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THE INTERNATIONAL TELECOMMUNICATION UNION AND THE REPUBLIC OF CHINA (TAIWAN): PROSPECT OF TAIWAN'S PARTICIPATION

CHUN HUNG LIN*

I. INTRODUCTION

Founded in 1865, the former and current “International Telecommunication Union” (ITU) has dealt with numerous international telecommunication matters for more than a century. Posed as the most important international telecommunication organization in the world, the ITU has made a great contribution to international telecommunications cooperation and technical arrangements. With many developing countries’ accessions, the missions of the ITU recently have been broadened to promote and assist technical and financial telecommunications development in those countries. All the world’s inhabitants have the equal right to communicate, and this transformation of the ITU will further this ideal. Also, such a trend corresponds to the principle of universality and universal participation under the Constitution of the ITU.

* Assistant Professor of Law, Feng Chia University, Taichung Taiwan; S.J.D., LL.M., Golden Gate University School of Law, San Francisco USA; LL.B. National Chengchi University College of Law, Taipei Taiwan. The author dedicates this article to the memory of his dear mother, Mrs. Hsu, Hsiu-Chin, and gives thanks for the loving supports from his father, Lin, Chuan-Hsun during the entire process of his doctoral studies. He also thanks his doctoral dissertation committee including Professor Dr. Sompong Sucharitkul, Professor Dr. Christian Okeke and Professor Jon Sylvester for their specific guidance and useful suggestions, and also thanks David Wilbur, a JD candidate from Rutgers University in Newark (New Jersey) for editing his doctoral dissertation.

Since losing its seat in the UN in 1971, Taiwan faces many difficulties participating officially in international organizations and activities. However, following the economic liberalization and internationalization, as well as political democratization in recent years, Taiwan has a stronger desire to heighten its international status and to join international organizations.

Taiwan's participation in the APEC as well as the WTO shows it's willing to participate in more international affairs. Even so, Taiwan's participation in international organizations still brings several political and legal issues due to the PRC's obstructions. Within those regional or international organizations, the issue concerning Taiwan's accession into the ITU has seldom been mentioned. With the plan of Taiwan as the Asia-Pacific Regional Operation Center and the pursuit to be a telecommunication and media center, the discussion of Taiwan's accession into the ITU is absolutely necessary and urgent.

The purposes of this article are to provide a general description of the most important telecommunication organization, the ITU, and from its missions and developments to discuss the possibility of Taiwan's accession into the ITU. At first, from the developmental history, organizational structure, operational procedures, and missions of the ITU, the article wants to describe which role the ITU plays in international telecommunication cooperation and to clarify why Taiwan should seek accession into this organization. Secondly, from the ITU's Constitution and Convention, as well as Taiwan's status in the international community, the article will debate the possibility and methods of Taiwan's accession into the ITU.

II. ROLE OF THE ITU IN THE INTERNATIONAL COMMUNITY

A. HISTORY OF THE ITU

In the early and mid 19th century, due to national security and limited networks available, telegraph lines did not cross national borders and each country used different systems and telegraph regulations. Thus, messages across two or more countries had to be transcribed and translated at frontiers before retransmitted into another country's system. Because of this inconvenience as well as much work and time required, many countries decided to conclude multinational agreements to interconnect their national networks.

The very early international telecommunication agreements can be traced back to those respecting the telegraph agreements that were entered into on the matter of protocols that services could be established among

German states in the 1840s.¹ Later on, the increasing number of telegraph networks and the growth of telecommunication tools used, many countries in Europe determined to draft a framework agreement to standardize equipment, uniform operating instructions and rule multination tariff and accounting regulations. On 17 May 1865, twenty participating countries signed the first International Telegraph Convention and the International Telegraph Union was established. This marked the birth of the ITU.²

Following its creation in 1876, the telephone was added to the competence of the International Telegraph Union.³ On the other hand, the Telegraph Union began to draw up the international legislation governing telephony so as to correspond to the expansive use of telephony. In 1896, following by the invention of the first type of wireless telegraphy, radiocommunication, a preliminary radio conference was convened in 1903 and the first International Radiotelegraph Convention was signed in 1906.⁴

During the years of 1920s, with the new creation of telegraphy, the International Telephone Consultative Committee (CCIF), the International Telegraph Consultative Committee (CCIT), and the International Radio Consultative Committee (CCIR) were established sooner or later. The CCIs were involved the preparation of the regulatory conferences to conclude international agreements governing all types of telecommunications.

At the 1932 Madrid Conference, the “wire” and “wireless” unions, known as the “International Telegraph Convention” and the “International Radiotelegraph Convention,” combined to form the “International Telecommunication Convention;” thereafter, the “International Telecommunication Union” (ITU) was set up in 1934.⁵ For the further development and organizational modernization, the ITU made an agreement with the United Nations and became one of the UN’s

1. Francis Lyall, *Communication Regulation: The Role of The International Telecommunication Union*, J. INFO. L. & TECH. 2 (1997), available at http://elj.warwick.ac.uk/jilt/commsreg/97_31yal/

2. See ITU’s History at <http://www.itu.int/aboutitu/history/history.html>.

3. Regulations in Execution of the International Telegraph Convention of Jul. 22, 1875, Berlin, Sept. 17, 1885, 165 CTS 212, BFSP vol. LXXVI 597.

4. Radio-telegraphic Convention, Final Protocol and Regulations, signed at Berlin Nov. 3, 1906, 203 CTS 101, 1906, UK, Parl. Papers HC 368, UK state Papers Vol. CXXVIX 1906, BFSP vol. XCIX, 321.

5. Telecommunication Convention, General Radio Regulations, Additional Radio Regulations, Additional Protocol, Telegraph Regulations and Telephone Regulations, Madrid, Dec. 9, 1932, 151 LNTS 4, Manley O. Hudson International Legislation (1932-34), VI, 109.

specialized agencies in 1947.⁶ The headquarters of ITU was decided by the 1948 conference to move from Bern to Geneva; at the same time, the "International Frequency Registration Board" (IFRB) was set up to manage the frequency spectrum.

To assist and improve developing countries' telecommunications environments, the "Telecommunications Development Bureau" (BDT) was established at the 1989 Nice conference. In addition, due to the rapid changing of telecommunications circumstance, the globalization of telecommunications and the coming of the space age all required the ITU to alter and reform its obsolete structures and procedures. Therefore, a new ITU was designed during the period from the 1989 Nice Conference to the 1994 Kyoto Conference and the new Constitution and Convention also has been drafted and adopted.

Within the new ITU, there are three new sectors including the Radiocommunication Sector, the Telecommunication Standardization Sector, and the Telecommunication Development Sector replacing the major former organs such as the CCITT, CCIR, and IFRB, etc.⁷ Hence, a brand new ITU has been established and operated until now.

B. MISSIONS AND PURPOSES OF THE ITU

The ITU is the most important international telecommunication organization that convenes the public and private sectors to cooperate and coordinate the telecommunications development. By international agreements and regulations, the ITU governs the terrestrial and space uses of the frequency spectrum and the use of the geostationary satellite orbit. The ITU also regulates the interconnection of telecommunication standardization on a worldwide basis. Additionally, the ITU deals with the telecommunication developmental strategies and technical assistances in developing countries such as the transfer of new technologies, the telecommunication financing and investment, the installation and maintenance of telecommunication tools, and the management of manpower and researches.

The early main purpose of the former ITU was to resolve the problem concerning messages across different telegraph systems among countries. Following the new technologies of telecommunications created such as

6. International Convention on Telecommunications, Atlantic City, Oct. 2, 1947, 1950 UKTS No. 76, Cmd. 8124, 63 Stat. 1399, TIAS 1901.

7. Final Act of the Additional Plenipotentiary Conference, Geneva, 1992. The Constitution and Convention of the International Telecommunication Union (Geneva, ITU, 1993). Also see Final Acts of the Plenipotentiary Conference, Nice, 1989 (Geneva, ITU, 1990).

telephone, radio, and satellite, etc., international cooperation for technical promotion and development gradually play a more and more important role within the ITU. Recently, with many developing countries' accession, the ITU pays more attentions to provide technical and financial assistances to those countries in the field of telecommunications development.

