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# TAIWAN'S INTERNATIONAL LEGAL STANDING: NAVIGATING THE FRAGILE *STATUS QUO*

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**Abstract:** *This study aimed to discuss the legal limbo of Taiwan, whose political situation lies in a grey area of international law. Its legal status is ambiguous: while meeting the characteristics of a State, it is not recognized by other States so long as China claims it as a Chinese territory. The methodology developed in this study adopted the descriptive analytical approach to the different principles of international law, in addition to quantitative methods, which involved gathering data on cases, courts, and resolutions of international organizations, followed by thorough analysis. This research provided an in-depth investigation to critically assess Taiwan's fragile status quo, threatened by a potential Chinese military intervention. The study found that the idea that Taiwan is deprived of legal status points out the shortcomings of international law. This study concluded that to overcome this tricky situation, Taiwan should take bold moves, such as making constitutional reforms to facilitate its independence.*

**Keywords:** *Recognition; Status Quo; Taiwan Strait; Resolution 2758; Use of Force; China*

## INTRODUCTION

The international political situation of Taiwan lies in a grey area of international law because of the difficulties that arise around its ambiguous legal status. While Taiwan lacks official international recognition in diplomatic relations, it possesses other vital elements of statehood: a population, a territory, and a democratic government. For Judge Lauterpacht, "even though a state may exist as long as it fulfills the conditions of statehood laid down by international law, it is the recognition of other states that establish ordinary diplomatic relations and materializes the rights and obligations of the recognized State" (Crawford 1998, 22). From an international law perspective, China and the ROC (Taiwan's official name is the Republic of China) still maintain the relationship of "one country, two governments" as, according to the constitution, the definition of the ROC territories still includes mainland China. Nonetheless, international law does not respond to its legal status. With the characteristics of a state, Taiwan is a legal limbo: it is not recognized by other states so long as China claims it as a Chinese territory. The UN practice does not facilitate the issue for Taiwan. For instance, after the 1999 earthquake in Taiwan, former Secretary-General Kofi Annan asked UN agencies to wait for China's approval before the United Nations Office for the Coordination of Humanitarian Affairs and relevant agencies sent the disaster assessment team to what he called "the Taiwan province of China" (Nguyen 2022).

The current definition of statehood raises legal questions about whether coming to defend Taiwan against using force would be lawful under the UN Charter. Firstly, if it applies to

UN membership, this will come up against the provisions of the Charter. Indeed, Article 4 stipulates that the condition to be admitted relies on the General Assembly upon recommendation of the Security Council. However, China, as a permanent member of the Council, can veto its entry. Secondly, seeking international recognition may provoke Chinese use of force, which may not be unlawful, as under Article 2(4) of the UN Charter, the use of force is prohibited against the territorial integrity of states, and Taiwan is not declaring itself a state.

However, suppose we argue that Article 2(4) of the Charter of the United Nations does not apply to Taiwan based on China's assertion. In that case, it is an integral part of its territory; another part of the debate challenges this idea based on legal precedents proving that states cannot use force against people who continue self-determination that *de facto* regimes can be included in Article 2(4) and that states must settle disputes with non-states by peaceful means under Article 33 of the Charter of the United Nations (Ediger 2018).

According to state practice, states must respect the borders of *de facto* regimes and consider it illegal to change them by force (Frowein 2013). As for Randelzhover and Dorr, in their UN Commentary, they argue that "it is almost generally accepted that *de facto* regimes exercising their authority in a stabilized manner are also bound and protected by Article 2(4)" (Randelzhover and Dorr 2012). For some scholars, the *de facto* regime is a territory over which a government has exercised stable control in opposition to another state's claim for a certain period (Frowein 2013), for example, the German Democratic Republic before 1972, North Cyprus, South Ossetia, and North Vietnam before reunification (Frowein 2013).

This study endeavors to discuss the intricate international legal status of Taiwan, a jurisdiction embroiled in a complex web of legal and political dynamics. By shedding light on the underlying reasons driving Taiwan's current legal and political turmoil, this research aims to clarify the subject. First, while it fulfills all the criteria of statehood outlined in the Montevideo Convention, it is still not recognized as a state. In addition, its constitution does not help as it does not guarantee its independence. Second, this paper analyzes the UN General Assembly Resolution 2758, which expelled the Republic of China from the UN. It represents a significant obstacle to its recognition by the international community. Finally, this study explores the fragile *status quo* that can potentially preserve it against the use of force by China.

## LITERATURE REVIEW

The fact that the international situation of Taiwan lies in a grey zone of international law has impacted the different authors' arguments on its legal and political crisis. In the entity that dares not speak its name, the argument by Crawford (2006) that "despite the fact that the suppression of 23 million people cannot be consistent with the UN Charter, Taiwan is not a state because it still has not unequivocally asserted its separation from China and is not recognized as a state distinct from China" (p. 219), was not persuasive for some authors because recognition can be a Pyrrhic victory. For a good reason, the international order conferred recognition on some countries, and the international community mostly stood by while their boundaries were grossly violated (Roth 2009).

The UN has fundamentally changed people's understanding of states and their rights and duties. Today, when people talk about the concept of a state, they talk about it in the

context of the contemporary international law system. An entity enjoys rights and privileges and bears the related obligations not because it has satisfied specific criteria but because it has been admitted to the UN. In this sense, statehood begins only after admittance to the UN (Liu 2012). So, the current definition of statehood is raising legal questions about whether coming to the defense of Taiwan would be permitted under an international legal framework such as the UN Charter (Fang 2023) because Taiwan's geopolitical situation shows that arguments based on the Westphalian conception of statehood - states are the only subjects of international law - create absurd results (Ediger 2018).

In "Taiwan's International Personality: Crossing the River by Feeling the Stones" (1998), Angeline G. Chen examines Taiwan's *de facto* statehood and establishes that it is an independent and sovereign state, prevented from seeking international recognition because of China's illegal threats of force (Chen 1998). Chen (1998) argues that to obstruct Taiwan's bid for statehood further, China has threatened to prohibit trading access to its markets to any nation that acknowledges Taiwan's claim of sovereignty.

