wei-cheng Wang then delineated the contours of this *sui generis* modality. Four design elements are central in his view.[292]

To begin with, he emphasizes the importance of "decoupling the issues of Taiwan's IGO membership and diplomatic recognition". Admission of Taiwan to a given IGO should neither require nor imply bilateral recognition by member states. The relevant criterion becomes whether Taiwan's participation advances the organization's mandate. This decoupling aims to reduce the sovereign-status salience that triggers Beijing's objections and to lower the political temperature around institutional access.

A second element concerns the amendment of charters or constitutions of those IGOs that allegedly admit only sovereign states so that they can also admit a functionally competent entity (for a particular issue area). Where IGO charters are presently drafted to admit as members only sovereign states, Wang proposes amendments (or interpretive practices) creating an additional membership/participation category specific to functional competence in a defined issue area. The World Trade Organization serves as the paradigmatic example: as a "Separate Customs Territory", Taiwan acceded without a final determination of statehood. Wang argues that a similar formula could be adapted across a range of technical bodies, with Taiwan participating under designations that track issue-specific competence (such as "economic entity", "public health authority", or "criminal-investigation authority").

In addition, Wang proposes that Taiwan's accession documents should explicitly state that admission into a given IGO does not have any impact on that body's position on China representation or imply sovereignty for Taiwan". This textual safeguard is intended to preserve the IGO's One-China posture while enabling Taiwanese participation on functional grounds.

Finally, he suggests stipulating that Taiwan would automatically lose membership if it were to declare independence after it entered the IGOs. The clause is meant to signal that functional participation is not a covert pathway to juridical secession, thereby reducing the perceived strategic risk to China while still opening space for cooperation.

Vincent Wei-cheng Wang's contribution is best understood as an attempt to articulate a future-oriented model for Taiwan's engagement with international organizations. By reframing the membership question as one of institutional design rather than status determination, his analysis offers a pathway that seeks to reconcile, albeit imperfectly, the divergent preferences of Taiwan, the PRC,

[292] V.W.-c. Wang, "Taiwan's Participation in International Organizations", in E. Friedman (ed.), *China's Rise, Taiwan's Dilemmas and International Peace*, cit., pp. 196-197.

and the wider international community. The model's strength lies in its functionalist orientation. Authority within international organizations should derive not from definitive settlements of sovereignty, but from the capacity to contribute effectively to the fulfillment of institutional mandates. In this respect, Vincent Wei-cheng Wang does not propose a solution to the sovereignty dispute, but rather a framework for its management within institutional settings. This forward-looking design is particularly relevant insofar as it reflects a Taiwanese scholarly perspective. While surely not representative of the plurality of views within Taiwanese society, its value lies in the potential to shift the terms of debate.

Although sharing the same surname, Tingliang Wang approaches Taiwan's future in international organizations from the PRC's perspective, grounding participation strictly within the framework of the One-China principle. According to Tingliang Wang, the PRC's stance on Taiwan rests on the already clarified One-China principle. From this perspective, Taiwan has never constituted an independent state. Its brief separation under Japanese rule is considered the product of unlawful aggression, subsequently nullified by post-war instruments such as the Cairo Declaration and the Potsdam Proclamation. The founding of the PRC in 1949 did not alter this legal reality, as Beijing is regarded as the sole legitimate representative of China. Consequently, Taiwan is not recognized as a state under international law but as an integral part of Chinese territory under separate administration.[293]

Given this unnegotiable perspective, Tingliang Wang explains that the People's Republic of China would only tolerate Taiwan's participation in an international organization if three cumulative conditions are satisfied, one grounded in the constituent treaty of the organization and the other two deriving from customary international law.[294]

The first condition is that the "constituent treaty of the international organization embraces non-state members". Where membership is restricted to sovereign states, as in the United Nations or the World Health Organization, Taiwan's participation is legally impossible for the PRC.

