In 1949 the civil war in China concluded as a matter of fact with the complete control of mainland by the armies of the Communist Party, which established the People’s Republic (PRC). The nationalist army made itself strong in the island of Taiwan—a territory largely inhabited by the Hakka and Fulkien Taiwanese which had been under Japanese rule until 1945, where it established the Republic of China. The division of China became one of the pivots of Cold War politics. During the Cold War both governments claimed to be the legitimate China. The recognition of the PRC by a majority of the international community after 1971, when it also took over the ROC’s seat in the United Nations, and the establishment of democracy in Taiwan in 1988, gave a new dimension to the conflict, as a pro-independence movement transformed the political discourse in the island and began to redefine its international claims. The PRC, which remains a one-party state, has also made a paramount principle of the one-China concept, and it threatens to use force against Taiwan if it proclaims independence. After
the victory of the independence party in the Taiwanese elections of March 2000, the new government in Taipei might accordingly terminate the Republic’s official commitment to one-China. Is there a question of Taiwan in international law? Does Taiwan have a right of independence? Does the PRC government on the contrary have a right to maintain the unity of China? Can Beijing adopt any policy, including the use of force, to assert such a right (assuming it has it)? May Taipei and Beijing have other stronger international obligations than those related to their respective interests in the dispute? Is there an obligation to self-government, or to democracy, under international law, which may bind both parties to the conflict in order to achieve a just and peaceful settlement of the conflict? What are the interests and the obligations of the international community in this conflict?

THE ROC RETURNS TAIWAN

In the presidential elections of March 18, 2000, with a turnover of near 83 percent, a plural majority of the people of Taiwan decided to elect the candidates of the Democratic Progressive Party, Chen Shui-bian and Annette Lu, over their rivals of the Independent and Kuomintang parties [1]. In his victory speech that same day, Chen proclaimed that “Taiwan provided a model for the third wave of the global democratic process”, that his government “will use Taiwan’s experience to promote democracy and safeguard human rights in the international community”, and that for the sake of peace and stability in the Taiwan Strait, “the common expectation of the people of both sides”, he was willing to enter immediate negotiations with Beijing, to reach a “peace agreement [and] a military mutual-confidence-building mechanism” [2]. Later on, Chen reiterated he favored a constructive dialogue with the People’s Republic, but he also rejected the “one country, two systems” as unacceptable, and the Hong Kong and Macau processes as inapplicable to Taiwan, which was to “insist on its independent sovereignty”. And he proclaimed: “this is our mission, we are determined to safeguard this land” [3]. Though an integral component of the party’s program, independent sovereignty, as a goal, was now heading for further adjustments to the imperatives of actual governance under specific material constraints. This is hardly surprising. However, any changes proposed in the party’s stance on independence have to be approved by a qualified majority of the party members, largely committed to a sovereign Taiwan, at the forthcoming party congress. It is unlikely the changes be different than simply reflecting the need for a more complex approach to the ultimate goal of independence. There might be a stronger emphasis on the requirement of democracy in Mainland. Overall, the mood among the independentists ranks is dominated by the perception that the break down of the KMT hegemony is also the beginning of the end of the historical Chinese links, and of the near-absolute dependence on the American connection. There is a widespread feeling that the time
has come for furthering the Taiwanization of the political system of the island, and for taking more distance with respect to Chinese identity issues. The precise policy stance of the plural pro-independence forces which are going to dominate Taiwan’s politics remains to be determined, but an air of realignments and constitutional reforms aimed at the establishment of sovereign statehood is pervasive. Perhaps only a convincing move toward democratic changes in the People’s Republic could imprint a different direction in the historical trend of Taiwan [4].

BEIJING, THE OLD ONE-CHINA

In its first reaction to the elections outcome, Beijing restated it was never going to allow Taiwan’s independence and that there was only one China of which Taiwan was an inseparable part, though it declared to be open to dialogue with the new leadership [5]. In the months before Taiwan’s elections, perhaps as far back as the Kosovo crisis [6], which had compounded with the Falun Gong’s peaceful, yet system-shocking, Taoist insurgency [7], Beijing had pursued a four-fold approach to the overall situation: a nationalist, pro-state sovereignty shift in its international security policy stance; a sustained military buildup at all levels of its defense posture and systems, with an ongoing concentration of personnel and firepower across the Taiwan Strait [8]; an incremental, gradually accelerated strengthening of the political and legal state control mechanisms, including a reinforcement of the communist party’s role along ideological and organizational lines [9]; and a coherent, widespread, persistent public diplomacy effort related to those three aspects of its approach, though specifically aimed in the Winter 2000, at exercising as much leverage as possible on the outcome of Taiwan’s elections, the key message being that a vote on March 18 for Chen Shui-bian could mean war [10].