Others think if a state could be described as independent *de facto* but not *de jure*, this would mean that its *de jure* situation would be qualified by one of three possibilities: non-existence, dependence on another state, or independence under another name. However curious, the argument that the Republic of China does not exist is nevertheless supported here and there (Corcuff 2005). Nonetheless, to declare Taiwan legally nonexistent is, at best, an aberration and, at worst, an argument employed to appease China or to oversimplify a problem one chooses not to comprehend. Taiwan, recognized as the Republic of China, issues passports accepted by customs officials worldwide, except in China. This amounts to admitting the legality of documents that can only emanate from a sovereign country.

On the other hand, the island of Taiwan is governed by elected legislative, executive, and judicial bodies. These bodies consistently generate legal materials that are applied and lead to litigation. It is, above all, accepted as such by states that negotiate on various levels with Taiwan, once again, at least if the admission of the legality of this legal matter does not imply an explicit recognition of the sovereignty of the regime (Corcuff 2005).

While some authors ponder whether Taiwanese nationalism inevitably evolves into *de jure* official Taiwanese independence, potentially sparking a direct conflict with China's "One-China principle" (Lin 2021), others contend that Taiwan's democratization has nurtured a fresh sense of Taiwanese nationalism centered on safeguarding the island's democratic liberties. Consequently, the Taiwanese populace increasingly views themselves as a distinct political and social entity separate from the mainland. Thus, despite similar historical and cultural backgrounds, China's undemocratic political system has led the Taiwanese people to increasingly identify as Taiwanese rather than Chinese (Li and Zhang 2017). However, despite the growth of Taiwanese identity over the past two decades, most of the population supports some form of the *status quo*. The possibility of a nationalist movement will be less affected by a growing sense of Taiwanese identity and more by the perceived aggressiveness of China against Taiwan (Lin 2021). So, even though the ROC inhabitants increasingly identify as Taiwanese, their strong preference for peace over armed conflict with China instead of *de jure* independence helped shape Taiwan's relations with China (Roy 2017).

In 1999 and 2002, Taiwan's decision to issue provocative political statements to challenge the *status quo* quickly intensified cross-strait tensions concerning the fragile situation in the Taiwan Strait. The United States' prompt assurance to China of its firm support for the One-China policy and its condemnation of Taiwan's actions helped China to realize its bargaining power over the island. It averted potential crises across the Taiwan Strait (Fravel 2008). The security situation makes many observers, especially in the United States, fear a confrontation that could result in armed conflict, with more than uncertain consequences, because we can imagine many actors not remaining insensitive to a crisis that would hit two major trading powers. With the North Korean nuclear crisis, the dispute between Beijing and Taipei is thus the most significant security challenge in the region (Courmont 2011). It revolves around a historical-cultural dispute and today relies on, on both sides, the evolutions of a nationalist discourse with vague contours that could precipitate events. Except for an unlikely spontaneous invasion by Chinese forces, the destabilizing element in the Beijing-Taipei relationship is a hypothetical declaration of Taiwan's independence (Courmont 2011), as the notion that military deterrence can be a powerful tool for Beijing to dictate the terms of Taiwan's political future (Wu 2018).

## RESEARCH METHODOLOGY

The methodology developed in this study adopts the descriptive analytical approach to the different principles of international law. The research will seek to provide an in-depth investigation to critically assess the complicated situation in which Taiwan stands by exploring different vital factors and actors as well. The approach utilized in this study should examine the primary factors contributing to the deficiencies of international law. This study relies on fundamental resources, including but not limited to literary publications, scholarly periodicals, and online articles. It constitutes empirical legal research, requiring critical thinking skills to evaluate pertinent facts and information. Adopting quantitative legal research methods involves gathering data on cases, courts, and resolutions of international organizations, followed by thorough analysis. Additionally, the research incorporates discourse analysis, scrutinizing the arguments advanced by institutions to rationalize their exercise of discretion or political choice, such as selecting a particular interpretation of the law.

Furthermore, this paper delves into critiques regarding the interpretation practices of international legal institutions. It proposes alternative approaches, often suggested in legal commentaries on UN resolutions by legal scholars. Upon completing the explanation and analysis of the various elements and components of the research problem, the most crucial step in the analytical descriptive framework is compiling a summary or results from the research approach based on all the steps mentioned above. Therefore, the results must be organized, persuasive, and connected to the research objectives and questions. Within these findings, we aim to identify suitable solutions and offer research recommendations.

## THE DILEMMA OF THE TAIWANESE CONSTITUTION

Taiwan's statehood is in troubled waters (Gazzini 2023) as international law does not clearly answer its legal status (Charney and Prescott 2000). It is a contested state for some authors because while possessing the criteria of a fully ledged country, Taiwan has not obtained international recognition (Henderson 2013). International jurists describe Taiwan evasively. For some authors, it is a territory legally belonging to China (Orakhelashvili 2021), an entity probably *de jure* part of China (Shaw 2021), a *de facto* government in a civil war (Crawford 2007), a country with a particular context (Brownlie 2003), or *personnalité pas plénière* (Daillier, Pellet, Nguyen Quoc Dinh, Miron, Forteau 2022). While some authors regard China and Taiwan as examples of a divided state (Von Glahn and Taulbee 2019), others admit the existence of two independent states (Wright 1955). One of the primary reasons supporting the arguments is the constitutional dilemma faced by the Republic of China (ROC).

If borders are a fundamental element of territorial sovereignty, the 1951 San Francisco Peace Treaty ended Japanese imperialism over Taiwanese territory but legally never resolved Taiwan's post-decolonization status (Lee 1997).

