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ESSAYS

THE RIGHT OF THE REPUBLIC OF CHINA AND ITS 21 MILLION CHINESE PEOPLE TO PARTICIPATE IN THE UNITED NATIONS

HUNGDAH CHIU*

I. INTRODUCTION

The Republic of China on Taiwan is in effective control of an area of 14,000 square miles, which is approximately the combined size of Maryland, Delaware, and Rhode Island.¹ It has a population of approximately 21 million, with a per capita income of approximately \$11,000 (U.S.) in 1993.² Its gross national product is the world's twentieth largest and its 80 billion foreign exchange reserves are the world's second largest.³

It is the fourteenth largest trading nation in the world and is the world's seventh largest outbound investor.⁴ In terms of its political system, the Republic of China has a popularly-elected democratic government with a constitution,⁵ guaranteeing all human rights recognized in the 1948 Universal Declaration of Human Rights.⁶ However, such a viable, democratic and prosperous nation has not been allowed to participate in the United Nations and other inter-governmental organizations since 1971. Is this not one of the greatest injustices in the world community and a gross violation of the human rights of 21 million people? In this Essay, I will briefly analyze the contribution of the Republic of China in the adoption of the Charter of the United

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1. For general information on the Republic of China, see GOVERNMENT INFORMATION OFFICE, THE REPUBLIC OF CHINA YEARBOOK (1994) [hereinafter YEARBOOK].

2. CHINESE YEARBOOK OF INTERNATIONAL LAWS & AFFAIRS 263 (Hungdah Chiu ed. 1991).

3. *Id.*

4. *Id.*

5. See YEARBOOK, *supra* note 1, at 693-708 for the text of the Constitution and articles discussing it.

6. See DUSAN J. DJONOVICH, IN BISHOP'S INTERNATIONAL LAW (1971).

Nations; the relations between the Republic of China and the United Nations before and after 1971 (i.e., the year when the Republic of China and its people were deprived of the right to participate in that organization and other inter-governmental organizations); and finally, why the rights of the 21 million Chinese people in Taiwan should not be denied.

II. THE REPUBLIC OF CHINA'S CONTRIBUTION TO THE ADOPTION OF THE CHARTER OF THE UNITED NATIONS

Before Japan attacked the United States on December 7, 1941, which forced the United States to declare war against Japan, the Republic of China single-handedly resisted Japanese aggression for four years from 1937 to 1941. After the United States entered the war, both the Republic of China and the United States became allies. This was the first time the United States entered into an alliance with an Asian country.

On October 30, 1943, the Republic of China, the Soviet Union, the United States, and the United Kingdom issued the Moscow Declaration⁷ and stated that "they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by such states, large and small, for the maintenance of international peace and security."⁸ The implementation of the Moscow Declaration was a complex and lengthy process. Preparatory work began in the U.S. Department of State as early as June 1942, and continued into the summer of 1944. The Tentative Proposals, the product of this preparatory work, were accepted by President Franklin D. Roosevelt and by Congressional leaders of both parties as the basis of discussions among the United States, the United Kingdom, the Soviet Union, and the Republic of China.⁹

The Dumbarton Oaks Conversations took place in two phases: the first, involving representatives of the Soviet Union, the United Kingdom, and the United States, extended from August 21 to September 28; the second, to which the Republic of China, the United Kingdom, and the United States were parties, lasted from September 29 to October 7, 1944.¹⁰

At the Dumbarton Oaks Conversations, the Republic of China submitted seven proposals for consideration.¹¹ The first one relat-

7. LELAND M. GOODRICH ET AL., CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 3 (3d rev. ed. 1969) (citing *Department of State Bulletin*, Vol. XI, 308 (1943)).

8. *Id.* at 2-3.

9. *Id.* at 3.

10. *Id.*

11. CHINA INSTITUTE OF INTERNATIONAL AFFAIRS, CHINA AND THE UNITED NA-

ed to adjustment and settlement of international disputes, which should be achieved with due regard for principles of justice and international law. The Chinese government considered that a peace not based on law and justice would be an uneasy and unstable peace.

The second Chinese proposal was that the territorial integrity and political independence of a state should be safeguarded against aggression and that the principle should be subscribed to by each member state. The third point raised by the Chinese delegation was that the term "aggression" should be defined in the Charter of the United Nations. The fourth point presented by the Republic of China was a proposal for an international police force. The fifth proposal related to the codification of international law. The sixth proposal was the recognition of the compulsory jurisdiction of the International Court of Justice.

The final proposal was the emphasis on the importance of international cultural collaboration. The Republic of China believed that international peace depended on international understanding, which would best be promoted through cultural and educational cooperation among nations.