A second requirement concerns the use of a "lawful name". Taiwan cannot seek admission in IOs under designations implying sovereignty or divided statehood, such as "Republic of China" or "Republic of Taiwan". Only compromise labels like "Chinese Taipei" or "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu" are deemed lawful. Tingliang Wang argues that this can be regarded as customary international law. His reasoning is that international organizations have consistently obliged Taiwan to adopt such compromise labels while rejecting applications submitted under names suggesting statehood (*diuturnitas*). This uniform practice, he argues, is not merely

[293] T. Wang, "Taiwan's Memberships in International Organizations: A P.R.C. Perspective", cit., p. 86.
[294] *Idem*, pp. 86-96.

political expediency or diplomatic courtesy, but is accompanied by *opinio juris*. The Asian Development Bank illustrates this dynamic clearly. Following the PRC's accession in 1986, the Bank unilaterally changed Taiwan's designation from "Republic of China" to "Taipei, China" and has since insisted on its exclusive use, treating the rule not as discretionary but as a legal obligation. The International Court of Justice, notably in Nicaragua v. United States and related cases, has affirmed that *opinio juris* may be inferred from consistent practice reflecting a sense of legal duty.[295] On this basis, Tingliang Wang maintains that the persistent requirement of lawful names by IOs demonstrates the emergence of a customary norm. Taiwan's participation is permissible only if it avoids titles that connote sovereignty or independence, thereby conforming to the One-China principle.

The final condition is the necessity of the "PRC's Government consent on a case-by-case basis". Even where treaty rules and naming conventions are satisfied, Beijing reserves a discretionary veto over Taiwan's participation. In Wang's analysis, this transforms consent into a *de facto* legal requirement under customary international law, making the PRC's approval indispensable for Taiwan's engagement in any international organization. In Tingliang Wang's analysis, this has to be regarded again as a norm of customary international law. Taiwan's WTO accession illustrates this dynamic. The WTO explicitly waited for the PRC's consent before admitting Taiwan. According to Wang, such facts reveal that the WTO did not act of its own free will but considered itself legally bound to obtain Beijing's approval. More broadly, Wang notes that this practice extends beyond the WTO. The UN has never allowed Taiwan's membership since its expulsion in 1971, not only because of treaty restrictions but also due to the PRC's categorical opposition. Similarly, the WHO and the WHA repeatedly blocked Taiwan's applications until Beijing gave its consent between 2009 to 2016. These repeated patterns demonstrate that PRC consent operates as an indispensable precondition (*conditio sine qua non*), effectively transforming a political prerogative into a customary international law norm. In other words, IOs now treat Beijing's approval as a binding legal obligation, without which Taiwan cannot be admitted or even retained as a participant.

In sum, Tingliang Wang's analysis – illustrative of the PRC's official position – frames a prospective model for Taiwan's place in international organizations. It does not envisage Taiwan's exclusion from international organizations as absolute, but rather as conditional and circumscribed. Within this framework, Taiwan's participation remains possible, provided it respects the three cumulative requirements. They outline a model of participation in which Taiwan is recognized not as a sovereign state but as a "functional entity",[296] whose engagement is justified by its ability to contribute to the purposes of international organizations. In this sense, Wang's perspective points

[295] ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, *ICJ Reports* 1986, para 207.
[296] T. Wang, "Taiwan's Memberships in International Organizations: A P.R.C. Perspective", cit., p. 101.

toward a future in which Taiwan may continue to engage internationally, though only within modalities that safeguard the One-China principle.