While questioning the varying interpretations of the notion of borders in Taiwan, the author Stéphane Corcuff (2005) asks, "If Taiwan is a sovereign state, shouldn't it necessarily have a border with China?" (p. 9). Indeed, there is a legitimate cause for concern as Taiwanese borders remain exceedingly ambiguous. Article 4 of the Constitution stipulates: "The territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly". It is important to recall here that the preliminary text of the Constitution of the Republic of China was drafted in 1937, and if it concerned mainland China, the island of Taiwan, under Japanese rule, was not yet part of it. The term "existing borders" was thus chosen by the Constituents in 1946, after the island was attached to China, and, by its lack of clarity, implicitly indicates that the Taiwanese constitution does not recognize the existence of a real border with China (Courmont 2011). When the ROC Constitution was revised in 2005, it merely shifted the authority to alter the ROC's national territory from the National Assembly (now called the Legislative Yuan) to that of a public referendum. However, a referendum to delimit Taiwan's territory has never been passed or held (Sher 2023). These observations highlight a concerning disparity between a constitution that appears to belong to another era and the current reality of a society that perceives itself as entirely independent (Courmont 2011).

Moreover, the current Constitution of the Republic of China does not guarantee Taiwanese sovereignty as it affirms that the People's Republic of China (PRC) and the Republic of China (ROC) occupy the same territory. That means if a war breaks out between the two countries, it would be classified as a domestic conflict under this constitution, which therefore prohibits any form of foreign aid in conformity with the principle of non-intervention set forth by Article 2 (7) of the United Nations Charter (Fang 2002, 3). So, some legal scholars proposed to renew the Taiwanese Constitution by passing an amendment that all new articles supersede all existing ones (De Lisle 2004). The difficulty is that any new constitution seeking to assert Taiwan's statehood will still rely on the Chinese Constitution if its name or content contains any reference to the mainland.

The Government of Taiwan, through the Continental Affairs Council, qualified the situation with China as a “common sovereignty, separate jurisdiction” in the 1990s. However, this pragmatic analysis cannot sidestep the acknowledgment of a border. The absence of a border between the two entities gives rise to legal and political complexities. According to Corcuff (2005), by relinquishing its official name, ROC, Taiwan’s severance of its symbolic and legal ties with China would substantiate Taiwan’s material and legal independence. Nonetheless, if the official name of the Republic of China is entirely abandoned, it would inevitably entail the redefinition of the regime’s borders.

An analysis of the constitutional block reveals that, in theory, no boundary is constitutionally defined between Taiwan and China. This is primarily due to the absence of any boundary definition within the constitution (Corcuff 2005). The original text of the Constitution of the ROC in Taiwan remains the sole legal document, and the absence of a border between the PRC and the island republic has yet to be addressed. Therefore, if the official borders of the ROC are restricted to Taiwan alone, does that signify Taiwan’s independence? However, as the international community does not recognize it, it is *de facto* independent, not *de jure*. Could a state be independent *de facto* but dependent *de jure*?

Even if the ROC does not declare itself independent, China has no sovereign powers regarding Taiwan, such as taxes, arms, foreign policy, financial instruments, institutions, and political symbols. They are all in the hands of the Taipei government, which does not share them with any other. Consequently, the idea of a legal dependence on fact or theory concerning another country is an argument destined to please but does not honor the one who holds it (Corcuff 2005).

While James Crawford (2006) affirms that “the suppression of 23 million Taiwanese people cannot be consistent with the UN Charter and therefore to that extent there must be a cross-strait boundary for the use of force, he asserts that Taiwan is not a state because it still has not unequivocally asserted its separation from China and is not recognized as a state distinct from China” (p. 219). However, for some authors, his analysis is not persuasive on the merits, as the tacit position of some reacting states determines whether an entity possesses the rights, obligations, and immunities of statehood (Roth 2009).

Others argue that Taiwan is an independent and sovereign regime *de facto* and *de jure*, not as the Republic of Taiwan but as the Republic of China, this being the constitutional and legal continuation of the regime founded in China in 1912, which is now reduced to the island of Taiwan and its offshore islands, the archipelago of Pescadores, Kinmen, and Matsu, but whose constitutional borders remain for the moment, for political reasons, those of the Republic of China before the division of 1949 (Corcuff 2005).

Nonetheless, under Chinese pressure, Taiwan’s recognition has weakened: since 2016, eight countries have broken off their diplomatic relations with the island, the latest being Nicaragua, in December 2021. In 2022, only 15 countries officially recognized the Republic of China, Latin America, the Pacific, and the Vatican. This does not prevent the country from maintaining diplomatic relations with many nations since it has 111 representations in 74 countries (Dagorn 2022). In 1971, the UN General Assembly passed Resolution 2758, effectively recognizing the People’s Republic of China (PRC) as the sole representation of China with a seat in the UN Security Council.

## THE 1971 UNGA RESOLUTION 2758

The United Nations General Assembly Resolution 2758 (also known as the Resolution on Admitting Peking) was passed in response to the United Nations General Assembly Resolution 1668 that required any change in China's representation in the UN be determined by a two-thirds vote referring to Article 18 of the UN Charter. China was one of the original 51 Member States of the United Nations, which was created in 1945. At that time, the Republic of China (ROC), led by the Kuomintang (Chinese Nationalist Party), governed mainland China and Taiwan. The Republic of China (ROC) army was engaged in a civil war with troops led by the Chinese Communist Party (CCP). In 1949, the CCP proclaimed the People's Republic of China (PRC) in Beijing. The remaining mainland ROC forces were compelled to retreat to Taiwan, which Japan had evacuated in 1945 and renounced all rights, titles, and claims to in the Treaty of San Francisco in 1951. After January 1950, the PRC controlled mainland China but could not capture Taiwan, Penghu, Matsu, and Kinmen. Therefore, these areas remained under ROC rule (Ediger 2018).

The PRC claimed to be the successor government of the ROC, while the Kuomintang in Taiwan championed the continued existence of the Republic of China. Both claimed to be the only legitimate Chinese government, and each refused to maintain diplomatic relations with countries that recognized the other. It is crucial to emphasize that until 1971, the Republic of China (ROC) was a founding member of the UN. Following Article 23(1) of the UN Charter, it also held a seat as a permanent member of the Security Council (Gazzini 2023) until it was expelled by the UN General Assembly Resolution 2758.

