

2007

**Taiwan and the United Nations: Historical and Policy Perspectives  
(Plenary Session III)**

Lung-chu Chen

distinguished speakers on the very question of Taiwan and the United Nations.

First, we have Professor Lung-chu Chen from New York Law School, who will be talking about Taiwan and the United Nations: Historical and Policy Perspectives; then we have Professor James Feinerman, Law Center at Georgetown University, who will be talking about the International Legal Status of Taiwan; the Honorable Harvey Feldman, Senior Fellow, Heritage Foundation, be speaking on Policy Alternatives: Membership, Representation or Observer Status For Taiwan; and, of course, Mr. Anthony Jenkins, who many of us in the United Nations know, as President, United Nations Correspondents, to be talking on the subject of the United Nations Correspondents Association, Taiwan, and the United Nations.

It is now my pleasure to give the floor to Professor Chen for his presentation. Thank you.

## **Speakers:**

### **Taiwan and the United Nations: Historical and Policy Perspectives**

**By Lung-chu Chen**

Thank you, Mr. Chairman, fellow panelists, friends, ladies and gentlemen. From this morning to this point, certainly many issues have been touched upon that are related to what I'll be discussing. To that extent that we have already discussed an issue, I will try to be very brief. We all know the United Nations itself purports to be a world organization to represent the entire humanity – all nation states of the world. But, as has been pointed out, Taiwan, a country that is democratic, free, committed to human rights, and prosperous, is the only country that has been excluded from the United Nations. Of course, this is a matter of great injustice to exclude Taiwan. Its substantial population has been pointed out repeatedly, but I will use another figure. The population of Taiwan exceeds the combined population of 49 least-populated member states of the United Nations. In terms of size, Australia is larger than Taiwan, but Taiwan has slightly more people than Australia or

Venezuela, and has more people than Sweden, Norway, and Finland combined. So in terms of justice, of course, Taiwan should be included in the United Nations. A United Nations without Taiwan is not really the world organization. Only when Taiwan is included in the United Nations would we see the universality principle in action, making the United Nations both effective and representative of the entire humanity.

The question has been raised: Why is Taiwan today an international orphan? As the Honorable Richard Bush pointed out again and again, Chiang Kai-shek had a great deal to do with it because Chiang Kai-shek had stubbornly held onto the creed that "gentlemen and thieves do not stand together." That was the one-China policy preached by Chiang Kai-shek, when he was in power in Taiwan. Yet the ironic result was that "only thieves stand and gentlemen simply disappear." In a sense, the whole question of Chinese representation in the United Nations started in 1950. During the 1950s, the United States and its allies undertook what was called the Moratorium Formula. Whenever the question of Chinese representation was put before the General Assembly, the answer was "Let's not discuss the substance of the case this year." In other words, the plan simply was to postpone the answer from year to year.

In the 1960s, with the rapid in-flow of newly independent states that were formerly colonial territories, finally there was a sense that it was rather unreasonable that the world could not discuss the question of Chinese representation while supporting Chiang Kai-shek's exiled regime, which governed only Taiwan, to represent the whole of China. That unreasonableness and absurdity were very simple to see. So the new formula that was adopted by the United States and allies was what was called the important question formula: Any decision to change the representation of China in the United Nations must be deemed an important question requiring a two-thirds majority rather than a simple majority.

In the 1970s, the situation began to change. We saw the United States play what was known as the China card, trying to align with China informally to contain Soviet expansion. That was the reason for Kissinger's secret visit to China. In 1971, several proposals were made before the General Assembly. One made by Albania and some other countries was called the one-China formula. Another was by the United States and its friends, and was known as "two Chinas" proposal. The Saudi

Arabian delegation introduced another, in the form of the "one-China, one-Taiwan": China should be seated in the UN as the representative of China, but Taiwan should remain in the United Nations as Taiwan; in the meantime, there must be a plebiscite for the people of Taiwan to decide their own future.

On October 25th, 1971, the General Assembly adopted what was called Resolution 2758 by which the General Assembly of the United Nations recognized the People's Republic of China as the only lawful government of China in the United Nations, and also in related UN agencies. In the meantime, that Resolution expelled the representatives of Chiang Kai-shek. Those are words taken from the text itself. Resolution 2758 was quite decisive, and that has become something China has used repeatedly, to invoke its own one-China policy within the framework of United Nations and to assert that Taiwan is part of China.