Under the 1994 new Constitution, the missions of ITU include the following fields:

- International Telecommunication Cooperation: to maintain and extend international cooperation between all members, and to cooperate with other world and regional intergovernmental organizations and those non-governmental organizations by the adoption of a broader approach in the global information economy and society.⁸
- Telecommunication Technical Promotion: to promote and improve the developmental and efficient operations of technical facilities and telecommunication services, their usefulness and generally available to the public, and to promote the extension of the benefits of the new telecommunication technologies.⁹
- Telecommunication Technical Assistance: to promote and to offer technical assistance to developing countries in the field of telecommunications, and to promote the mobilization of the material and financial resources needed.¹⁰
- Peaceful Use of Telecommunication: to promote the use of telecommunication services with the objective of facilitating peaceful relations, to harmonize the actions of Members.¹¹

C. LEGISLATIVE AND POLICY FUNCTIONS OF THE ITU

The instruments of the ITU comprise the Constitution, the Convention and the Administrative Regulations. The Constitution is the basic instrument of the ITU and includes constitutional provisions. The Convention contains many governmental provisions that are easier to be amended than those in the Constitution. The provisions of the Constitution, the Convention, and the Administrative Regulations are binding on all Members.¹² The legislative and policy functions of the ITU

8. Constitution of ITU, *supra* note 7, Art. 1.1 (a), (g).

9. Constitution of ITU, *supra* note 7, Art. 1.1 (c), (d).

10. Constitution of ITU, *supra* note 7, Art. 1.1 (b).

11. Constitution of ITU, *supra* note 7, Art. 1.1 (e), (f).

12. Constitution of ITU, *supra* note 7, Arts. 4, 54.

are performed by the Plenipotentiary Conference, the Council, and the World Conferences. For specific telecommunications issues, there are three Sectors of the ITU to execute those functions concerning their different areas. They are the Radiocommunication Sector (ITU-R), the Telecommunication Standardization Sector (ITU-T), and the Telecommunication Development Sector (ITU-D). Within the three Sectors, there are Recommendations that are non-binding standards agreed by consensus in technical study groups. Recommendations guarantee the interconnectivity of networks and enable telecommunication services to be provided on a worldwide scale and are generally complied with by the members.¹³ Also, close cooperation and relationships among three Sectors regarding to matters of common interests are also required.¹⁴

D. FINANCING AND VOTING OF THE ITU

The expenses of the ITU are primarily met by the contributions of its Members and authorized entities and organizations.¹⁵ Unlike the usual UN method whereby contributions based on the gross national product, the financing of the ITU relies on each member choosing a class of contributions from a scale of units.¹⁶ Members of the ITU may choose from a scale of contributory units ranging from a minimum of 1/16th up to 40 units.¹⁷ Though the choice of the class of contributory unit is voluntary, this choice does not have any impact on the rights and obligations of the ITU's members.

Under the 1994 Constitution and Conventions, each member of ITU equally and duly has the right to participate and vote at conferences, meetings and consultations.¹⁸ The ITU adopts the UN general principle of "one member, one vote" that means voting power is separating from the contribution. Due to financial implication is unlinked to voting power, many small Member states only pay a few amount of contributions but have the same influence and equal right as some major contributors. The amount of the maximum unit class of contribution is 640 times than that of minimum class; however, they own the same voice and rights at all conferences and meetings. This policy gradually deviates and alters the main purpose and structure of the ITU and turns to benefit many small

13. Convention of ITU, *supra* note 6, Arts. 11, 14, 17.

14. Constitution of ITU, *supra* note 7, Arts. 12.2, 17.2, 21.2.

15. Constitution of ITU, *supra* note 7, Art. 28.2.

16. Constitution of ITU, *supra* note 7, Art. 28; Convention of ITU, *supra* note 6, Arts. 33, 34, 38.

17. Constitution of ITU, *supra* note 7, Art. 26; Convention of ITU, *supra* note 6, Art. 33.

18. Constitution of ITU, *supra* note 7, Art. 3.2; Convention of ITU, *supra* note 6, Art. 32.13.

developing countries.¹⁹ Many scholars criticize this policy is the major drawback to promote the efficiency of the ITU's functions.²⁰

E. ORGANIZATIONAL STRUCTURE OF THE ITU

The former ITU contained seven organs including the Plenipotentiary Conference, the Administrative Conferences, the Administrative Council, the General Secretariat, the International Frequency Registration Board (IFRB), the International Radio Consultative Committee (CCIR), and the International Telegraph and Telephone Consultative Committee (CCITT)²¹. To upgrade the ITU's mission and meet modern requirements, the voices concerning the reconstitution of ITU's structural and organizational competences had grown during the 1980s.

For this purpose, a plenipotentiary Conference was held in Nice in 1989 to revise the earlier ITU Convention and one in Nairobi in 1982. A High Level Committee was established to review the structures and functions of the former ITU during this period. In April 1991, the High Level Committee reported to the Administrative Council of the ITU regarding the structural reform.²² The Council decided to ahead of the schedule and arranged an additional Plenipotentiary Conference in Geneva in December 1992. At the 1994 Conference held in Kyoto, the ITU published the revised version of the 1992 Geneva documents and the new arrangements took legal effect in the mid-1994.²³

Under Article 7 of the new Constitution, the new ITU comprises seven organs including the Plenipotentiary Conference as supreme organ of ITU, the Council, and the World Conferences on International Telecommunication, the General Secretariat, the Radiocommunication Sector, the Telecommunications Standardization Sector, and the Telecommunications Development Sector. The General Secretariat and each sector that operates through a Bureau all are located at the ITU headquarter, Geneva.²⁴

19. Lyall, *supra* note 1.

20. *Id.*

21. See Nairobi Convention Art. 5, 1982; International Telecommunication Convention, with Final Protocol, additional Protocols I to VII and Optional Additional Protocol, Nairobi, 11/6/1982.

22. *Tomorrow's ITU: The Challenges of Change*, the Report of the High Level Committee to review the structure and functioning of the International Telecommunication Union; Geneva, ITU, 1991

23. Final Acts of the Plenipotentiary Conference, Kyoto, 1994, Geneva, ITU, 1994.

24. See the new Kyoto Constitution of ITU, Art. 7 and Art. 30, 1994.

The Plenipotentiary Conference is the supreme authority of the ITU and owns the highest power to adopt the strategic plans and fundamental policies, as well as decide on the organizations and activities of the ITU. It is composed of delegations representing members and convened every four years.²⁵ The World Conferences on International Telecommunications are convened periodically and according to needs. They are designed to establish the general principles for the provisions and operations of international telecommunication services offered to the public and the underlying transportation means used to provide such services. In addition, they set up rules applicable to administrations and operators relating to international telecommunications as well as review and revise the international telecommunications regulations.²⁶

The Council acts on behalf of the Plenipotentiary Conference and meets annually and is composed of forty-six members elected by the Plenipotentiary Conference. The Council takes steps to facilitate the implementations by the members of all ITU's regulations and considers broad telecommunication issues in order to ensure the ITU's policies and strategies fully respond to the constantly changing telecommunication environment. The Council is also responsible for ensuring the efficient coordination work and exercising financial control of the ITU as well as contributing to the development of telecommunication in the developing countries.²⁷ The General Secretariat is directed by a Secretary-General with the assistance of the Coordination Committee to prepare strategic policies and plans for the ITU. The Secretary-General acts as the legal representative of the ITU and takes all actions to ensure economic use of the ITU's resources.²⁸ It is responsible to the Council for all administrative and financial aspects of the ITU's activities.²⁹

Meanwhile, at the 1994 Kyoto Conference of ITU, the major former organs including the CCITT, CCIR, and IFRB were replaced by three new sectors; the Radiocommunication Sector (ITU-R), the Telecommunication Standardization Sector (ITU-T), and the Telecommunication Development Sector (ITU-D). Each Sector has its own World Conference, Bureau, study groups and is headed by a Director. The mission of the ITU-R is to ensure rational, equitable, efficient and economical use of the radio frequency spectrum by all

25. Constitution of ITU, *supra* note 7, Art. 8; Convention of ITU, *supra* note 6, Art. 1.

26. Constitution of ITU, *supra* note 7, Arts. 2, 5; Convention of ITU, *supra* note 6, Art. 3.

27. Constitution of ITU, *supra* note 7, Art. 10; Convention of ITU, *supra* note 6, Art. 4.

28. Constitution of ITU, *supra* note 7, Art. 11; Convention of ITU, *supra* note 6, Art. 5.

29. *Id.*

radiocommunication services, including those using the geostationary-satellite orbit, and to carry out studies on radiocommunication matters.