The two models outlined above, while departing from divergent premises, converge on a common theme: Taiwan's future participation in international organizations is conceivable only in a form that does not entail recognition of sovereignty. Vincent Wei-cheng Wang emphasizes the need for institutional innovation through amendments and interpretive practices that would allow entities "other than states" to join, thereby operationalizing Taiwan's participation as a *sui generis* actor. Tingliang Wang, by contrast, articulates the PRC's official position, according to which Taiwan may only engage in international organizations under strict conditions grounded in treaty law and customary international law, with Beijing's consent serving as a necessary precondition. Despite these differences, both perspectives ultimately delineate the same structural outcome: Taiwan's engagement as a "functional entity". From the standpoint of institutional practice, this outcome reflects the trajectory already observable over past decades, during which the One-China principle has consistently shaped Taiwan's room for maneuver within the international system. Against this background, the present thesis contends that Taiwan's likely future lies in participation not as a sovereign state, but as a technical entity or "member other than state" whose involvement carries no implications for recognition or sovereignty. Importantly, this does not mean that Taiwan's sovereignty claims are entirely denied. From a Taiwanese perspective, functional participation without recognition does not amount to a renunciation of statehood, but rather a pragmatic accommodation to the constraints of the international order. This functionalist approach thus offers a pathway for coexistence in international organizations without formal recognition, allowing cooperation to proceed independently of unresolved political disputes. However, most international organizations continue to condition membership on statehood. Whether Taiwan's scope of participation expands in the future depends largely on institutional evolution, either through amendments and interpretive flexibility of the kind advocated by Vincent Wei-cheng Wang, or through a more rigid application of statehood requirements, in line with Tingliang Wang's position. In either case, the fundamental point remains that Taiwan's prospects for participation are confined to the space of functional engagement.

Much of the future of the China-Taiwan sovereignty challenge will inevitably depend on political developments – whether through a shift in cross-Strait relations, a recalibration of great-power rivalry, or a transformation of domestic preferences within Taiwan and the PRC. Yet if the present *status quo* endures – without formal recognition of Taiwan as a sovereign state and without political *de facto* unification under Beijing – the legal vocabulary available to describe Taiwan's role remains limited. In fact, Taiwan cannot be said to possess international legal personality in the classic

sense reserved for sovereign states. Nonetheless, as the importance of international organizations continues to grow in the governance of global public goods, a different concept may emerge as analytically useful: that of "institutional subjectivity". Unlike a full international personality, "institutional subjectivity" should not rest on sovereignty or recognition, but on the capacity of an entity to participate meaningfully in the work of international organizations. This depoliticized avenue of participation does not resolve the sovereignty dispute, but it may help manage it in ways that safeguard cooperation where it is most urgently needed. Indeed, "technicization can serve as a vector of depoliticization performed by IOs".[297] The fact that technical participation does not entail or imply political recognition not only captures the essence of Taiwan's current condition but also provides the conceptual key for envisioning its possible future role in the international institutional order.

[297] M. Louis – L. Maertens, *Why International Organizations Hate Politics: Depoliticizing the World*, vol. 1, 1st ed., London, Routledge, 2021, p. 10.

CONCLUSIONS

International law has always oscillated between the aspiration to universal order and the reality of political fragmentation, and nowhere is this oscillation more visible than in the unresolved relationship between the People's Republic of China and Taiwan. This thesis set out to ask whether international organizations have been able to manage, however imperfectly, the coexistence between China and Taiwan, and what mechanisms they have employed to accommodate both sides without deciding the ultimate question of sovereignty. The answer, as the analysis has shown, does not lie in a definitive solution but in a series of institutional practices that transform division into coexistence, ambiguity into procedure, and political confrontation into legal compromise.

This thesis has traced a path from conceptual foundations to institutional practices and prospective futures. The first chapter demonstrated how sovereignty, recognition, and legal personality – cornerstones of international law – are challenged by the reality of contested entities. Taiwan is excluded from the United Nations system by Resolution 2758, yet it continues to participate in other organizations under carefully crafted formulas that separate functionality from recognition. The second chapter examined this paradox in practice, through the WTO and WHO, showing how institutional design and political will interact to produce either inclusion or exclusion. Taiwan's role as a "Separate Customs Territory" in the WTO proves that law can innovate to preserve economic cooperation even in the face of sovereignty disputes, while its marginalization from the WHO illustrates the vulnerability of functional participation to political asymmetries. The third chapter turned to the future, introducing, at the end, the notion of "institutional subjectivity" as a way to conceptualize how entities like Taiwan may acquire meaningful presence in global governance. Taken together, these analyses reveal that international organizations do not merely reflect the balance of power but actively mediate it, providing forums where division can be managed without foreclosing unity, and where law evolves through practice rather than through definitive settlements.