But did Resolution 2758 decide that? No! 2758 decided the PRC as the only lawful representative of China in the UN and expelled the representative of Chiang Kai-shek. It did not address the issue of Taiwan's sovereignty or title. It did not decide Taiwan was part of China. It did not authorize the People's Republic of China to represent Taiwan and the Taiwanese people in the United Nations. All it did was to decide that the PRC was to represent China in the United Nations. So it's very important. Historically, when we talk about the whole question of Chinese representation, that was the case. As a result of this, Taiwan became an international orphan. An international orphan. It was excluded from the United Nations and, one after another, from UN-related specialized agencies. Taiwan today is trying to gain membership into the United Nations and has been for quite a while.

During the period when Taiwan was under martial law, under the authority and regime of Chiang Kai-shek and his son Ching-kuo from 1949 to 1987, the Taiwanese people did not enjoy freedom of expression. They could not begin to ask for policy of change or try to get into the United Nations. During the process of democratization and Taiwanization in the 1990s, the Taiwanese people finally were able to ask the questions. People around the world said, yes, here was a Taiwanese economic miracle, but Taiwan was beginning to ask, "Are we Taiwanese only economic animals? Do we have our proper place in the universe? In the family of nations?" Obviously not.

Ambassador Sopoaga said that his country has a population of only 10,000, but he has such a sense of pride and dignity to be here, and to be representative of his country in the United Nations. The UN is where all humankind is supposed to assemble, and the Taiwanese people finally were asking what to do about their exclusion. Because of the demand that Taiwan should participate in the United Nations itself, finally, the government of Taiwan, even under the old regime, tried to change the situation. For the past ten to eleven years, the basic strategy was trying to get the General Assembly of the United Nations to establish a Special Study Committee, or a working group, to examine the ways and means by which the Republic of China on Taiwan can be enabled to participate in the United Nations, or, alternatively, to revise or repeal Resolution 2758.

That did not succeed. Last year and this year, the government of Taiwan finally said they were very clear in terms of what they wanted. They didn't need a Special Committee or a working group. Taiwan needed to be a member of the United Nations. Therefore, countries friendly to Taiwan submitted their joint proposal in terms of representation of the Republic of China (ROC), "Taiwan," in the United Nations. I would much prefer the Taiwanese government be straightforward and say "the question of Taiwan's representation in the United Nations" so that the world community would not confuse the PRC with the ROC.

ROC, certainly, has been discredited by Resolution 2758. It's important Taiwan use the name of Taiwan and seek to become a new member of the United Nations or simply to be represented in the United Nations, because the PRC does not rule Taiwan, does not represent the Taiwanese people in the UN. When PRC tried to reject Taiwan's participation, the joint proposal submitted by countries friendly to Taiwan, year after year, were dealt with by the General Committee of the General Assembly. The General Committee simply said there was no consensus to inscribe the item in the formal agenda of the General Assembly, so no formal discussion of that item has been possible. There is a fundamental procedural injustice in blocking the case from being discussed. As some speakers have said, China is the obstacle, but there are a lot the people of Taiwan and the government of Taiwan can do.

What should the Taiwanese government be doing? First, it should make it very clear that when nations friendly to us sub-

mit a joint proposal, it should be termed "the question of Taiwan's representation in the United Nations." Don't introduce "China." The moment "China" is introduced, people in the UN will say, "We settled that by Resolution 2758, and China means PRC, not ROC." Taiwan has to be known as Taiwan.

Second, in addition to this, what the government of Taiwan can do is to take a proactive policy with the proper groundwork to be laid. Then, at the appropriate opportunity, the Taiwanese government should formally apply for UN membership under Article 4 of the UN Charter. Taiwan fulfills all the requirements; it is a peace-loving state, able and willing to carry out Charter obligations. Of course, there's this formidable issue of veto, but, this morning, Professor Paust indicated you cannot take that for granted, even though the legal issues cannot be resolved. But it's very important for the government of Taiwan to communicate very clearly its determination to be a member, not an observer, of the United Nations. It's important to demonstrate that Taiwan is a sovereign, independent state, perfectly qualified to be a member state.