The 1951 Peace Treaty between the Allied Powers and Japan required Japan to renounce all its "rights, title, and claims" to Taiwan without specifying any beneficiary state. The treaty formally terminated Taiwan's status as a colony of Japan (Ediger 2018). Thus, Taiwan was legally detached from Japan but was not attached to China or any other country. The shared expectations of the parties to the Peace Treaty were that Taiwan's legal status, though temporarily left undetermined, would be decided at an opportune time by the principles of the United Nations Charter, particularly the principles of self-determination (Chen 1998). The United Nations failed to adopt a "One China, One Taiwan" formula to resolve the Chinese representation in the UN. According to the "One China, One Taiwan" formula, both China and Taiwan would have been seated as separate states in the UN, with the People's Republic of China (PRC) occupying China's permanent seat in the Security Council (Chen 1998).

When examining the legality of the internal legal force of the UNGA Resolution 2758 of 1971, we find out that it recognizes China as a sole representative of Mainland China but does not regulate the status of Taiwan.

More than half a century after adopting this text on the continent, Resolution 2758 accelerated the end of Taiwan's isolation, notably recognized in 1979 by the United States. As for China, the text has since acquired within the UN an influence often commented on, and one of the objectives, to be achieved by force so necessary, remains the capture of Taiwan, conceived as the completion of a national reunification (Detry 2023).

Suppose the Resolution does not present only historical interest. In that case, it is because it retains an essential place in the legal argument presented by the People's Republic of

China in support of its positions (Detry 2023). Regarding the effects of Resolution 2758, Article 10 of the United Nations Charter only gives the General Assembly the power to make recommendations on matters falling within the scope of the Charter. However, in addition to the legal effects of the resolutions issued by an international organization for its members, their effects can be considered within the organization itself. From this perspective, specific resolutions of the General Assembly, which are not deemed recommendations but rather decisions, may impose obligations not on the Member States of the United Nations but on the organization within its internal legal framework.

In summary, if the resolutions of the General Assembly can create obligations specific to the UN, they are not supposed to pose any for its members. This explains why China refers to Resolution 2758 as a “political document” (Detry 2023). Resolution 2758 is often presented as the text by which the Republic of China was expelled from the UN. It is true that the text “decides” - which suggests that the Resolution is binding within the UN, independent of its members - “to expel forth with the representative of Chiang Kai-Shek from the place which they unlawfully” (Detry 2023, 6). But here we note that the expulsion does not target a state, only its representatives, whose organization recognizes the implicit competence to control the legitimacy. Resolution 2758, therefore, did not concern the membership of a state to the UN, but the representation to the UN of a state considered to be the same since 1945 - China. The purpose was not to replace one seat with another but to change the occupants of a single seat. The two rival governments shared this view then (Detry 2023).

Moreover, the examination of the text shows that it cannot have the more extensive meaning that China today claims. The Resolution is limited to 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” (Detry 2023, 6). It recognizes 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” (Drun and Glaser 2022).

Nonetheless, this Resolution is silent on the status of Taiwan, whose name does not appear in the text, nor that of the Republic of China, to which it is only referred by the turn already mentioned by the representatives of Chiang Kai-Shek. We look in vain for expressions like “Single China principle” or “One-China principle” (Ekman 2022). Hence, the following question arises: Can China not invoke Resolution 2758 as a binding decision in the domestic law of the United Nations to prevent any admission of the Republic of China, including Taiwan, as requested by its president Chen Shui-bian in 2007?

It is true that at that time, the Secretary-General of the United Nations, Ban Ki-Moon, believed he had to reject this candidacy by invoking Resolution 2758. He even asserted that, under this text, the UN considers Taiwan as part of China, an interpretation that sparked discreet but vigorous protests from several states, including the United States. In response, Mr. Ban Ki-Moon admitted that he had overstepped and stated that he would not attribute this position to the UN in the future (Drun and Glaser 2022).

This position was questionable in two ways: firstly, because the text does not address the status of Taiwan, and secondly, because it pertains to the representation of China rather than



the admission of Taiwan. Therefore, it only hinders an application from Taiwan if it is assumed that its admission is related to the representation of China. This assumption is only implicit if one first adopts the position of China itself, which claims that Taiwan is part of its territory (Drun and Glaser 2022).

It is important to emphasize that China endeavors to leverage Resolution 2758 to bolster its claim over Taiwan. Following a large-scale military exercise conducted in response to US House Speaker Nancy Pelosi's visit to Taiwan, the People's Republic of China (PRC) released a white paper outlining its strategy toward Taiwan, wherein it exaggerated the interpretation of Resolution 2758. Titled "The Taiwan Question and China's Reunification in the New Era", the white paper, published by China in August 2022, states: "Resolution 2758 is a political document encapsulating the One-China principle whose legal authority leaves no room for doubt and has been acknowledged worldwide. Taiwan does not have any ground, reason, or right to join the UN, or any other international organization whose membership is confined to sovereign states" (Fukuda 2022, 2).

This new white paper reinterprets the significance of the One-China principle and dedicates a substantial portion to explaining the UN General Assembly Resolution, citing it as the basis for China's claim that the principle is widely accepted by the international community (Fukuda 2022). As elucidated earlier, the fundamental assertion of the One-China principle by the People's Republic of China (PRC), which includes Taiwan as part of China, is not explicitly stated in Resolution 2758. Neither "Taiwan" nor "ROC" is mentioned in the Resolution. So, why is China emphasizing Resolution 2758 as the foundation for its One-China principle? (Fukuda 2022). Adopted in 1979, the One-China principle aims for "peaceful reunification, and one country, two systems". The core tenets of this principle and the relevant policies stipulate that China will strive for peaceful reunification but do not rule out the use of force (Liff and Lin 2022).

It is essential to highlight that after its expulsion, the Republic of China (ROC) has frequently attempted to apply for UN membership following Article 4 of the Charter, Rule 58 of the provisional rules of procedure of the Security Council, and Rule 134 of the Rules of Procedure of the General Assembly, which stipulate that the applicant must be a state (Gazzini 2023). However, the success of such a candidacy is rendered illusory as it requires the recommendation of the Security Council, where China holds a veto, and the decision of the General Assembly, where China is likely to rally a majority in favor. However, Detry considers that this is solely a matter of opportunity rather than a principle that would bind the organization. As such, Resolution 2758 does not seal Taiwan's fate within the UN. Indeed, it has a little legal impact on Taiwan's status outside the United Nations and international law (Detry 2023).