The first, fifth, and seventh Chinese proposals were accepted by the United States and the United Kingdom, and later by the Soviet Union. Other proposals were referred to the United Nations Conference on International Organization (UNCIO), which was to be convened at San Francisco in 1945.

On March 5, 1945, the Republic of China, the United States, the United Kingdom, and the Soviet Union, as sponsoring countries, invited forty-six countries to participate in the United Nations Conference on International Organization to be convened on April 25, 1945. At the plenary meeting held on June 26, 1945, the Charter of the United Nations was adopted. On October 24, 1945, the Charter entered into force upon the ratification by the Republic of China, the United States, the United Kingdom, the Soviet Union, and the majority of other participants to the San Francisco Conference. On January 10, 1946, the inauguration meeting of the United Nations was held in London.¹²

At the San Francisco Conference, the Republic of China made specific contributions to the adoption of the following provisions of the Charter:

- (1) Article 1. The Purposes of the United Nations are:
 1. . . . to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement

TIONS 31-33 (Manhattan Publishing Co. 1959) [hereinafter CHINA AND THE UNITED NATIONS].

12. GOODRICH ET AL., *supra* note 7, at 9.

of international disputes or situations which might lead to a breach of peace. [First Chinese proposal at Dumbarton Oaks Conversations.]

(2) Article 2.

4. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. . . . [Second Chinese proposal at Dumbarton Oaks Conversations.]

Article 13. The General Assembly shall initiate studies and make recommendations for the purpose of (a) . . . encouraging the progressive development of international law and its codification . . . [Fifth Chinese proposal at Dumbarton Oaks Conversations.]¹³

Although the fourth Chinese proposal at the Dumbarton Oaks Conversations on establishing an international police force was not adopted, the Charter provides something similar to that idea in Article 43, paragraph 1, which states that "All members of the United Nations . . . undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."¹⁴

The seventh Chinese proposal at the Dumbarton Oaks Conversations related to international cultural collaboration. At the San Francisco Conference, the Chinese delegation also supported the idea of international cooperation in the field of health.¹⁵ Therefore, Article 55 of the U.N. Charter provided that the United Nations "shall promote . . . solutions of international economic, social, health, and related problems; and international cultural and educational cooperation. . . ."¹⁶

The Republic of China also made special contributions to the Charter provision on establishing the international trusteeship system. At the Dumbarton Oaks Conversations, the Republic of China made a proposal for the establishment of an international territorial trusteeship commission, but no details were offered.¹⁷ At the San Francisco Conference, the Chinese delegation proposed an elaborate draft for an international trusteeship system.¹⁸ The most important aspect was that "independence," not just "self-government," should be one of the aims of the trusteeship.¹⁹ Therefore, Article 76 of the Charter provided that the basic objectives of the trusteeship system "shall be . . . to promote the politi-

13. U.N. CHARTER art. 13, ¶ 1.

14. U.N. CHARTER art. 43, ¶ 1.

15. CHINA AND THE UNITED NATIONS, *supra* note 11, at 53-54.

16. U.N. CHARTER art. 55, ¶ 1.

17. CHINA AND THE UNITED NATIONS, *supra* note 11, at 54.

18. *Id.* at 55-58.

19. *Id.* at 58.

cal, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence."²⁰

III. THE REPUBLIC OF CHINA IN THE UNITED NATIONS, 1946-1971

On December 25, 1946, the National Assembly of the Republic of China adopted the Constitution of the Republic of China, which in Article 141 specifically provided that the foreign policy of the Republic of China shall "respect treaties and the Charter of the United Nations."²¹ The Republic of China was the first country which provided in its Constitution that the United Nations Charter was the guiding principle of its foreign policy.

The Republic of China was a faithful member of the United Nations until it was unjustly deprived of its seat at the United Nations in 1971. It is not possible to give a detailed analysis of the Republic of China's participation in, and contribution to, the United Nations between 1946 and 1971. It is only necessary here to point out that when the United Nations General Assembly voted in 1971 to deprive the Republic of China of its seat in the United Nations, none of the countries that voted for that unjust resolution were able to provide any facts showing that the Republic of China consistently violated any principles of the United Nations Charter, a requirement under Article 6 of the Charter to justify the expulsion of a member.