In my paper, one very fundamental issue has been addressed: China's objection to Taiwan's participation is on the grounds, mainly, that Taiwan from time immemorial has been part of China. But is Taiwan really part of China in law and in fact? Definitely not. In pages four through six of my paper, I show that Taiwan was a Japanese colony from 1895 to 1945. From 1895 to this date, for more than a century, Taiwan legally has never been a part of China.

After World War II, the military occupation of Chinese Nationalist forces was authorized by General McArthur, as Supreme Commander of the Allied Powers in the Far East. With the conclusion of Peace Treaty with Japan, which became effective in 1952, Taiwan's status was kept undetermined. Meanwhile, the illegal imposition of martial law by Chiang-Kai shek's Kuomintang (KMT) regime continued. Thus, until the lifting of martial law in 1987, the Taiwanese were held under the thumb of the military, illegally occupied, and, of course, occupied without the consent of the Taiwanese people.

That dire situation began to be transformed with the new process of democratization in the 1990s, when members of the legislature were elected. The president was directly elected by the people in 1996, and again in 2000. That evolutionary process completely changed what appeared to be the illegal mili-

tary occupation into an administration with the consent of the people. Taiwan has evolved from a militarily occupied territory to being a sovereign, independent state, totally independent of the People's Republic of China.

After Professor Feinerman's presentation, I'm sure we have some more details to discuss. But I do want to make that statement here. Furthermore, it's clear what the world community should be doing. There are key points. The Taiwanese government has to take a very proactive policy. The Taiwanese people abroad and at home must unite, to exert all they can, with determination and psychological preparation. It indeed is an uphill battle. It's a marathon that requires perseverance. Of course, it requires international support. The whole question of Taiwan's representation or membership in the United Nations must be decided by the United Nations, not by allowing China/PRC to dictate terms of the decisions.

China can retaliate against an individual state. On the other hand, when a collective decision is made on Taiwan, within the collective framework of the United Nations, then China would not be effective in retaliating against individual member states. In order to put a "one-China, one-Taiwan policy" into action, there's no better place to start by supporting membership for Taiwan in the United Nations. As a fresh policy, that support would contribute to the common interests of the world community, that support would help Taiwan to be a proper member of the UN, and to act normally within the framework of the United Nations. Taiwan's membership ultimately would contribute to normalization of relations between China and Taiwan. Moreover, it would contribute to the maintenance of peace and security in the Taiwan Strait, in the Pacific community, and, in effect, that decision would constitute a collective recognition of Taiwan by member states of the United Nations.

Taiwan's membership would certainly enhance security for Taiwan and for the region. But the United Nations and the world community would benefit as well: Taiwan can contribute not only financially but also in terms of what is called "Taiwan experience." The experience is not only an economic one, but also an inspiration of how a state that was living under martial law and authoritarian rule can be transformed to a free, democratic state that is committed to human rights. The world community certainly needs to support this, and the United States can take a lead in helping Taiwan.

The Taiwanese people need to be very creative in this era of global governance and civil society. They need to try to mobilize the global community, global governance, civil society, NGOs, and the Internet on the drive toward becoming a member of the United Nations. With concerted efforts, with the help, support and goodwill of people around the world, Taiwan's dream of becoming a member of the United Nations can come true. Where there's a will, there is a way, especially when the cause is just. Thank you very much.

## **Enele S. Sopoaga**

Thank you. Thank you very much, Professor Chen, for your very enlightening presentation. Now it's my pleasure to give the floor to Professor James Feinerman.

## **The International Legal Status of Taiwan**

### **By James V. Feinerman**

Thank you. I want to, first of all, thank Professor Chen for putting together this excellent conference and inviting me to speak. This is a topic that is critically important in the development and understanding of where international law should go in the 21st Century, and I'm glad that he's taken this cutting edge issue and given it this form. I am going to try and summarize the high points of my paper, which I know you have in the materials before you, and apologize in advance for its somewhat discursive and disjointed nature, because I'm trying to cover a lot of ground in both legal theory and in doctrine in somewhat recognized areas of international law, and, at the same time, trying to keep an eye on practical concerns. In fact, in my introduction, I focus on two aspects of the recent acceptance of Taiwan as a member of the WTO and whether or not, first of all, it will presage any change in the *de facto* status of Taiwan on the world stage. I want to focus on that for a second because it's important to know that I may depart here from it with the stirring remarks that Professor Chen made in the end of his speech.