Under Chinese pressure, Taiwan's diplomatic recognition has waned. Since 2016, eight countries have severed their diplomatic relations with the island, the latest being Nicaragua in December 2021. As of 2022, only 15 countries officially recognize the Republic of China, primarily in Latin America, the Pacific, and the Vatican. Despite this, Taiwan maintains diplomatic relations with numerous nations, boasting 111 representations in 74 countries (Dagorn 2022). Since the late 1990s, China has actively pursued efforts within the UN system to promote the de facto recognition that Taiwan is part of China (Fukuda 2022). However, Taipei has not been deterred from seeking admission to the United Nations. On numerous occasions, the Republic of China (ROC) has explicitly asserted its independence and sovereignty (Gazzini 2023).

In March 2005, the One-China principle was set in stone by the vote in Beijing of the Anti-Secession law, which promotes reunification with Taiwan by peaceful means but allows the use of force in three scenarios: if Taiwanese separate Taiwan from China; if an incident could lead to separate Taiwan from China, and in the event of the disappearance of any possibility of peaceful reunification (Dagorn 2022). In reaction to the 2005 Anti-Secession Law, Taiwan declared that:

It is undeniable that the ROC is a sovereign and independent state (...) 'The Anti-Secession Law' - a domestic law unilaterally enacted by China - claims that Taiwan is a part of China and suggests that non-peaceful means may be arbitrarily employed by China to achieve unification. This is not only a violation of the principle of self-determination but also infringes upon the sovereignty of the ROC (Gazzini 2023).

Moreover, even if Article 2 (4) of the UN Charter does not protect territorial integrity or political independence, according to the 1970 UNGA Resolution 2625 on the Principles of International Law Concerning Friendly Relations and Cooperation among states, the prohibition of the use of force also entails that states must adhere to "the duty to refrain from any forcible action which deprives peoples (...) Of their right to self-determination and freedom and independence".

These scenarios are perceived as threats by the Taiwanese. Since then, despite remarkable economic development and the establishment of genuine democracy following the opposition's victory in 2000, Taiwan has existed in a precarious *status quo* (Dagorn 2022).

### THE FRAGILE *STATUS QUO*

It can be argued that the *status quo* underscores the significant strategic divergence in the Sino-American relationship, and any alteration to the *status quo* could render the situation fragile. Indeed, the triangular relationship between the United States, Taiwan, and China is among the world's most crucial, intricate, and potentially volatile international relations. Maintaining a delicate balance is imperative for all parties to uphold a stable *status quo* and ensure peace in the Taiwan Strait. The hypothesis of this study posits that the *status quo* in the Taiwan Strait is under threat of being altered due to China's aggressive stance and the growing identity of Taiwan, coupled with the reactive and evolving US policy in the Taiwan Strait (Lin 2021). All three concerned parties must exercise restraint to prevent war in the Taiwan Strait. This entails Taiwan refraining from declaring independence, the United States refraining from recognizing Taiwan as an independent state, and China refraining from resorting to force against Taiwan.

#### Taiwan

What is the *status quo* between Taiwan and China? We have two states: one is primarily recognized and maintains a threat of invasion against Taiwan. At the same time, the other has been excluded from international organizations and does not appear sovereign, even though it

is indeed. To maintain the *status quo*, Taiwan has no choice, which implies that neither unification nor independence would be possible in the short term, but the importance of Taiwan in the international space will continue to grow, giving Taiwan more options and choices (Xue 2021). Indeed, it must maintain this *status quo*, particularly as the number of countries recognizing its sovereignty has dropped to 15 (Dagorn 2022).

In this regard, a Taiwan Public Opinion Foundation survey affirms that 48.9% of Taiwanese support independence, 11.8% support unification, and 26% support the *status quo* (Sher 2023, 1). Neither unification with China nor independence from Taiwan is the preferred option for the island's inhabitants. Instead, maintaining the *status quo* and having a vague attitude toward cross-border relations kept the majority position. Most Taiwanese citizens are concerned about a combination of maintaining the *status quo*, preferring neither unification with China nor Taiwan's declaration of independence (Yu 2017).

In November 2006, Taipei's Mainland Affairs Council declared that the *status quo* in the Taiwan Strait means that both sides across the Strait have no jurisdiction over each other. There is no issue of independence or unification between them (Roth 2009).

The problem is that the ability of Taiwan to maintain the *status quo* largely depends on the external environment: first, the *status quo* lies in the continuation of the US's external dominance in its military role in the region. The second condition is the confrontation between the United States and China. China's economic sanctions against Taiwanese pineapples and sugar apples and increased military pressure in recent years constitute the third force shaping the *status quo* (Xue 2021).

The current Taiwanese President, Tsai Ing-wen, affirms her predecessors' policy of maintaining the *status quo*. In October 2021, she declared, "Our position on cross-strait relations remains the same: neither our goodwill nor our commitments change (...) We call for maintaining the *status quo*, and we will do our utmost to prevent the *status quo* from being unilaterally altered" (Xue 2021, 1). It is important to stress that the former Taiwanese leader Ma Ying-jeou had founded a policy on the 1992 Consensus and "One China, Two Interpretations", which was based on the "Three No's" formula - "no unification, no independence, and no use of force" (Xue 2021).

Suppose Taiwan declares itself independent and China fails to prevent its recognition. This will disadvantage China because Taiwan would emerge as a country with advanced military technology and a powerful economy, positioned less than two hundred kilometers from China (Beckley 2017). Taiwan, armed by its thriving democracy, would be free to make strong alliances with fellow democracies like Japan and the US, establishing a line of potentially hostile military forces on China's shores (Ediger 2018). Thus, Taiwan would also be able to join the UN and other international organizations, with an indisputable right to protection under Article 2(4) and rights of self-defense and collective security under Article 51 (Ediger 2018).