On the contrary, many countries at that time defended the right of the Republic of China to maintain its seat at the United Nations on the ground that the Republic of China was a faithful member of the United Nations. Indeed, the representative of the United States specifically pointed out that the Republic of China was a member in good standing with no Charter violations and with a most constructive record.²² The representative of Japan stated that the Republic of China was one of the original founders of the United Nations in 1945 and that it had faithfully carried out its responsibilities and obligations under the Charter, consistently upholding the authority and prestige of the Organization.²³

Similarly, the representative of the Democratic Republic of the Congo emphasized that the Republic of China had always faithfully discharged its obligations, and that its conduct had remained beyond reproach in its relations with states.²⁴

20. U.N. CHARTER art. 76, ¶ 1.

21. YEARBOOK, *supra* note 1, at 702.

22. *UN Monthly Chronicle*, Vol. VIII, No. 10 (November 1971), p. 41.

23. *Id.* at 48.

24. *Id.* at 50.

IV. THE UNJUST GENERAL ASSEMBLY RESOLUTION 2758 (XXVI) ON THE CHINESE REPRESENTATION QUESTION

On October 26, 1971, the General Assembly of the United Nations adopted Resolution 2758 (XXVI)²⁵ to give the Chinese seat to the People's Republic of China and thus exclude the Republic of China from participation in the United Nations, despite the fact that many countries proposed that arrangements should be made for representation of both the Republic of China and the People's Republic of China in the United Nations.²⁶ Other specialized agencies of the United Nations, such as the World Health Organization, the International Civil Aviation Organization, and the Food and Agriculture Organization, soon took similar measures to exclude the Republic of China.²⁷ In 1980, the International Monetary Fund (April 17), the International Bank for Reconstruction and Development (World Bank) (May 15), the International Development Association (IDA), and the International Finance Corporation (IFC) also excluded the Republic of China.²⁸

The consequence of United Nations General Assembly Resolution 2758 (XXVI) was to deprive the Chinese people in the Taiwan area, then totalling 14 million and now totalling 21 million, of the right to participate in international activities sponsored by the United Nations and its specialized agencies.

Is this a just action? These Chinese people in Taiwan were excluded from participation in international activities not because they had done anything wrong, but because the People's Republic of China, which has never exercised effective control over Taiwan, demanded that the Republic of China be excluded. In the preamble of the Charter of the United Nations, it is stated that:

25. 1971 U.N.Y.B. 136 (1971).

26. On September 29, 1971, a proposed resolution to have both the People's Republic of China (with a permanent seat in the Security Council) and the Republic of China represented in the United Nations and its specialized agencies was submitted by 19 states, namely, Australia, Bolivia, Chad, Costa Rica, the Dominican Republic, Fiji, the Gambia, Haiti, Honduras, Japan, Lesotho, Liberia, Mauritius, New Zealand, the Philippines, Swaziland, Thailand, the United States, and Uruguay. With the adoption of the Resolution 2758 (XXVI) on October 26, 1971, this 19-power resolution was not put to vote. *See id.* at 128, 132.

27. *See id.* at 132-35; *Representation of China Within the United Nations System*, INTERNATIONAL LEGAL MATERIALS, Vol. XI, 561-70 (1972).

28. *See International Monetary Fund, China Admitted, Taiwan Removed*, FACTS ON FILE, Vol. 40, No. 2059, 302 C1 (April 25, 1980); *China, World Bank Membership Gained*, FACTS ON FILE, No. 2063, 389 C1 (May 23, 1980). The IDA and IFC are both affiliated agencies of the World Bank, so the ROC also lost its membership in both organizations.

We the people of the United Nations determined . . . to reaffirm faith in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . . have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Clearly, the exclusion of the Republic of China and its people from the United Nations and other specialized agencies is contrary to the spirit and letter of the Charter.

V. THE REPUBLIC OF CHINA AND THE UNITED NATIONS AFTER 1971

Despite the great injustice done to the Republic of China and its people by the October 26, 1971 General Assembly resolution 2758 (XXVI), which compelled the Republic of China to withdraw from the United Nations before that unjust resolution was put to a formal vote, the government and people of the Republic of China have never lost their faith in the Charter of the United Nations. On the day the United Nations General Assembly adopted that unjust resolution, the late President Chiang Kai-shek delivered a message to the Chinese people in Taiwan, in which he stated:

The Chinese cultural tradition is to uphold justice and love peace. Although we have withdrawn from the United Nations, which we helped establish, we shall continue to be guided by the purposes and principles of the United Nations Charter in the international community and shall continue to fight courageously for international truth and justice and for world peace and security.²⁹

The Republic of China, despite the fact that it has not been a member of the United Nations since 1971, has continued to support the activities and resolutions of the United Nations. Thus, on August 6, 1990, after the invasion of Kuwait by Iraq, the Security Council of the United Nations adopted Resolution 661³⁰ to impose economic sanctions against Iraq. The Republic of China soon issued an order to implement this resolution by suspending the issuance of export licenses to Iraq.³¹

On May 30, 1992, the Security Council of the United Nations

29. *Chung-hua Min-kuo Ch'u-hsi Lien-ho-kuo ta-hui ti erh-shih-liu-chieh ch'ang-hui tai-piao-t'uan pao-kao-shu* (Report of the Delegation of the Republic of China to the Twenty-sixth Session of the General Assembly of the United Nations), Taipei: compiled and published by the International Department of the Ministry of Foreign Affairs, April 1972, pp. 121 (Chinese), 124 (English).