Less than a month before the elections, on February 21, Beijing had issued a restatement of its position on the one-China principle and the Taiwan issue [11]. The document, consistent with the style of Beijing’s official political literature, is repeating and doctrinaire, but it is an authoritative statement of the People’s Republic policy stance on this crucial matter. A careful understanding of its main contents and propositions is necessary in order to identify and organize the core issues on a subject where there is no substantial body of accumulated research. In the introduction on the “origin of the Taiwan issue”, the new White Paper specifies that “the struggle between the Chinese government and the separatist forces headed by Lee Teng-hui finds its concentrated expression in the question of whether to persevere in the One-China Principle or to create ‘two Chinas’ or ‘One-China, one Taiwan’” [12]. It goes on next on the de facto and de jure basis for one China. The argument here is that, upon the surrender of Japan, which had occupied Taiwan since 1895, “the Chinese government recovered Taiwan,
resuming the exercise of sovereignty” over it; and that, when four years later, on October 1949, the government of the People’s Republic was proclaimed in Beijing, it replaced that of the Republic of China “to become the only legal government of the whole of China and its sole legal representative in the international arena”. The successful establishment of the revolutionary government would thus have brought “the historical status of the Republic of China to an end”. The “replacement of the old regime by a new one” entailed a transfer in China’s sovereignty, “including its sovereignty over Taiwan” [13]. The new Central People’s Government had then “telegraphed the United Nations announcing that the KMT authorities had no right to represent China at all” any longer, and that the government of the PRC had to be recognized “as the sole legitimate government representing the whole of China”, which also required to “sever or refrain from establishing diplomatic relations with the Taiwan authorities” [14]. But that recognition did not come until twenty-two years later, when, on October 1971, the U. N. General Assembly adopted Resolution 2758 (XXVI), “which expelled the representatives of the Taiwan authorities and restored the seat and all the lawful rights of the government of the PRC in the United Nations” [15].

Turning then to the basis for achieving peaceful reunification under the “one-China principle”, the document focuses on the ‘one country, two systems’ concept, a follow-up of Deng Xiaoping 1979’s initiative, with three main propositions: mainland China and Taiwan would keep their different political and economic systems after reunification; Taiwan would “enjoy a high degree of autonomy”, without mainland’s military or administrative personnel stationed in it; and the settlement of the Taiwan issue would remain an “internal affair of China, which should be achieved by the Chinese themselves” [16]. However, to “safeguard China’s sovereignty and territorial integrity and realize the reunification of the two sides of the Straits, the Chinese government has the right to resort to any necessary means” [17].

The government of the People’s Republic has championed the one-China principle, waging a “resolute struggle” against the “separatist activities” of the Taiwan authorities under Lee Teng-hui. Nevertheless, the “situation in the Taiwan Strait” remains so critical that the Chinese government may be compelled “to adopt all drastic measures possible, including the use of force” [18]. Three core aspects must be taken into account to transform cross-Strait relations in light of the one-China principle, according to the Paper: the status of Taiwan, the compatibility of the “one-China principle” with any of Taiwan’s concerns (other than independence), and the question of democracy. On the status of Taiwan, the departing premise is that the persistence of non-reunification “has not imbued Taiwan with a status and rights” of its own under international law, for three reasons: first, “under both domestic and international laws Taiwan’s legal status as a part of Chinese territory is unequivocal”; second, people’s “sovereignty over Taiwan belongs to all the Chinese people, and not to some of the people in Taiwan”; and third, since “at no time in history has Taiwan been a state in its
own right, the issue of national self-determination, therefore, does not exist” [19]. On the compatibility of one-China with Taiwan’s concerns, the document declares without much elaboration that “any question can be discussed, including the various issues which are of concern to the Taiwan side”, for as long as it is within the one-China framework [20]. Finally, on the question of democracy, the document contends it has become “an excuse for postponing and resisting reunification, as well as a scheme to deceive compatriots in Taiwan and world opinion”. Whereas the Chinese government “is prepared to apply a looser form of the ‘one country, two systems policy’ in Taiwan than in Hong Kong and Macao”, it would be “unreasonable and undemocratic for the Taiwan authorities to force the more than 1.2 billion people living in on the Chinese mainland to practise the political and economic systems in Taiwan” [21].