The most important legal instrument is the Radio Regulations that constitute an international treaty on radiocommunication covering the use of the radio frequency spectrum by radiocommunication services.³⁰ The World Radiocommunication Conferences (WRCs) are convened every two or three years to revise the Radio Regulations, associated Frequency Assignments and Allotment Plans; and address radiocommunication matters of worldwide character. The Radio Regulations Board (RRB) that replaces the former IFRB, is composed of nine member elected by the Plenipotentiary Conference.³¹ Members of the RRB independently perform their duties on a part-time basis and act as custodians of an international public trust, not as representing a state or a region.³² The duties of RRB consist of the approval of Rules of Procedure and the performance of assignment and utilization of frequencies in accordance with the Radio Regulations.³³

As to the sector of ITU-T, the purposes of ITU-T are to study technical, operating, and tariff questions and to issue recommendations on them with a view to standardizing telecommunications on a worldwide basis.³⁴ The policy and legislative functions of the ITU-T was carried out within the mandate of World Telecommunication Standardization Conferences (WTSC) supported by study groups. The WTSC is convened every four years to consider and approve reports and work programs designed by Study Groups or the Director.³⁵

The Telecommunication Standardization Study Groups (SGs) are groups of experts to study questions and develop recommendations concerning the standardization of telecommunication services, operation, performance and maintenance of equipment, systems, networks and services, tariffs regulations, accounting methods.³⁶ The Telecommunication Standardization Bureau (TSB) was headed by the Director to organize and coordinate the Standardization work including the coordination of the work of the ITU-T sector, diffusion of information and publications, etc. The TSB provides secretariat services

30. Constitution of ITU, *supra* note 7, Art. 12.

31. Constitution of ITU, *supra* note 7, Art. 10.1.

32. Constitution of ITU, *supra* note 7, Arts. 14. 1, 14, 3.

33. Constitution of ITU, *supra* note 7, Art. 14.2. (a) (b) (c).

34. Constitution of ITU, *supra* note 7, Art. 17. 1.

35. Constitution of ITU, *supra* note 7, Art. 18; Convention of ITU, *supra* note 6, Art. 13.

36. Constitution of ITU, *supra* note 7, Art. 19; Convention of ITU, *supra* note 6, Art. 14.

for the ITU-T conferences and study groups' meetings. It also organizes and coordinates the approval process of recommendations.³⁷

The functions of the ITU-D is to discharge the ITU's dual responsibility as an UN specialized and executing agency for implementing projects under the UN developmental system and funding arrangements to facilitate and enhance telecommunications development by offering, organizing and coordinating technical cooperation and assistance activities in developing countries.³⁸ With the creation of the ITU-D, the purpose of the ITU broadened its technical duties to technical assistance and became to benefit the interest of developing and less-developed world. Some scholars criticize this change as inappropriate and will decrease the ITU's efficiency.³⁹

However, the establishment of the ITU-D is essential for the promotion of international telecommunication cooperation and will benefit the whole world's inhabitants. Because the right to communicate is one of the fundamental human rights, and the world is combined together closer than before and should not be divided into 'rich – telecommunications own' and 'poor – telecommunications lack', the technical assistance of basic telecommunication services in developing countries is necessary and should play a more and more important role in the future development of the new ITU.

F. MEMBERSHIP OF THE ITU

Under the new Constitution and Convention, the membership of ITU is divided into two categories. One is the "Member State" which is open only to states; the other is "Sector Member" which is open to entities authorized by the Member State as well as other related institutions and organizations.

1. Member State

To emphasize the purposes of international telecommunication cooperation and technical promotion, the ITU adopts, similar to the UN, the principle of universality and the desirability of universal participation that encourages every state of the whole world to be its member.⁴⁰ For the mission of globalization and being a specialized agency of the UN, the ITU should be composed of every country, no matter their economic

37. Constitution of ITU, *supra* note 7, Art. 20; Convention of ITU, *supra* note 6, Art. 15.

38. Constitution of ITU, *supra* note 7, Art. 21.

39. Lyall, *supra* note 1 at 11-12.

40. Constitution of ITU, *supra* note 7, Art. 2.

developmental levels, social structures, or legal systems. Obviously, the universal principle is the major policy for the ITU's membership and universal participation is future developmental trend of the modern ITU.

Under Article 2 of the new Constitution, there are three manners that constitute the ITU's members. First, the ITU should comprise the original signatories that are the parties of the former International Telecommunication Convention before the new Constitution and Convention entry into force.⁴¹ Secondly, the ITU, being a specialized agency of the UN, encourages the member of the UN to accede this new Constitution and Convention under Article 53.⁴² Thirdly, the ITU encourages a state that is neither an original signatory nor an UN member, to apply the membership. Adopting Article 2. (c) to become a new member of the ITU, there are two procedures required, one is getting secured approval of such application by two-thirds of the Members of the ITU, the other is accession under Article 53 of the new Constitution and Convention.⁴³

Reviewing the three accession methods, it can be found that those methods are still restricted and limited, and should be considered a conflict against the universal principle. Under Article 2 of the new Constitution, the ITU is composed of three categories, the original signatories, the UN members, and the new members. However, all categories are open only to state, and do not open to "non-state" members such as regional telecommunication organizations, and self-governing telecommunication entities, etc.

Moreover, applied under Article 2 (c) as a new Member State, there should have secured approval by two-thirds of members of the ITU, the absolute majority, to approve the accession case. It is difficult for a new-independent or small state to acquire enough supports to approve its accession especially for those states with economic or politic dilemmas. The ITU currently comprises over 180 member states; in the other words, a new member has to acquire approvals from over 120 countries to support its application. Although this kind voting of the absolute majority is regulated for the new member's application in many international organizations, it doesn't mean the ITU should follow this way. Considering the ITU's missions and the changes of international environment, the ITU should open its door to every entity and

41. Constitution of ITU, *supra* note 7, Art. 2. (a).

42. Constitution of ITU, *supra* note 7, Art. 2. (b).

43. Constitution of ITU, *supra* note 7, Art. 2. (c).

organization that hope to participate in the global telecommunication cooperation and affairs.

2. Sector Member

For resolving the problem concerning “non-state” entities and other international or regional telecommunication organizations can’t participate in the ITU, Article 19.1 of the Convention regulates that the Secretary-General and the Directors of the Bureau in three sectors shall encourage participations of entities and organizations other than administrations in the ITU’s activities. Also, Article 23.3 of the Convention requires that the Secretary-General shall invite the UN, the specialized agencies of the UN, and some specific telecommunication entities and organizations to send “observers.” Those members are so-called “Sector Members.”⁴⁴ They include the following categories:

- (1) recognized operating agencies, scientific or industrial organizations and financial or development institutions which are approved by the Member States concerned;⁴⁵
- (2) other entities dealing with telecommunications matters, which are approved by the Member State concerned;⁴⁶
- (3) regional and other international telecommunications, standardization, financial or development organizations;⁴⁷
- (4) regional telecommunications organizations mentioned in Article 43 of the Constitution of the ITU;⁴⁸
- (5) intergovernmental organizations operating satellite systems;⁴⁹
- (6) entities and organizations referred to in No. 229 of this Convention, and organization of an international character representing such entities and organizations;⁵⁰
- (7) the United Nations;⁵¹
- (8) the specialized agencies of the UN;⁵² and
- (9) the International Atomic Energy Agency.⁵³

44. Constitution of ITU, *supra* note 7, Art. 19.8.

45. Convention of ITU, *supra* note 6, Art. 19.1. (a).

46. Convention of ITU, *supra* note 6, Art. 19.1. (b).

47. Convention of ITU, *supra* note 6, Art. 19.2. (c).

48. Convention of ITU, *supra* note 6, Art. 23.3. (b).

49. Convention of ITU, *supra* note 6, Art. 23.3. (c).

50. Convention of ITU, *supra* note 6, Art. 23.3. (e).

51. Convention of ITU, *supra* note 6, Art. 23.3. (a).

52. Convention of ITU, *supra* note 6, Art. 23.3. (d).

Like Member States, Sector members have to pay the “contributory” annually, can participate in activities and also own the same rights and obligations as Member States within the three sectors of the ITU. Some international or regional telecommunication organizations such as INTELSAT,⁵⁴ INMARSAT,⁵⁵ and EUTELSAT,⁵⁶ continually play important roles in global telecommunication cooperation. By this way, they can take part in the ITU to make more contributions to the ITU financially and technically and to promote the global telecommunication development.