30. FREDERIC L. KIRGIS, JR., *INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING* 645-46 (2d ed. 1993).

31. Public Notice of Mao (79) Fa No. 21592 of the Bureau of International Trade of the Ministry of Economic Affairs. (unpublished photocopy of documents, on file with *The John Marshall Law Review*).

adopted Resolution 757,³² imposing economic sanctions on Yugoslavia (Serbia and Montenegro) for its intervention in the Republic of Bosnia and Herzegovina. On November 16, 1992, the Security Council adopted Resolution 788³³ and on April 17, 1993 adopted Resolution 820³⁴ to strengthen its economic sanctions against Yugoslavia. On June 10, 1993, the Republic of China's Ministry of Communications issued an order prohibiting the entry of Yugoslavian ships to ports in the Republic of China.³⁵

In 1990, the Republic of China set up an International Disaster Relief Fund³⁶ to provide emergency aid to many countries; almost all of them are members of the United Nations.³⁷ It has also provided many developing countries, almost all of which are under United Nations technical assistance programs, with technical assistance and developmental funds. Thus, despite its exclusion from the participation of the United Nations and its specialized agencies, the Republic of China has continued to support activities of the United Nations and its specialized agencies.

VI. THE WORLD BEGINS TO PAY ATTENTION TO THE QUESTION OF THE REPUBLIC OF CHINA'S RIGHT TO PARTICIPATE IN THE UNITED NATIONS

The exclusion of the Republic of China has engendered great indignation among the 21 million Chinese people in Taiwan. They cannot believe or understand how an organization like the United Nations, with a principal goal of promoting the human rights of all people, can continue to disregard the basic human rights of the 21 million Chinese people in the Republic of China. Those 21 million people represent a population larger than that of two-thirds of the members of the United Nations.

Recently, this great injustice to the Republic of China has come to the attention of several states. Thus, on August 9, 1993, seven Central American states, Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama, requested the 48th Session of the General Assembly of the United Nations to include in its agenda a draft resolution for establishing an ad hoc committee "to analyze comprehensively all aspects of the excep-

32. KIRGIS, *supra* note 30, at 692-95.

33. *Id.* at 696-98.

34. U.N. Doc. S/RES/820 (April 17, 1993).

35. Letter of Chiao-han (82) No. 016274 to the port authorities of Keelung, Taichung, Hualien, Kaohsiung and Suao (unpublished manuscript, on file with *The John Marshall Law Review*).

36. See Ministry of Foreign Affairs, ed., *Tui-wai kuan-hsi yu wai-chiao hsing-cheng* (External relations and foreign affairs administration) (Report on Foreign Affairs), Taipei: Distributed by Chen-chung Book Co., December 1992, pp. 320-326.

37. For a list of countries receiving this relief fund, see *id.*, at 327-39.

tional situation" of the 21 million Chinese on Taiwan who are not represented in the United Nations, and to make appropriate recommendations.³⁸ In the explanatory memorandum attached to this draft resolution, it is noted that the ROC in Taiwan has adopted "the guidelines for national unification, which are consistent with the spirit of the Charter with regard to the peaceful settlement of disputes."³⁹ However, "[b]efore reunification can be achieved, the Republic of China in Taiwan must secure recognition of its international status, enabling it to participate in the United Nations, so that the interests of the 21 million Chinese in the territory under its jurisdiction can enjoy proper and effective representation."⁴⁰

The memorandum also pointed out that the "precedent set by the former East and West Germanys and by North Korea and South Korea, which became members of the United Nations, shows clearly that parallel membership in the United Nations neither prevents the unification of a nation nor implies international support for its permanent division."⁴¹ Moreover, the memorandum noted that both the Republic of China and "the People's Republic of China are members of the Asian Development Bank (ADB) and the Asia-Pacific Economic Cooperation Council (APEC), and both have observer status with the General Agreement on Tariffs and Trade (GATT), to which they are negotiating accession."⁴²

This explanatory memorandum takes appropriate consideration of the Chinese Communist regime's concern with the issues of unification and "two Chinas." Thus, it specifically mentions international governmental organizations, in which both the mainland and Taiwan are members (ADB and APEC) or observers (GATT), implying that this may be a possible model for Taiwan's participation in the United Nations under the principle of "one China."