There are also basic implications of the one-China principle in the international community, a restatement as well of Beijing’s already established positions in this respect: Taiwan is not eligible for membership into public international, or governmental, organizations; United Nations members must abide by their obligations under the Charter, “including mutual respect for sovereignty and territorial integrity and non-interference in each other’s internal affairs, and never, in any form, support Taiwan’s joining the U. N.”, nor “provide arms to or enter into military alliance with Taiwan; United States must remain committed to a one-China policy, end “its sale of advanced arms and military equipment to Taiwan”, and drop legislative and defense initiatives which are “obstructing the peaceful reunification of China and jeopardizing the peace and stability of the Asia-Pacific region and the world at large”. The government of China, however, “has no objection to Taiwan’s non-governmental economic and cultural contacts with foreign countries”, and it “safeguards all the justified and lawful rights and interests of Taiwan compatriots abroad” [22].

**WHAT A NEW ONE CHINA WOULD BE LIKE**

Responses to Beijing’s Paper by both the Mainland Affairs Council, and the Ministry of Foreign Affairs, of the Republic of China, did not take long to follow. In its statement of response to Beijing, of February 22, the Ministry sticks to a well-established line: “that the two sides of the Taiwan Strait have been ruled by separate governments since 1949”, and that “Taiwan is therefore entirely justified in promoting its own diplomacy as this is nothing but the fulfillment of its duty towards the development of the 22 million people of Taiwan and the safeguarding of its existence” [23]. A line of thinking on the subject, perhaps with a stronger tone, also emphasized by the ROC’s Mainland Affairs Council that same day: “Since 1949, Taiwan and the Chinese mainland have been governed separately, with neither side subordinate to the other. The Chinese mainland authorities have never ruled Taiwan,” how could they possibly be sovereign over
Taiwan? China is now divided, like in the last half-century, and both sides have “different definitions of one China”. That is why, the Council goes on, Taipei and Beijing agreed in 1992 on that “each side is entitled to its respective interpretation of one China” [24].

Yet Taiwan’s approach and policy stance on both its own status concept and its relations with Mainland China, do not make easier either the task of defining the fundamental questions of international law at stake in the conflict. Part of the problem stems from the fact that throughout its history after 1949, as Republic of China under the rule of the Kuomintang, the conflict was caused not by a question of identity but by one of legitimacy in the representation of China as a whole. Democratic opposition during the 38 years of martial law under the KMT rule was conducted, mainly but not only, by native Taiwanese nationalists, who tend to construe the establishment of democracy in the island from 1988 on as a devolution of the sovereign prerogative, usurped by the leftover of the Chinese nationalist army after its defeat by the PLA in mainland China [25]. But the hypothetical right of self-determination of native Taiwan is only one aspect, and probably not quite the most decisive, of the international legal complexion of the conflict. A decisive aspect in terms of positive international law remains the title to China, as demonstrated by the defining role of the Guidelines for National Unification in Taiwan’s metaconstitutional architecture and international design. President-elect Chen Shui-bian has won the elections of March 2000, rallying almost 40 percent of the vote around a pro-independence platform, which the DPP has championed since 1986: but so far he has disregarded the logical move to modify or simply abolish the Guidelines [26]. National unification is “the common responsibility of all Chinese people”, and it is a direct corollary of the Guidelines’ first principle, that “both the mainland and Taiwan are parts of Chinese territory”.