On 13 January 2024, Lai Ching-te from the Democratic Progressive Party (DPP) won Taiwan's next presidential election. He is considered the strongest advocate for radical independence. Distrusted by China, he has already described himself as a "pragmatic worker for the independence of Taiwan" (The Economist 2024).

## The United States of America

Taiwan matters to the US for both political and economic reasons. An ancient general like Mac Arthur referred to Taiwan from a military point of view as the critical geopolitical element in the geographical fact of relations between China and the United States in the Pacific. Henri Kissinger thought Taiwan and *de facto* the current world order owe the “strategical ambiguity” concept of the right strategical compromise (Couraye 2022). Taiwan is among several islands, including Japan and the Philippines, allied with the US. This makes Taiwan essential to ensuring the region’s security and US interests, like capping China’s power and maintaining an “asymmetric advantage” over China (O’Dell 2024). If China can’t control Taiwan in a region with US allies, China’s military will struggle to project power far beyond China’s shores. But if China could take Taiwan, it would be far more difficult for the United States to maintain a balance of power in the Indo-Pacific or prevent a Chinese bid for regional dominance” (O’Dell 2024, 3).

Despite recognizing the PRC as the sole legal government of China and the end of diplomatic relations with the ROC, the US maintained treating the ROC as a foreign state. Thus, the One-China Policy has enabled the US to enjoy this “strategic ambiguity” and build a robust unofficial relationship with the ROC (Couraye 2022).

It is not easy to maintain peace and stability in the Taiwan Strait. For some Americans, stability requires the US to provide Taiwan with the means to defend itself while respecting China’s red lines (Cher 2023). In 1979, the US Congress passed the Taiwan Relations Act, which redefined diplomatic relations with Taiwan and annulled all previous bilateral treaties. Washington no longer has its hands tied but continues to supply arms to Taipei to give it the means to ensure its military defense (Gazzini 2023). In August 2023, President Joe Biden approved \$80 million for Taiwan to buy US military equipment, marking the first time in four decades that “America is using its own money to send weapons to a place it officially doesn’t recognize”, according to the BBC (O’Dell 2024). Hence, the question is: The United States does not recognize Taiwan as a sovereign country, so why is it arming the island? The US has maintained a delicate balance between not officially recognizing Taiwan as a sovereign nation and arming the island to fend off any Chinese aggression. The US is concerned that expanding China could threaten its political and economic interests in the Asia-Pacific region (O’Dell 2024). However, the balance of power that prevailed in 1979 cannot remain the same in the current strategic context (Couraye 2022).

Indeed, the continuity of the American approach to the balance of power indicates that today’s *status quo* is no longer based on American hegemony but on a new balance of power. Because of the affirmation of the Chinese model, this *status quo* remains a reality of the balance of regional powers. That is why the US and the PRC insist that the two sides maintain the delicate *status quo* (Scobell and Stephenson 2022).

Ambiguity has been the essential mission of American leadership for as long as 1954, to define the *status quo*. The link between the US and Taiwan has always been complex, even ambivalent since the US repealed its 1954 mutual defense treaty. Today, unambiguous US support becomes crucial for Taiwan, as some would suggest containing this strategic vacuum because the reality of the US commitment to Taiwan was strengthened verbally, even though it was weakened militarily (Couraye 2022).

This posture of American policy towards Taiwan and its repercussions for the regional order led straight to January 1950 when President Truman affirmed, like Joe Biden in 2022 on Ukraine, “that the US will not intervene directly and militarily in a conflict involving Taiwan” (Couraye 2022, 4). In the name of the One-China Principle, the US recognizes the Chinese position that “there is only one China and Taiwan is part of China” (Couraye 2022, 4). As for Taiwan, it can count on the US position that stands out with the agreement of “Six Assurances”<sup>1</sup>.

Amid so many others, the illusion of the *status quo* is explicit in a little diplomatic statement by Mike Pompeo in November 2020. While the Secretary of Defense Lloyd Austin declared, “Our policy in the Strait of Taiwan is unchanged and unwavering (...) unfortunately, that doesn’t seem true for the People’s Republic of China. We categorically oppose unilateral changes to the *status quo*” (Scobell and Stephenson 2022). Not only did the former US Secretary declare that “Taiwan was not part of China, and this was recognized with the work of the Reagan administration” (Couraye 2022, 5), but his recent invocation of Taiwan’s complete independence renders this interpretation indisputable. On 23 May 2023, Joe Biden declared that he would be prepared to use force to defend Taiwan as part of a series of critical comments on China during a press conference. This statement overall suggests a departure from the current American policy of strategic ambiguity regarding Taiwan, and it mainly highlights the fragility of American credibility and exacerbates ambiguity (Couraye 2022).

## China

For the PRC since 1979, the *status quo* is fragile as Beijing has never ceased to reaffirm the One-China Principle and considers Taiwan a rebel province.

For Nathaniel Sher (2023), China seeks to undermine the *status quo*, as evidenced by official statements and military coercion toward the Island (Sher 2023, 3). Indeed, the 2022 visit to Taiwan by Nancy Pelosi, the US Speaker of the House of Representatives, which was followed by several days of Chinese military exercises, underscored how worrying the situation around the Taiwan Strait was. If the position of Beijing has not changed in recent decades, the increasingly strong desires of Xi Jinping, the Chinese president, to seize Taiwan by the necessary force destabilize the precarious and shifting *status quo* that has existed around the Strait since the second half of the 20th century (Dagorn 2022).

Indeed, Taiwan holds significant strategic importance for China, which harbors hegemonic ambitions. It transcends the notion of counterbalancing the United States and instead signifies an entry into rivalry with them. In Chinese discourse, the United States has consistently been portrayed as an external power to Asia. Taiwan is a substantial obstacle to China’s rejuvenation, prompting consideration of a potential armed conflict. According to Marianne Peron-Doise, “China aims to assert sovereignty over Taiwan by framing it as

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<sup>1</sup> The “Six Assurances” represent six fundamental foreign policy principles of the United States concerning its relations with Taiwan. They were established as unilateral clarifications by the US subsequent to the Third Communiqué with the People’s Republic of China in 1982. These assurances aimed to provide reassurance to both Taiwan and the US Congress that the US would maintain its support for Taiwan, even if formal diplomatic ties were severed. Presently, the “Six Assurances” serve as semi-formal guidelines employed in managing the relationship between the US and Taiwan.