Additionally, any telecommunication agencies, organizations, institutions, or entities such as telecom companies or research institutes that are approved by the Member State can participate in the ITU. It will broaden the ITU’s participation basis and contain capacious opinions to attain the goal of universal participation. The UN, the specialized agencies of the UN like UNESCO,⁵⁷ the International Atomic Energy Agency also can send observers to the conferences and join the activities of the ITU.

However, applied as a Sector Member under Article 19.1 (a) or (b), the entities, companies, organizations, or institutions have to be approved by their home state that is already a Member of the ITU. In other words, those companies or institutions that are under the jurisdiction of non-member entities cannot apply as a Sector Member of the ITU, unless their home state also applies as a Member State of the ITU. As mentioned above, this provision will exclude those entities that can make financial contributions and technical assistances to the ITU and also is considered violating the universal principle under Article 2 of the Constitution.

53. *Id.*

54. International Telecommunications Satellite Organization (INTELSAT) owns and operates a global communications satellite system providing capacity for voice, video, corporate/private networks and Internet in more than 200 countries and territories. *See* <http://www.intelsat.int/>.

55. International Mobile Satellite Organization (INMARSAT), established in 1979 to serve the maritime industry by developing satellite communications for ship management and distress and safety applications, INMARSAT currently operates a global satellite system which is used by independent service providers to offer an unparalleled range of voice and multimedia communications for customers on the move or in remote locations. *See* <http://www.inmarsat.org/index3.html>.

56. *See* <http://www.eutelsat.org/home.html>.

57. The United Nations Educational, Scientific and Cultural Organization (UNESCO), founded in 1945 in London; to promote and coordinate the international educational, scientific, and cultural cooperation.

G. RELATIONSHIP OF THE ITU WITH OTHER INTERNATIONAL ORGANIZATIONS AND NON-MEMBER STATES

The ITU and UN have signed an agreement that defined the ITU as one of specialized agencies of the UN in 1947. Because the main goal of the ITU is to promote global telecommunication cooperation, the relationships between the ITU and other international organizations also stress such cooperation regarding multinational interests. Additionally, if a sector of the ITU is invited to participate in a meeting of any international organization, the Director is authorized to make arrangements for its representation in an advisory capacity.⁵⁸ However, it doesn't mention the choice of law or the method of dispute resolutions while there is a law conflict existing in the international agreements between the ITU and other multinational organizations.

As to the relationships with non-member states, the ITU give each member the reserved right to fix conditions for telecommunications exchange. However, if a telecommunication originating in the territory of a member state, it has to transmit following the telecommunication channels under the obligatory provisions of the ITU.⁵⁹ In international practice, because the ITU composes of most countries in the world, its regulations are applied in most international telecommunication exchanges. Due to the universal principle, the ITU should accept members as much as it can to cover every territory that telecommunications can be reached. However, the new Constitution still restricts its member only to states,⁶⁰ and doesn't open its membership to "self-governing telecommunications territories". The new Constitution also doesn't regulate the relationships between the ITU and non-member states. Those law leaks of the new Constitution will decrease the ITU's practicable and equitable functions.

III. TAIWAN'S STATUS IN THE INTERNATIONAL COMMUNITY

A. HISTORICAL BACKGROUND

In 1911, the Chinese people overthrew the Ching Dynasty of imperial China and established the Republic of China (ROC).⁶¹ At the beginning,

58. Constitution of ITU, *supra* note 7, Art. 50; Convention of ITU, *supra* note 6, Art. 22.3.

59. The Constitution of ITU, *supra* note 7, Art. 51.

60. The Constitution of ITU, *supra* note 7, Art. 2.

61. JOHN FAIRBANK, ET AL., EAST ASIA-TRADITION & TRANSFORMATION 898-906 (1989).

the Kuomintang (KMT)⁶² was the largest and most important political party in Mainland China, and controlled the political and economic advantages.⁶³ However, having endured the Chinese Unionization War, and Anti-Japanese War, many people were tired of the long wartime and dissatisfied with their living conditions; therefore, under this unfavorable situation, the KMT gradually lost the public's support.

At the end of Anti-Japanese War, the Chinese Civil War between the KMT and the China Communist Party broke out and lasted four years.⁶⁴ In 1949, the China Communist Party won this war and established "the People's Republic of China" in Beijing, and the KMT withdrew to Taiwan.⁶⁵ During the early years of the KMT withdrawal into Taiwan, most countries still had formal diplomatic relations with it and the ROC (Taiwan) maintained its seat in the United Nations and related international organizations.⁶⁶

However, serious problems concerning China's representation existed because the Nationalist government withdrawal into Taiwan and barred its jurisdiction over Mainland China.

In contrast, the Peoples' Republic of China controls the superior portion of territory and population in Mainland China. Under international law, although the PRC did not own China's seat in the UN and did not have formal diplomatic relations with many countries from 1949 to 1971, the PRC should be considered as the *de facto* China. The claim of the Nationalist government in Taiwan regarding its legal representation over the whole of China appears insufficient and fragile. Based on the same reasoning, the PRC never exercised jurisdiction over Taiwan from its establishment in 1949; therefore, the PRC's claim relating to its representation over Taiwan is also unjustified and weak.

B. UN GENERAL ASSEMBLY RESOLUTION NO.2758 (XXVI) AND ITS EFFECTS

In October 1971, the Assembly of the United Nations adopted Resolution No. 2758 (XXVI) concerning the issue of Chinese representation. The UN Assembly Resolution No. 2758 decided to "restore all its rights to

62. KMT, also known as the Nationalist Party, was the biggest political party in Mainland China during the early and mid-20th century, and today it is the biggest political party in Taiwan.

63. *Id.*

64. HEIN-HEING WU, BRIDGING THE STRAIT: TAIWAN, CHINA, AND THE PROSPECTS FOR REUNIFICATION (1994).

65. *Id.*

66. *Id.*

the Peoples' Republic of China and to recognize the representatives of its Government as the only legitimate representative of China in the United Nations, and to expel forthwith the representatives of Chiang Kai-Shek from the place which they unlawfully occupied at the United Nations and in all the Organizations related to it."⁶⁷ According to this Resolution, it ordered that Taiwan, known as "the Republic of China," must give its seat to "the People's Republic of China" and the UN recognized that Taiwan, as a province of China, is devoid of any qualification whatsoever to join the UN and its related organizations.⁶⁸ Following this diplomatic setback, most countries severed their formal diplomatic relations with ROC (Taiwan).

Under the principle of international law, the recognition of a government as "proper" happens when a government has effective control over most of the territory and the control is likely to continue. Since the PRC has controlled most territory of China from 1949, the recognition of the PRC government as the legitimate government of China is more in line with the norms of international law.⁶⁹

On the other hand, compared with the PRC's geographic superiority and covering the large portion of China, Taiwan's Nationalist government claim over the whole China appears very feeble and powerless. Since the UN and most countries recognize Taiwan as one part of China, and this "China" means "the People's Republic of China," not Taiwan's "the Republic of China," Taiwan encounters many difficulties in practicing international laws and subsequent participation in international organizations.