On August 11, 1993, the Permanent Representative of the

38. "Request for the Inclusion of a Supplementary Item in the Agenda of the Forty-Eighth Session, Consideration of the Exceptional Situation of the Republic of China in Taiwan in the International Context, Based on the Principle of Universality and in Accordance with the Established Model of Parallel Representation of Divided Countries at the United Nations" (Letter dated August 6, 1993 from the representatives of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama to the United Nations addressed to the Secretary-General), U.N. Doc. A/48/191 (August 9, 1993), reprinted in CHINESE YEARBOOK, *supra* note 2, at 261-62, Explanatory Memorandum at 263-64, Draft Resolution at p. 265.

39. CHINESE YEARBOOK, *supra* note 2, at 264.

40. *Id.*

41. *Id.*

42. *Id.*

People's Republic of China to the United Nations sent a note⁴³ to the United Nations, opposing the inclusion of the seven countries' proposed resolution in the agenda of the 48th Session of the General Assembly. The note claimed that the Chinese representation question has long been settled, both politically and procedurally, by 1971 General Assembly Resolution 2758 (XXVI), and "parallel representation" is entirely out of the question.⁴⁴ It likens Taiwan's "attempt to 'return' to the United Nations . . . [as] actually trying to split China, obstruct and sabotage the great undertaking of China's reunification" and notes that "[this] attempt has been and will continue to be resolutely opposed by the entire Chinese people, *including people in Taiwan*, and is, therefore, doomed to failure."⁴⁵

The note's message that the people in Taiwan oppose the Republic of China's return to the United Nations is obviously contrary to fact. Moreover, this note ignores the main issue raised by the seven countries' proposed draft resolution, i.e., how to find an appropriate way to have the fundamental rights of 21 million Chinese in Taiwan properly represented in the United Nations.

Article 55 of the United Nations Charter provides:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of the people, the United Nations shall promote: . . .
c. universal respect for, and observance of, human rights and fundamental freedoms for all *without distinction as to race, sex, language, or religion*.⁴⁶

Article 56 provides that all members "pledge themselves to take joint and separate action in co-operation with the [United Nations] for the achievement of the purposes set forth in Article 55." Can we say that the continual denial of the fundamental rights of the 21 million Chinese in Taiwan to be represented in the United Nations is consistent with the above-cited principles provided in Article 55 of the United Nations Charter?

VII. CONCLUSION

Based on my analysis, I must say, by any standard of international law, moral principles, and common sense, the exclusion of the Republic of China and its 21 million people from participation in the United Nations and its specialized agencies is one of the greatest injustices in the world today. To conclude, I would

43. U.N. Doc. A/48/306 (August 11, 1993).

44. *Id.* at 1.

45. *Id.* at 2 (emphasis added).

46. U.N. CHARTER art. 55, ¶ 1 (emphasis added).

like to quote excerpts from a speech delivered by Premier Lien Chan of the Republic of China on September 2, 1993 at the 30th Anniversary meeting of the Chinese National Press Council in Taipei:

[I]n the 22 years since we were excluded from the United Nations, the 21 million citizens in the Taiwan area have been seriously discriminated against and their dignity and basic rights to participate in political, economic, and cultural activities in the international community have been violated. This is a very immoral, unfair, and unreasonable situation. If the United Nations really values human rights, it must not continue to just sit by and watch. The United Nations should prove its esteem for human rights by promptly taking action to correct the situation. . . . Members of the United Nations must realize that while the United Nations Assembly, in its 1971 resolution, accepted the Chinese communist authorities and barred us from its organizations, the United Nations, nevertheless, ignored the fact that the Chinese communists cannot and are not entitled to represent the 21 million people in the Republic of China on Taiwan. We are not represented in the United Nations today. Nor do we have anyone who can stand up for our rights or promise to take on our responsibilities. Is it normal for such an important international intergovernmental organization to ignore the existence of our 21 million people? Is it normal for our children, women, aged, and handicapped to be excluded from United Nations activities and deprived of their rights and the benefits which their counterparts in other countries around the world enjoy? Is it normal for our police to be deprived of full international cooperation in their mission to crack down on international crimes and drug trafficking?⁴⁷

Premier Lien Chan reminded the world of the great injustice of the ROC's exclusion from the United Nations. It is time to right this wrong.

47. Lien Chan, *Let the Cry for Justice Reach Far and Wide!* (Remarks on the 30th Anniversary of the National Press Council [September 2, 1993]), Taipei: Government Information Office, September 1993, at 6-7.