“reunification” although this term is highly inappropriate, given that Taiwan has never been part of China. There would be no genuine “reunification”, but rather unification through force” (Peron-Doise 2022).

In reality, China finds itself somewhat constrained within the Seas of China, lacking unrestricted access to the Pacific Ocean due to the presence of a string of islands with which it maintains relatively hostile relations (Dagorn 2022). This initial chain of islands comprises four countries allied with the United States: South Korea, Japan, the Philippines, and Taiwan. Each of the first three nations has entered into a mutual defense treaty with the United States, providing them with vital security guarantees. South Korea hosts two American naval air bases, while Japan hosts six. Furthermore, since 2014, a security agreement has facilitated the presence of five American Air Force support points in the Philippines (Dagorn 2022).

A second chain is formed of the Northern Mariana Islands, where the critical American naval base of Guam, Palau, is installed, as well as the Japanese archipelago of the islands of Ogasawara. A military annexation of Taiwan would, among other things, have the objective and consequence of significantly weakening the American presence in the region and affirming Chinese domination (Dagorn 2022).

Taiwan is a lock for China in the Pacific because of its central position. Indeed, China is struggling to break the network of American alliances in the region. The objective is for the Chinese army to be able to dissuade the United States from intervening in the region through denial of access tactics, which will make it much more difficult for the Americans to get closer to China and Taiwan. When the United States can no longer defend Japan, the alliance will no longer hold. This eventual disappearance of the United States as a guarantor of regional security would be a strategic turning point (Dagorn 2022).

Another potential objective of Beijing concerns its nuclear dissuasion, particularly its oceanic component, because several geographical elements limit the maneuverability of Chinese submarine launchers (SNLE). The current mesh of the two island chains allows the allies of the United States to quickly identify Chinese submarines that would like to access the Pacific Ocean. The Japanese, the Americans, and the Taiwanese have outstanding anti-submarine capabilities and can track this type of submarine, as a researcher at the French Institute of International Relations (IFRI) reports (Dagorn 2022).

Taiwan’s conquest would serve other Beijing objectives, such as territorial and maritime claims. In fact, by controlling Taiwan, China could expand its exclusive economic zone and impose restrictions on navigation. If the immediate interest concerns foreign military buildings, extending its sovereign zone would also allow China to oppose a right of control over merchant shipping - a powerful lever to exert pressure on its neighbors or promote its interests (Dagorn 2022).

It is important to stress that the Taiwan Strait is one of the maritime areas that China would like to control. At the same time, it is partly constituted of international waters freely open to navigation. The prospect of Beijing controlling this main trade route between the South China Sea and the East Sea is of concern to South Korea and Japan, whose import-dependent economies (Dagorn 2022). In this regard, it is important to stress that China uses the 1982 Convention of Montego Bay (United Nations Convention on the Law of the Sea (UNCLOS) to affirm its sovereignty in the Taiwan Strait. Indeed, according to the UNCLOS, sovereignty, a term

connoting supremacy, is not absolute within the territorial sea. It must accommodate the right of innocent passage of foreign ships, including warships. Additionally, the rights exercised in the exclusive economic zone, deemed “sovereign”, are nonetheless limited in scope to specific fields of activity. The distinction between “law” and “competence” is not always clear, particularly in the legislative and judicial sense (Laprès 2023).

While the Strait is 70 nautical wide in its widest part, the Convention defines that the territorial waters where the complete sovereignty of the riparian is exercised extend up to 12 nautical of the coasts. It should be noted that, unlike the United States, which only signed, China has signed and ratified the Convention, but employing *a note verbale* addressed to the United Nations in 2006, it uses a “reserve clause”, which allows it to exempt itself from disputes on sovereignty issues. Taiwan, which is not recognized as a state, is not a party to the Convention but has enshrined most of its rules in its domestic law (Yacine 2022).

Thus, the PRC asserts its right, not provided for in the Convention, to require foreign warships exercising their right of innocent passage in its territorial sea to obtain prior authorization. However, the value of these declarations in international law is doubtful since the Convention “does not allow reservations or exceptions other than those expressly authorized” (Laprès 2023).

On 13 June 2022, spokesman Wang Wenbin claimed that the Taiwan Strait was not an international maritime space but should be considered part of Chinese waters. This assertion of sovereignty over what all Western and Asian navies, including those of India, Japan, South Korea, and several Southeast Asian countries, still consider international waters raises concerns in Washington. According to Washington, the “freedom of navigation” is the primary argument for the movements of the American Navy in the area (Yacine 2022). Despite the protests of Beijing, the US Navy continues to conduct its so-called freedom of navigation operation missions, the last of which took place on 20 January 2022 in the vicinity of the Paracel Islands by the 9,000-ton destroyer USS Benfold; China is raising the stakes on the Taiwanese issue. To this end, it asserts its sovereignty over the waters of Strait in flagrant violation of the Convention on the Law of the Sea, whose relevance in Detroit is denied by the Waijiaobu spokesman (Yacine 2022).

Finally, capturing Taiwan would allow the Beijing regime to control the Taiwanese semi-producer industry, representing a large part of world production (63%). These components, essential for manufacturing high-tech products (telephones, aircraft, solar panels, etc.), are crucial for the global economy (Peron-Doise 2022, 4).

Moreover, it is important to stress that China has invested for years in so-called anti-access/zone-denial capabilities such as ballistic missiles and cruise missiles (Yuan 2024). It’s a non-friendly, technical concept that refers to this family of military capabilities used to prevent or limit the deployment of opposing forces in each theatre of operations and reduce their freedom of maneuver once in a theatre. This system, also known as A2AD, which includes anti-ship, anti-aircraft, anti-ballistic, submarine, and other naval and air capabilities, significantly alters the strategic environment in the Western Pacific Ocean and shifts the military balance in China’s favor. The regime limits the response and deterrence capabilities of the United States, its allies, and regional partners. If implemented according to the plan, a whole country can be isolated from the outside world (Yuan 2024).