But the recognition that Taiwan is one part of PRC, and that PRC should represent Taiwan in the international community is unjustified for the people in Taiwan. Although the problem of the China's seat in the UN had been "partly" resolved by the UN Resolution No. 2758, the PRC's claim to represent Taiwan is still unreasonable under international law. The PRC regime has never exercised the jurisdiction over Taiwan from its establishment in 1949.

In addition, the government on Taiwan has maintained its sovereignty and international personality since its inception. With respect to international telecommunication regime, Taiwan has its own telecommunication policies, laws, and systems. Any message, cable, or

67. G. A. Res. 2758, U.N. GAOR, 26th Sess., Supp. No. 30, at 2, U. N. Doc. A/8249 (1971).

68. *Id.*

69. See HERSCH LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW, 87-136 (1947).

tele-signal that seeks transportation and transcription within or across Taiwan's territory and jurisdiction must deal with Taiwan and get permission from Taiwanese government directly. Also, in the international practice, the Taiwanese government controls treaty-making capacity and has signed telecommunication agreements with many other countries.

C. MODELS OF TAIWAN'S PARTICIPATION IN INTERNATIONAL ORGANIZATIONS

1. *Taipei China* as in the Asian Developmental Bank (ADB) Model

After UN Resolution No.2758 (XXVI), Taiwan has faced constant diplomatic frustrations and learned much from these reversals. However, since its 1980 democratization and liberalization, Taiwan is eager to play an active role in the international community. Evolving from former struggle for sole legal representation of the whole China, Taipei has gradually changed its foreign policy and adopted a more flexible and pragmatic approach corresponding to international calls for change. For instance, Taiwanese government agreed to participate in the 1984 Los Angeles Olympics under the title of "Chinese Taipei" not "the Republic of China" as in previous games. Another obvious example is the event of the change of official name from ROC to "Taipei, China" in the Asian Development Bank (ADB).

Founded in December 1966, the Asian Development Bank is an inter-governmental financial organization in Asia. The purposes of ADB are to provide funds, technical assistance and managerial expertise to developing countries and to promote regional economic development and cooperation in Asia Pacific region. Taiwan, known as "ROC," is a founding member of the bank and has fully carried out its membership responsibilities since the establishment of ADB.

However, in November 1985, Beijing and ADB reached a Memorandum of Understanding that recognized the "the People's Republic of China" as the sole legal representative of China and it became a member of the ADB.⁷⁰ Taiwan remained in the ADB with an altered designation of "Taiwan, China." Taiwan did protest at the change of its official name as founding member of ADB to "Taiwan, China." After several negotiations, Taiwan, with protest, attended the annual ADB meeting in Manila under the name of "Taipei, China" in April 1988 instead of the

70. ASIAN DEVELOPMENT BANK, CHINA'S ECONOMIC PROSPECTS (2000).

withdrawal of its membership from this organization.⁷¹ Taiwan has continued to voice objections to the ADB's unilateral decision in 1986 to change the designation of "the Republic of China" within the organization to "Taipei, China."⁷² This was the first time that the ROC and PRC both attended a meeting of an inter-governmental organization. The ADB is also one of the few international organizations that admit both Taipei and Beijing.⁷³

After its withdrawal from Mainland China, the KMT government fought with Beijing for the sole legal representative of China in many international organizations for a long time. However, after losing its seat at UN, Taiwan no longer had strong justification to persuade other countries believe that this small island represented the whole of China.

Afterward, under Beijing's "One China Policy" along with huge pressures, Taipei faced not only losing its membership as the sole legal representative of China in most international organizations, but also the possibility of diplomatic relationships being severed by many countries. Thus, forced to adopt with pragmatism, flexibility and border manners, Taiwan tried to develop a foreign policy based primarily on substantive relations and active participation on international activities. The event at the 1988 ADB meeting showed Taipei's determination to participate in international activities and its struggle to escape the trap of Beijing's "One China Policy." Instead of withdrawal from ADB, Taiwan attended and voiced its interest to the organization to set a different pattern of recognizing Taiwan's international identity.

On the other hand, Taiwan also has consistently protested the name change at ADB to indicate its separation from PRC. In recent years, however, Taiwan has not actively participated in ADB activities, in part because she has graduated and has other channels of dialogue with other ADB members.

71. Afterward, Taiwan's former President Lee explained the decision in a June 3, 1989, speech to the Second Plenum of the KMT's Thirteenth Central Committee: "The ultimate goal of the foreign policy of the R.O.C. is to safeguard the integrity of the nation's sovereignty. We should have the courage to face the reality that we are unable for the time being to exercise effective jurisdiction on the mainland. Only in that way will we not inflate ourselves and entrap ourselves, and be able to come up with pragmatic plans appropriate to the changing times and environment."

72. *Peng Leading ROC Delegation to ADB Meeting*, CENTRAL NEWS AGENCY, May 8, 2001.

73. *ROC Again Protests ADB Name Change*, CENTRAL NEWS AGENCY, May 14, 2001.

2. *Chinese Taipei* as in the Asia-Pacific Economic Cooperation (APEC) Model

Another example of Taipei's participation in international organizations is the Asia-Pacific Economic Cooperation (APEC), a high-level forum established to promote economic integration and to sustain economic growth in the Asia Pacific region as well as trade and investment liberalization around the Pacific Rim. The APEC has also played a complementary role to the International Monetary Fund and other international financial institutions in fostering rapid Asian economic growth. The APEC membership is not limited to sovereign states but includes economic entities and regional organizations. Both Taipei and Beijing were admitted to APEC in 1991, with the condition that Taiwan is referred to as an economic entity under the name "Chinese Taipei." Meanwhile, beginning in 1993, under a proposal made by US former President Clinton, an annual meeting gathering presidents from all members together is held to provide a forum for leaders to meet on a regular basis both as a group and bilaterally to discuss current issues and resolve disputes.

However, because Beijing fights to prevent Taipei from being recognized as an independent nation at any international event, the PRC has successfully blocked the Taiwanese presidents from going to the group's annual forums, attended by the top politicians from all other members.⁷⁴

Under Beijing's objections, Taiwan's status of accession into APEC is described as an economy entity but not a sovereign state. Thus Taiwan's president, vice president, and premier are forbidden to attend APEC's annual informal leaders' summits. At this point, the established practice regarding the summits was for the host country to send an invitation to the president in Taiwan, and then the president would appoint his special envoy to attend the summit on behalf of him.⁷⁵

In general, because Beijing wants Taiwan to stick to precedent and name an economics-related envoy, Taipei previously has sent either its chief economic planner or central bank governor.⁷⁶ Arguing that Taiwan holds full membership status, Taiwan has tried to appoint higher level of Taiwanese representation or political figures at APEC summits⁷⁷, but

74. Alex Frew McMillan, *Taiwan Pulls out of APEC Shanghai Summit*, CNN, Oct. 19, 2001.

75. *Taipei's APEC Fears Unfounded: Beijing*, TAIPEI TIMES, Nov. 13, 2000.

76. *Taiwan APEC Row Heads for the Wire*, BCC News, Oct. 17, 2001.

77. For example, in 2000, Beijing had voiced opposition to Taipei's plan to appoint Vice Premier Lai In-Jaw as chief Chinese Taipei delegate at the informal leadership summit of APEC forum scheduled in Brunei. Once again, Beijing had rejected Taiwan's plan to send former Vice

Beijing has again and again interfered politically to stymie Taiwan's participation in APEC summits.⁷⁸ It is because Beijing regards Taiwan as a renegade province and must be reunified, by force if necessary, and the appointment of Taipei's representative other than an economic envoy will contradict Beijing's "One China Policy."

Taipei regards Beijing's policy as unreasonable and illogical, and asserts that it should be given equal status as the PRC, i.e., a full membership in APEC with full and meaningful participation in the organization, including the attendance of the leader at annual summits. The leaders of every other APEC member, irrespective of the level of its economic development or wealth, participate in the annual leaders' summit.