Yes, but unification, in the design of the Guidelines, is not an end by itself. Unification is an instrument, not of an abstract concept of Chinese sovereignty, but for the establishment of “a democratic, free and equitably prosperous China”, and for “safeguarding human dignity, guaranteeing fundamental human rights, and practising the rule of law”. Indeed, the fundamental idea, explicited in the Guidelines’ Foreword, is to “build a new China” over the basis of democracy and freedom. The Guidelines in this light open a different perspective of the conflict and its settlement with two relevant propositions for purposes of international legal analysis: that unification is not a merger nor an annexation, but the result of a process of simultaneous dissolution of the existing entities and an act of political constitution, and that the bases of both the process and the outcome is the democratic consent of the peoples of the larger China. An aspect, this latter, which contrasts with the conventional notion, somewhat espoused by Beijing and the most nationalist Taiwanese segment, that the sovereign prerogative can be exercised separately by each of the respective peoples, if with consequences for both of them. The idea of one China, which seemed instrumental for Beijing’s framework of annexation, or
even incorporation, acquires a different dimension in this perspective, a dimension which conveys three normative, but common sense, propositions: first, one-China can be construed not as a function of power relations but of principle prevalence, and that principle is two-fold: self-government via democracy and equal justice under the rule of law; second, one-China is based not on territorial control but upon the wide, historical and cultural elements of community and the bonds of common heritage and purpose [obviously this touches a sensitive fiber in Beijing’s overall texture, and at the same time compels to reconsider the problem of the historical Chinese heritage in terms of the rather extraneous communist culture]; and third, it returns the center of gravity of the conflict where it historically and politically belongs, which is not the question of Taiwan but the question of China [27]: the fact that the end of the hostilities of the civil war, in 1949, left in place two sovereign governments in China, one in the continental China (mainland), and the other in the island of Taiwan; that these two governments rule on two different and separate political systems, the system of the People’s Republic in mainland China, and the system of the Republic of China in Taiwan; and that during the fifty years to the present both governments have claimed, and do still officially claim to be the legitimate government of the whole of China [28].

The controversy between the authorities of Taipei and Beijing, apparently bound to enter into a new phase after the elections in Taiwan, is couched in a terminology fraught with ellipses, indirects, and hidden meanings. Perhaps this may be due to the fact that, in the last resort, both governments are trying to find somewhat, through words and agreements, a way out of the historical impasse of a civil war, which could not be ended by the force of arms, and that remains un concluded. Viewed in this narrow perspective, it might be of relevance and utility today to reexamine the mediation efforts of the United States, through the mission of General Marshall in the period 1945-1947 [29] I will be back on some of these questions later in this note, but want to recapitulate first on some difficulties in the setout of the controversy, before identifying the three types of international law issues which are at stake in this conflict.

The first technical, or conceptual, difficulty concerns the relationship between succession to legal rights and revolutionary change of government, particularly when: a) international acts of the nationalist government [such as the 1941 Declaration of War against Japan, the 1943 Cairo Declaration [30], and the 1945 Potsdam Proclamation [31], are treated as sources of the titles claimed by the communist government, yet b) the nationalist government, not only does not cease to exist as an operating reality – which would be the case had its persistence be one as a government in exile–, but remains a territorial, and thus a population, reality. Consider in this light a situation in which the 1911 Republic would have prevailed in the whole of Mainland China but the Imperial government had remained effective in Taiwan. The question here is whether, under the conditions of territorial persistence by both governments, the control of the larger portion of the territory by one of them amounts to a transfer of sovereignty on all
of the territory: though the discussion on that question is bound to have a dominant interpretive element if, as a matter of fact, the sovereign prerogative remains in effect and separate for both governments.

A second conceptual difficulty lies in the binding force, or force of material evidence, which the government of the People's Republic confers on its own declarations of policy, intent, or principle. Beijing construes its own insistence over time on that there is only one China and Taiwan is part of it as a normative act which generates two types of obligations, one of contents and the other of forms, and opposable both to Taiwan and the international community, namely: that the one China is the PRC, and that it so has to be recognized by every other state. We are here thus confronted with two serious problems out of this second difficulty. One is the misunderstanding of the relationships between unilateral acts and the sources of international obligations [32], an issue which takes the controversy into the larger and deeper context of Beijing’s approach to and practice of international law [33], and its effects upon this conflict. The other is the chilling effect that such an interpretation of the sources of international obligations has on the prospects of a peaceful settlement of the conflict: in projecting the normativity of its own acts upon the others, instead of simply on itself, Beijing generates a dynamics of coercion which is contrary to common principles and general assumptions on the conditions of peaceful settlement. The idea that “the Chinese government has the right to resort to any necessary means”, including the use of force, is a corollary of its unilateralist interpretation of international law. Yet at the same time it is a position very difficult to reconcile with the PRC’s contention that the conflict is exclusively an internal matter, since the military confrontation caused by the exercise of such a “right” would surely drag the international community into the conflict.