However, a conclusion must not merely restate findings; it must extend them, reflecting on broader implications. The first of these implications concerns the nature of sovereignty itself. The Taiwan case demonstrates that sovereignty is not an absolute condition but a relational and contextual construct. In the absence of recognition by most states, Taiwan has nonetheless exercised effective sovereignty internally and has projected agency externally, albeit under constrained forms. International organizations have become the mediators of this paradox, translating Taiwan's factual autonomy into limited participation without transforming it into legal statehood. This suggests that

sovereignty today functions less as a binary – state or non-state – and more as a range, mediated by IOs. Taiwan's experience could foreshadow a broader transformation in international law, where contested entities may acquire differentiated forms of international presence that are not reducible to classical categories.

A second implication concerns the role of international organizations themselves. Traditionally portrayed as instruments of state will, they emerge here as actors with constitutive authority. By admitting Taiwan to the WTO under a *sui generis* designation, or by denying it observer status in the WHO, these organizations have shaped the international status of Taiwan as much (or more) as states have. Their practices, repeated and formalized, contribute to the development of international norms that extend beyond the Taiwan Strait.

A third implication concerns the tension between law and politics. The Taiwan case illustrates that legal formulas are never neutral: they embody political compromises. "Chinese Taipei" is not a descriptive label, but a carefully negotiated legal device designed to allow participation without recognition. Such instruments, while fragile, are essential for preserving cooperation in a divided world. They show that international law cannot be understood in isolation from politics, but rather as a framework that gives political disputes structured forms and procedures. The role of legal scholarship, therefore, is not to criticize these compromises for their imperfections, but to examine how they operate in practice and how they may develop in the future. From this perspective, Taiwan's participation is not a peripheral anomaly but a central case for rethinking international legal order. The law adapts not only by definitively resolving disputes but also by creating frameworks within which disputes can be managed.

The consequences of this dynamic extend far beyond East Asia. Other contested entities – such as Palestine, Kosovo, and Northern Cyprus – face similar dilemmas of recognition and participation. The precedents developed in the Taiwan case, such as the use of neutral designations or observer arrangements, may inform the treatment of these entities as well. More broadly, they illustrate how the international system is moving toward differentiated forms of participation, where the rigid dichotomy between recognized states and excluded non-states gives way to a plurality of institutional subjectivities. It is worth recalling that at the end of the eighteenth century, the only subjects of international law were considered to be sovereign states, whereas today we witness a multiplicity of actors, each exercising distinct roles and capacities within the legal order. In a world defined by interdependence and global challenges, exclusion becomes increasingly costly, not only for the entity left out but for the international community as a whole. Issues like climate change, cyber governance, and global public health demand universal cooperation, and the pressure on international organizations to prioritize functionality over political rigidity will only grow stronger.

To return, then, to the opening quotation of this thesis – the celebrated line from *The Romance of the Three Kingdoms*, "天下大势，分久必合，合久必分" ("The great trend of 'All under Heaven (Tianxia)' is that prolonged division inevitably leads to unity, and prolonged unity inevitably leads to division") – the China-Taiwan case exemplifies the enduring dialectic between division and unity. The sovereignty dispute has produced exclusion and fragmentation, yet international organizations have provided frameworks of limited inclusion that prevent rupture and preserve the possibility of future integration. International organizations have become mediators able to translate political antagonism into institutional practice. Whether this leads ultimately to unity after division, or to renewed division after unity, remains uncertain. The future of Taiwan's international presence will depend on how law, politics, and institutions continue to interact in the coming decades. What is certain is that the great trend of "All under Heaven" will persist, oscillating between integration and fragmentation, leaving us to ask, at the close of this inquiry, whether in the case of China and Taiwan it will be "合久必分" ("prolonged unity inevitably leads to division") or "分久必合" ("prolonged division inevitably leads to unity").

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