Nevertheless, due to Beijing's humbling objection, Taiwan, one of the most successful economic entities and the largest trading blocs in the world, has been refused respect, participation and just treatment in this organization. This is unjust discrimination incompatible with Taiwan's economic prowess and contributions to the international community. In fact, in 1991, it is clear that APEC members committed themselves to "conducting their activities and work programs on the basis of open dialogue with equal respect for the views of all participants."⁷⁹

Additionally, because APEC is an informal and economic organization, Taiwan's attendance and participation will not violate PRC's so called "One China Policy." Thus even Taiwan's accession into APEC under the name of "Chinese Taipei" is a better possible solution to all concerned parties; however, Taiwan's participation has suffered unjust exclusion in APEC.

3. *The Separate Customs Territories of Taiwan, Penghu, Kingman and Matsu as in the World Trade Organization (WTO) Model*

Although Taiwan's participation in international organizations and activities encounters the PRC's staunch opposition, Taiwan still continuously acts an honorable manner and performs its required duty in the international community. To increase its influences in international trade affairs, Taiwan submitted its formal application to the General

President Li Yuan-Zu as Presidential Representative at the 2001 APEC's leader summit held in Shanghai China.

78. Deborah Kuo, *Beijing Intervention in Taiwan's APEC Rep. Issue Regrettable*, CENTRAL NEWS AGENCY.

79. John J. Tkacik, Jr., *China-Taiwan Dialogue Could Begin at the APEC Summit*, Heritage Found. Exec. Memo. No. 767, (Heritage Foundation), Aug. 21, 2001.

Agreement on Tariffs and Trade (GATT) by the name of “the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” in 1990.⁸⁰

To make its membership more attractive to other GATT members, Taiwan also agreed to a GATT ascendance as a “developed country” member, which involved wider market opening.⁸¹ Since the date of its application, Taiwan has negotiated with various members of the GATT regarding various trade issues and has tried to gain its full membership.

In 1992, a working group under the GATT Council was finally appointed to consider Taiwan's application for membership, and Taiwan, referenced as “Chinese Taipei,” was granted observer status in the GATT in the same year.⁸² Then in 1995, a new international trading system, the World Trade Organization (WTO) was established to replace the GATT and Taiwan's application for membership was also referred to the WTO at the same time. However, the PRC had attempted to link its WTO membership to Taiwan's application and insisted that it should be allowed to join the WTO before Taiwan's accession.⁸³ Although there is no precedent for such a linkage under the WTO and many countries have repudiated the linkage, the PRC had successfully convinced some of its close allies in the WTO to stall Taiwan's application on the PRC's behalf.⁸⁴

In fact, unlike PRC and many other members in the WTO, Taiwan's trading regime is already in compliance with most provisions of the WTO before its participation even commenced. For accession to the WTO, Taiwan had negotiated with its major trading partners and undertaken a series of trade liberalization measures to meet the WTO's requirements.⁸⁵ Based on Taiwan's trading success and liberalization, Taiwan already has been recognized as a responsible trading partner by most countries and as a qualified applicant by a wide consensus.

In contrast, the PRC, as a developing communist nation, had slowly concluded its entry talks with other WTO members during application procedure. First, most major WTO members had viewed that the

80. *Taiwan Applies for GATT Membership, Files Formal Application in Geneva*, DAILY REP. FOR EXEC., Jan. 4, 1990.

81. Dick Kirschten, *The Other China*, 26:41 NAT'L J. 2332 (1994); T.Y. Wang, *Taiwan's GATT Membership – Fully Deserved, Yet Elusive*, CHRISTIAN SCI. MONITOR, Mar. 4, 1991, at 19.

82. GATT Documents, 1992.

83. Beijing has insisted, citing a statement in 1992, that Taiwan not be given a seat in the organization before Beijing. *See Taiwan gets ready for WTO entry*, CHINA POST, Nov. 30, 1999.

84. Greg Mastel, Economic Strategy Institute, *Taiwan in the WTO: An Economic and Policy Analysis*, Oct. 6, 1999.

85. *Taiwan Better Prepared for WTO than China: Analyst*, CHINA POST, Jan. 25, 2002.

applications of Taiwan and that of the PRC should proceed separately based upon their own merits, which mean any acceding country that has completed the established requirements will be granted WTO membership. Second, WTO's membership does not necessarily require recognition of the party joining as an independent state. For example, Hong Kong became a contracting party to the GATT under Article XXVI in April 1986 even when Hong Kong was still under British control on territory leased from China at that time.⁸⁶ Taiwan's accession to the WTO was not premised on statehood; rather, its application was made under Article XXXIII as a separate custom territory to avoid contradicting PRC's "One China Policy."

Although Taiwan's participation met the economic requirements and overcame legal issues regarding WTO membership, it suffered political obstacles and became the victim of a diplomatic dilemma. Because of Beijing's huge pressure and opposition, Taiwan's accession was unfairly linked with Beijing's and unreasonably delayed to wait for the troublesome PRC's accession.

After its long-run application over ten years, Taiwan's entry to the WTO finally concluded in 2002 and Taipei expected that its WTO membership would be acknowledged as a separate entity status from Beijing.⁸⁷ However, because Beijing continues to view Taiwan as breakaway province, Beijing has refused to exert the WTO mechanism to resolve the cross-strait trade dispute and simply ignored Taipei's WTO membership.⁸⁸ Beijing claimed that trade affairs between Beijing and Taipei is an internal Chinese affair and wanted to settle trade spats informally with Taiwan, as it does now with Hong Kong.

Although some argued that both Taiwan and PRC should have access to the WTO as a channel of communications to review mutual cross-strait respective regulations to speed up talks and negotiations,⁸⁹ Taiwan's entry may further snarl relations with Beijing, especially if Beijing insists on treating Taiwan as its extension and not a separate entity.⁹⁰ However, even with somewhat uncertain circumstances in the future, it is foreseeable that both Taiwan's and the PRC's accession to the WTO will

86. GATT Documents, 1986.

87. *US Official Congratulates Taiwan on WTO*, CHINA POST & TAIWAN NEWS, Jan. 25, 2002.

88. Beijing has set up restrictions on polyester imports from Taiwan, which are steamrolling mainland rivals. Taiwan takes the squabble to the WTO's Dispute Settlement Board in Geneva. But Beijing refuses even to attend the proceedings, claiming that what happens between Beijing and Taipei is an internal Chinese affair.

89. *WTO Entries to Reduce Cross-Strait Tension*, CENTRAL NEWS AGENCY, Feb. 8, 2002.

90. Mark L. Clifford et al., *Can Two Chinas Coexist in the WTO?* BUSINESSWEEK, Nov. 8, 2001.

reduce political tensions between the two sides. If this situation occurs, both will receive economic benefits via trade and investment liberalization under the WTO.

D. ANALYSIS

Since its withdrawal from the UN, Taiwan has faced a series of diplomatic dilemmas and Taiwan's status in the international community remains uncertain, especially Taiwan's designation usage in international organizations. However, Taiwan never ceases to show its determination to participate in international activities. Through constant effort, Taiwan's membership has extended into several international economic organizations including the Pacific Basin Economic Council (PBEC), the Organization for Economic Cooperation and Development (OECD), and Asian Productivity Organization (APC) etc. Taiwan also plays an active role in some inter-governmental organizations such as the Asian Development Bank (ADB), Inter-American Development Bank (IDB), and the Central American Bank for Economic Integration (CABEI), and European Bank for Reconstruction and Development (EBRD), etc.

Under Beijing's "One China Policy" and the UN's Resolution, Taiwan still has difficulty in participation international organizations with its official name "the Republic of China" or with the label of "Taiwan." Although Taiwan still keeps its formal full name "the Republic of China" in certain international organizations such as the CABEI, it has adopted an informal title as a necessity, in order to participate in international activities under the PRC's pressures.

The origin of this informal designation actually lies in the settlement of a lawsuit between Taiwan and the International Olympics Committee over the use of the name ROC in the Montreal Winter Olympics. That settlement led to the use of terms like "Chinese Taipei" in the Games and the word "Chinese" here is non-political and ethnic in connotation.⁹¹ Afterward, to avoid the conflicts against Beijing's "One China Policy," Taiwan has used different "designations" to join international organizations. For example, Taiwan acts as an autonomous customs territory to join the WTO by the name of "Separate Custom Territory of Taiwan, Penghu, Kinmen, and Matsu." Under the structure of the APEC, Taiwan participates as an economic entity and uses the name "Chinese Taipei." And since the foundation of the Asian Development Ban (ADB)

91. Nicholas Berry, Center for Defense Information, *Who Will Represent Taiwan at the APEC Summit?*, Oct. 4, 2001.

in 1966, Taiwan has always maintained its membership even though its title changed from ROC to "Taipei China."