Is this why the US President claimed, after the victory of the pro-independence Democratic Progressive Party (DPP) in the recent January presidential elections, that the United States does not support the independence of Taiwan? Would confirming the One-China policy by maintaining the *status quo* avoid a high-risk confrontation between the US and China?

## Possible Solutions

If the only thing that prevents China from invading Taiwan is the USA and not international law, does that mean Taiwan's *de facto* sovereignty is fake? What does China lose by recognizing Taiwan as a sovereign state?

The proposal to integrate ROC into the United Nations as a possible solution to the Taiwanese problem may seem unrealistic because it is unlikely that Chinese leaders will accept the idea of democratic federalism or the idea of a separate UN seat for Taiwan. The current leadership rejects this liberal or democratic thinking. Qian Qichen, Deputy Prime Minister of the PRC, declared in a threatening manner that any attempt to change the status of Taiwan through a referendum on the island would create severe problems for those involved in this initiative (Baogang and Becquelin 2001). However, if China agrees to find a solution to this crisis, it must reconsider its policy towards Taiwan and adopt a new concept of sovereignty.

When there is a conflict between two governments on a question relating to national identity or coming from a nation's division, the United Nations system allows Taiwan also to seek an advisory opinion from the International Court of Justice (ICJ). Even though it lacks legally binding force, the advisory opinion holds significant legal weight and moral authority since it represents the collective opinion of 15 judges. In 2003, former Taiwanese President Chen Shui-bian met with Shigeru Oda, a former judge of the ICJ who had engaged in discussions on Taiwan's status issue with UN authorities during his tenure as a UN legal adviser. Judge Oda once presented some data under the name of Taiwan, but the UN Secretariat corrected his report based on its One-China stance (Taiwan Info 2003). As for the US, they will not seek an advisory opinion from the ICJ because they do not support Taiwanese independence. Instead, they prioritize protecting their vital interests in the Western Pacific Ocean.

Moreover, US Foreign Minister Antony Blinken soon congratulated Lai Ching-te on his victory, as well as "the Taiwanese people for once again demonstrating the strength of their strong democratic system and electoral process", while President Joe Biden told reporters, "We do not support independence" (RTBF 2024). The US does not recognize Taiwan as a state. It considers the People's Republic of China the only legitimate government, but it provides the island with significant military assistance (RTBF 2024). It is also impossible to spin away because the One-China policy has been communicated and recognized worldwide for over five decades.

Taiwan's membership in the UN could potentially contribute to the reunification of China in the long term. If the People's Republic of China (PRC) welcomed Taiwan into the United Nations, the two Chinas could establish an economic union, which might serve as a foundation for a political union. From a comparative perspective, dual representations did not impede the reunification of Germany or Yemen. Instead, political provisions based on mutual recognition ultimately facilitated their unification (Baogang and Becquelin 2001). The reason why independence is part of Taiwan's agenda is precisely because it lacks international recognition.



If Taiwan were to become a UN member, the issue of independence might naturally dissipate (Baogang and Becquelin 2001). However, the question remains: will Taiwan first dare to undertake constitutional reforms to achieve independence?

In the past, the international community has continued to recognize unitary states where control has been heavily contested, such as in Congo-Leopoldville in 1960 and Somalia in 1993. Others recognized where insurgents had held significant control zones, like in Angola in 1975-95 and Cambodia in 1970-1975. The international community also recognized unitary states where secessionists have exercised control in most of the claimed territory (e.g., Biafra within Nigeria in 1967-70 and Eritrea within Ethiopia from the late 1970s to early 1990) (Roth 2009). It is important to stress that such continued recognition is not exceptional but in conformity with general principles of international law (Damrosch and Murphy 2001).

## CONCLUSION

This study aimed to discuss the legal limbo of Taiwan, whose political situation lies in a grey area of international law. First, in exploring the situation of Taiwan, this study found that many difficulties arise around its ambiguous legal status despite fulfilling all the characteristics of a state: Taiwan has its currency, a booming economy, lively democratic politics, and sizable armed forces, but lacks recognition from the international community. Second, this situation puts Taiwan in a legal and political vortex: from an international law perspective, the paper found that if Taiwan applies for UN membership, not only can China veto its access to the Universal organization, but it can also use its Anti-Secession Law, and a Chinese invasion may not be considered unlawful. This situation shapes Taiwan like an entity that does not speak its name. Indeed, its constitution does not guarantee its independence due to its lack of clarity, implicitly indicating that it does not recognize the existence of a real border with China.

Third, this study found that the UN General Assembly Resolution 2758, by which the Republic of China (ROC) was expelled from the UN, represents a significant obstacle to its recognition by the international community.

Finally, this paper concludes that the idea that Taiwan would have no rights under international law, despite possessing all the characteristics of a state, creates a gap in the ability of international law to regulate the use of force. To overcome this tricky situation, Taiwan can start by taking bold moves, such as making constitutional reforms to facilitate its independence. As for the US, as an ally, instead of maintaining strategic ambiguity towards Taiwan, it can start by supporting its membership in international organizations. Another solution to this legal vortex may involve seeking an ICJ advisory opinion. Under international law, only a judge could rule to clarify this ambiguity and provide legal responses. Even if it does not have a legally binding force, the advisory opinion carries significant legal weight and moral authority as it reflects the opinions of 15 judges.

As for its contribution to the discipline, this article has identified several traits and trends in development that could provide insight into the future of relations between the two shores of the Strait. First, given the characteristics and trends, in the short and medium term, Taiwan will most likely continue to distance itself politically from the mainland and actively assert itself as a *de facto* sovereign state, but not to the point of claiming formal independence. Then, similar to

Taiwan's economic relations with China, Taiwan has consistently invested in its national defense to deter and, if necessary, confront a military conflict with the mainland. Compared to other studies, this paper addresses Taiwan's international status from a legal and political perspective.

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