For Beijing, Taiwan is merely a renegade province and must be reunified, so Taipei's participation in any international event is limited to membership in purely economic international organizations.

In addition, Beijing has steadfastly opposed Taiwan's membership in any political organization that would promote its legitimacy as a sovereign state, especially in some related UN organizations. For Taipei, which "title" Taiwan should adopt is a more flexible issue; instead, the more important point is that the voice of people in Taiwan should be heard in the international community. With this understanding, an informal designation of ROC for Taiwan is flexibly used in international economic and cultural events recently.

Because the rules of international law grant international organizations an identity over and beyond that of member states whose membership is premised on statehood, accession into international organization will acknowledge a member's separate identity from others. Under Beijing's "One-China Policy," Taiwan is one part of China and lacks statehood to join any international organizations even if Taiwan changes its designation. However, because some international economic instruments such as the APEC and WTO Charter permit the arrangement for an economic entity's accession, Taiwan has followed this approach to change its designation to prove its international identity and also to link with the global trading system. Taiwan, unjustly excluded from international community for a long time, now should seek for a new method to escape Beijing's doomed incantation.

Frankly speaking, Taiwan is flexible in its "title" approach because it is a means to an end. Taiwan seeks international recognition by any name and in as many ways as possible, because in addition to trade benefits, Taiwan feels that the recognition will help establish itself as a sovereign state

IV. LEGAL ISSUES CONCERNING TAIWAN'S ACCESSION INTO THE ITU

A. METHODS OF TAIWAN'S ACCESSION TO THE ITU AND SUBSEQUENT PROBLEMS

The membership of ITU is open only to states under Article 2 of the new Constitution. So does Taiwan fit the requirements of the definition of "state" under international law? Taiwan controls the self-governing

territory, 2.5 million people, and a government that can exercise its jurisdiction efficiently and also maintains foreign relations with many countries. Under international law, Taiwan fulfills all requirements to be a “state” and further possesses the international personality and treaty-making capacity.⁹² Although expressing Taiwan’s sovereign disposition in the international community will violate the so-called “One China Policy,” there is little doubt that Taiwan can execute its own state capacity without any other countries’ consent.

1. Historical Difficulties – Article 2 (a) and (b) of the Constitution

Before the KMT’s withdrawal to Taiwan, ROC had joined the International Radio Telegraph Convention located in London, and also became one of the original signatories of the former ITU. However, as one of the specialized agencies of UN, the Council of former ITU voted to expel the membership of ROC according to the UN Resolution No. 2758 on May 29, 1972. Even so, being a member in the international community, Taiwan still operates its telecommunication system under the ITU’s regulations.

However, now even as an original signatory, Taiwan cannot renew its membership under Article 2 (a) of the Constitution of ITU now.⁹³ According to the UN’s Resolution No. 2758 and PRC’s control over the large land mass that makes up China, the PRC holds China’s seat in most official international organizations. Although the Nationalist government maintains its jurisdiction on Taiwan Island, many countries recognize PRC’s succession from the former government of China. Since the PRC did succeed taking control over most of China and it now “owns” the legal representation of China under international law, Taiwan can’t force renewal of its membership as ROC. According to the Nationalist government, it continuously exercises its jurisdiction on this island. To resolve the controversy, the simplest way of Taiwan’s participation in official international organizations is to overthrow the UN Resolution No. 2758 and to definite Taiwan’s status under international law. Taiwan recently shows its desire to participate in the UN and related international organizations. However, lack of other countries’ support

92. See “The Determination of Statehood” at Louis Henkin, Richard C. Pugh, Oscar Schachter, and Hans Smit: “International Law: Cases and Materials,” 3rd edition, West Publishing Co., pp 242-259.

93. Constitution of ITU, *supra* note 7, Art. 2 (a) states that “the International Telecommunication Union shall, having regard to the principle of universality and the desirability of universal participation in the Union, be composed of any State which is a Member of the Union as a Party to any International Telecommunication Convention prior to the entry into force of this Constitution and the Convention.”

and facing PRC's intensive opposition, this idea still seems less achievable.

2. Applied as A New Member State – Article 2 (c) of the Constitution

The other possibility for Taiwan to participate in the ITU is that Taiwan submits its application directly under Article 2 (c) of the Constitution.⁹⁴ Although Taiwan is not a member of the UN, Taiwan fulfills all requirements of being a “state” and also has its own telecommunication policies and system. Once Taiwan wins its struggle for the approval of two-thirds of the members of ITU, and Taiwan can accede to the ITU under the Constitution and Convention.

However, unlike the WTO, APEC, and other international organizations that Taiwan has joined, the ITU, as one of specialized agencies of UN, opens its membership only to “states” recognized by the UN. The most obvious obstacle to Taiwan's accession to the ITU is PRC's staunch opposition. Beijing continuously claims that Taiwan is one of its provinces and does not possess the authority to participate in any international governmental organization. PRC considers that Taiwan's accession into any international governmental organization as a violation of the “One China Policy” and would constitute recognition of “Two Chinas” or “One China, One Taiwan.”

Additionally, the PRC maintains formal diplomatic relations with most countries in the world and those countries also “acknowledge” or “recognize” that Taiwan is one part of China, and therefore, the Taiwan issue is China's internal affair. Hence, Taiwan's application faces the lack of support from other countries and that means Taiwan has less possibility to gain the approval of two-thirds of the ITU's members.

3. Applied as a Sector Member – Articles 19 and 23 of the Convention

Under Article 19.1. (a) and (b) of the Convention, any recognized operating agencies, scientific or industrial organizations, and other

94. Constitution of ITU, *supra* note 7, Art. 2 (c) states that the International Telecommunication Union shall, having regard to the principle of universality and the desirability of universal participation in the Union, be composed of any other State, not a Member of the United Nations, which applies for membership of the Union and which, after having secured approval of such application by two-thirds of the Members of the Union, accedes to this Constitution and the Convention in accordance with Article 53 of this Constitution. If such application for membership is made during the interval between two Plenipotentiary Conferences, the Secretary-General shall consult the Members of the Union; a Member shall be deemed to abstain if it has not replied within four months after its opinion has been requested.

entities dealing with telecommunication matters that are approved by the Member State can participate in the activities and become Sector Members of ITU. But since Taiwan is not a Member State of ITU, none of its telecommunication agencies, organizations, and institutions such as Chunghwa Telecom Corporation or National Science Committee can apply to be the Sector Member of ITU.

Although Taiwan's telecommunication companies and institutions cannot register with the ITU, they still can seek the approval or recognition under other Member States of the ITU. Taiwan maintains formal diplomatic relations and keeps wide-range cooperation with many Central American and the Pacific Islands countries such as Costa Rica, El Salvador, Honduras, Panama, Tonga, Palau, etc. Taiwan also has traditionally friendly non-official relations with many industrialized countries like USA, Japan, and Singapore, etc. Therefore, Taiwan's telecommunication companies and institutions may adopt multinational operational strategies and seek the approval under the auspices of those countries.

The Taiwan government also can cooperate with other Member States to convene regional telecommunication or developmental organizations and then use the name of such organizations to participate in the activities of Sectors of ITU under Article 19.1. (c).

Because Taiwan is not a member of ITU, Taiwan cannot launch any wholly owned, sole control of high-orbit spacecraft.⁹⁵ Taiwan is not eligible to register with the ITU for the utilization of satellite capacity; instead, Taiwan has leased transponders from the International Telecommunications Satellite Organization and subscribed to international submarine cable services.⁹⁶ However, communications via satellite are superior in quality to those via submarine cable; but the reality is that, satellites and submarine cables are both major tools for international communications.⁹⁷ Thus, it is very important for Taiwan to participate in the activities of ITU and apply to be a member of ITU. To further Taiwan's telecommunications development, Taiwan's Chunghwa Telecom Corporation has cooperated with Singapore Telecom Corporation and launched Taiwan's first telecommunications satellite, ST-1, registered with the ITU under the name of Singapore.⁹⁸

95. *Taiwan Joins the Satellite Fraternity*, AUSTRAL. NEWS ABSTRACTS (ABIX), Aug. 27, 1998.

96. *Id.*

97. *Id.*

98. *Taiwan's First Satellite Takes Flight, Taiwan*, TAIWAN ECON. NEWS, Sep. 1, 1998.

Under Article 23.3. (c) “Intergovernmental organizations operating satellite systems”, Taiwan’s Chunghwa Telecom Corporation may request to send observers and join in the related activities of the ITU.

B. SOME CONSIDERATIONS WITH REGARD TO TAIWAN’S ACCESSION INTO THE ITU

1. The ITU and International Telecommunication Cooperation

One of the main missions of the ITU is international telecommunication cooperation. That means every member of the international community should have the equal right to participate in global telecommunication affairs. According to Article 2 of the Constitution, the ITU “shall, having regard to *the principle of universality* and the desirability of *universal participation* in the Union.”

Also, Article 1 (d) states that the ITU shall “promote the extension of the benefits of the new telecommunication technologies *to all the world’s inhabitants*.” Article 1 (g) states that the purpose of the ITU is “to promote, at *the international level*, the adoption of *a broader approach* to the issues of telecommunications *in the global information economy and society*, by cooperating with other world and regional intergovernmental organizations and those non-governmental organizations concerned with telecommunications.” Taiwan is one member of the international community and people in Taiwan are also the world’s inhabitants. Therefore, Taiwan’s accession into the ITU fully comports with the mission of the ITU and fits the requisites of the related Articles of the Constitution.

At the same time, “the right to communicate” is already extensively considered as one of basic fundamental human rights. Being the world’s inhabitants, Taiwanese’ fundamental human right, the right to communicate, should not be neglected. Taiwan continuously peacefully stands in the international community and diligently fulfills its international responsibilities as a matter of ongoing policy. Taiwan has its own telecommunication policies, systems, and self-controlled market. Any transaction or investor concerned with telecommunications within Taiwan needs permission from the government on Taiwan rather than PRC. Therefore, enforcing the PRC’s view to refuse Taiwan’s accession into the ITU both violates the ITU’s universal principle and serves as constant harassment to the Taiwanese people’s basic right to communicate.

2. Benefits to both the ITU and Taiwan with Taiwan's Accession

Taiwan controls powerful economic advantages and thus, has the ability to assist other developing countries in telecommunication services. Taiwan is the fourteenth largest trading country in the world; its GNP ranks as the world's nineteenth; its foreign exchange reserves of over US\$ 100 billion is the third largest in the world; and it is the world's sixth-largest outbound investor.⁹⁹

Taiwan also has advanced technical skills, and equally important, it has the willingness to share its developmental achievements and to offer financial and technical assistances to developing countries.¹⁰⁰ Taiwan is the world's third largest OEM and brand name manufacturer of computer components, peripherals, desktops, notebooks and servers.¹⁰¹ With Taiwan's accession, Taiwan can provide substantial financial and technical contributions and benefits to the ITU. By joining in the ITU's programs and projects designed for universal access and services, Taiwan can furnish its advanced technologies as well as financial assistance to developing countries that lack basic telecommunications services. Therefore, Taiwan's admittance into the ITU will benefit ITU, itself, and many members.

Taiwan's pattern of success is indicative of its strenuous intend to become one of the global economic pivots. It plans to adopt the blueprint named "Asia-Pacific Regional Operation Center" (APROC) in the near future. One of the plans is designed to boost Taiwan as the major telecommunication center in the Asia-Pacific area. Taiwan's basic telecommunication infrastructure stands on stable foundations and has shown a high capacity to absorb new technologies, a critical factor to remain competitive. By providing reasonable-priced and high-quality telecommunication services, Taiwan hopes to create the most favorable, world-class telecommunications industrial environment, in order to internationalize its telecommunication market.¹⁰² Additionally, Taiwan has already opened the cellular telecommunications spectrum and many value-added network services to the private sector and also took steps to liberalize its telecommunication market and revise the

99. TAIWAN GOVERNMENTAL INFORMATION OFFICE, THE FUNDAMENTAL RIGHTS OF THE PEOPLE AND GOVERNMENT OF THE ROC ON TAIWAN TO PARTICIPATE IN THE UNITED NATIONS AND INTERNATIONAL ACTIVITIES 2 (1998).

100. *Id.*

101. *Acer Inc. Licenses G. 723.1 Technology from DSP Group*, PR NEWswire, May 26, 1998.

102. TAIWAN COUNCIL FOR ECONOMIC PLANNING AND DEVELOPMENT DOCUMENT, THE PLAN FOR DEVELOPING TAIWAN AS AN ASIA-PACIFIC REGIONAL OPERATIONS CENTER, 21, (1995).

telecommunication regulations.¹⁰³ With its accession into the ITU, Taiwan can play a more active role and furnish concrete projects and ideas for international telecommunication development. And only by joining the ITU, can Taiwan's plan to be the regional telecommunication center be fully achieved.

V. CONCLUSION

Composed of both public and private sectors, the ITU is the most important international telecommunication organization dealing with global telecommunications cooperation and development. The ITU regulates the terrestrial and space uses of the frequency spectrum and the use of the satellite orbits as well as the interconnection of telecommunication standardization on a worldwide basis. The ITU also provides developmental strategies and technical assistance to developing countries.

Reviewing the ITU's history, its mission and functions have changed according to the international environment and demands of the time, and become increasingly broad. Regardless whether it is mediating the differences between telecommunication systems among states or providing technical assistance to developing countries, the ITU adopts the policy of comprise amongst its members with a focused global vision in order to promote the international telecommunication cooperation.

According to the principle of universal participation, the ITU hopes to pass the benefit of telecommunication technology for all the world's inhabitants. The right to communicate is considered as one of fundamental human rights under international law. Taiwan is one member of the international community and the Taiwanese people should have the equal right to communicate along with everyone else in the world. The recognition that Taiwan is one province of PRC and PRC should represent Taiwan in the international community is simply unjustified for the people of Taiwan. UN Resolution No. 2758 merely partly resolved the problem of the China's seat in UN and did not successfully conclude the issue of the representation of people of Taiwan in the UN. The PRC regime has never exercised jurisdiction over Taiwan since the day of its establishment in 1949.

Taiwan has its own telecommunication policies, systems, and self-controlled telecommunication market; and also controls the treaty-

103. TAIWAN GOVERNMENT INFORMATION OFFICE DOCUMENT, THE ROC AND THE ASIA-PACIFIC REGIONAL OPERATIONS CENTER 3 (1996).

making capacity and has signed telecommunication agreements with many other countries. Therefore, allowing the PRC's view to dominate and subsequently, to refuse Taiwan's accession into the ITU, violates the spirit of ITU's universal communication principle as well as its laws, and further, simply harasses the Taiwanese people's basic human right.

Additionally, Taiwan has developed powerful economic advantages, advanced technical skills, and also has the willingness to offer its developmental experiences, financial and technical assistances to developing countries.

With Taiwan's accession, Taiwan can provide substantial contributions and benefits to many members of the ITU. Taiwan's basic telecommunication infrastructure stands on stable foundations and has proved its high capacity to absorb new technologies. With the accession into the ITU, Taiwan can play a more active role in global telecommunication cooperation. By accession into the ITU, Taiwan's plan to be the regional telecommunication center will be more easily achieved and Taiwan's legal status will be also promoted in the international community. Therefore, Taiwan's accession into the ITU will not only benefit the people in Taiwan, but also promote the interests of the international community as a whole. Due to the UN Resolution No. 2758 and the PRC's obsession, Taiwan's accession into the ITU is currently postponed to some future dated.

However, following the change in international environment and the demand for technology to be globally competitive in order to produce the best products as well as the potential for global economic benefits, Taiwan's dream to participate in the ITU will come true sooner or later. The only question is how long the intimidation of the PRC will continue to contravene the interests of global competition and development.