THREE CLAIMS, ONE OVERRIDING INTEREST

The PRC’s interpretation of its conflict with Taiwan, as it is restated in the White Paper of February 21, 2000, shows also that there are at stake substantial differences on the interpretation of its dispute in international law, and on the concept of international law generally, certainly between China and Taiwan now, and probably between China and a majority of all the other member states of the United Nations. However, whereas the differences on the concept of international law between China and the majority of the international community may have a fairly demonstrable historical pedigree [34], those between Beijing and Taipei, specifically on the applicable international law which may substantiate their claims, appear to be at least of two types, which I identify for the time being as historical and new world order types of differences, depending on the nature of the issues underlying their claims. The former concern rights and obligations of states, such as those affecting the conditions of statehood, the practice and the effects of
recognition, succession, and acquisition and lost of territorial sovereignty [35]. The latter focus instead primarily on rights of peoples, such as self-determination, the protection of fundamental freedoms and civil liberties, equality under the law, and self-government or democracy [36]. Both types of differences and issues have respectively marked also the trajectory of the conflict: state status and rights issues, during the Chinese phase, dominated by the questions of entitlement to represent the legitimate China and its international recognition; and people’s rights issues, in the Taiwanese phase, centered on the question of independence.

There is a significant amount of overlap between these two types of differences and issues, particularly during the latter, rather ambiguous and imprecisely defined Taiwanese phase of the dispute, which is somewhat the dominant now. The main reason for this overlap is the existence of a third type of issues, which do not arise as such from the claims and the underlying interests of the parties to the conflict, the People’s Republic and the Republic of China, but from interests of direct relevance for the international community. The third type of issues, which may be identified for now as international community-based, is fundamentally and simply concerned with the problem of peace and security in the Taiwan Strait, in the region and worldwide, to the extent it may be affected. And there are a number of convincing estimates as to that an armed conflict in the Taiwan Strait would have devastating consequences for the world economy and for the peace of the region, and create also an extremely dangerous situation for world peace at large: even in the doubtful scenario it were to remain limited to China and Taiwan, and to last only like, say, NATO’s intervention in Yugoslavia over Kosovo in the Spring of 1999, or Russia’s campaign in Chechnya in the Winter of 2000. International community-based interests in relation to this dispute are therefore overriding. And so are its responsibilities too, which affect all and every one of the U. N. members, and especially the major powers, within and outside the Security Council, the normative bases for which seem unequivocal in the Charter and general international law [37].

A second reason for the overlap between the historical and the new world order international law issues at stake in the conflict lies in its juridical and legal indeterminacy. Obviously, neither Taipei nor Beijing have ever made any move indicating they were interested in a juridical settlement of their differences, that is, through some form of international judicial or arbitration procedure. Moreover, their approach to the international legal basis of their claims has been vague and contradictory. Beijing for instance has repeatedly contended its axiomatic postulates were backed by principles of international law: that there is only one China, that China is the People’s Republic, and Taiwan is an absolutely inseparable part of it. Taipei was forced to change course, wisely, due to the new international conditions, and above all because of its own peaceful democratic revolution. Thus, from being the legitimate China it moved to acknowledge there were two concepts of China. But it has formally
remained China, even amidst a growing but unofficial demand for Taiwan, which has now reached the government. Whereas it would appear to meet the conditions for statehood, it is not a separate state because it formally claims to be part of China [38]. This observation appears to concern an exclusively formal aspect of the situation: whether the issues and the claims are well defined in terms of international law. Yet the absence of legal determinacy induces uncertainty about the nature of the stakes, as it prevents a precise answer to whether there is a Taiwan question in international law, and what is it exactly, which does not allow for the establishment of an optimal policy framework.

International law is the system of rules governing the relations among states and providing the common principles for humankind. The extent to which the common principles of humankind can be construed in autonomy with respect to, or even with supremacy over, the interests and conditions of interstate relations, is a subject which requires ascertainment on case-by-case basis [39]. A growing consensus is taking place, however, as to that there are internationally protected interests which affect interstate relations and limit the scope of sovereign rights. The international community has made determinations of this kind for its interventions in a number of cases these years, in Kosovo, Bosnia, Haiti, though it is true that not without strong controversy in relation to some of them. In all those and comparable cases, the questions of international law which were at stake blended interests concerning peoples rights, such as the prohibition of genocide and the right to democracy, with interests concerning states rights and rights of the interstate system at large, such as international peace and security.

Against such a background, here are the preliminary conclusions concerning the status of the three types of issues at stake, which I address with greater detail in the follow-up parts of this article.

First, the historical international law issues between China and Taiwan, related to state rights, present generally political questions, which are determined by international practice. There is no established right or obligation to recognize. Recognition may have constitutive and declaratory functions, but none has absolute control over international practice or its effects. There is no specific international law question in this respect. Nor for that matter the present configuration of international recognition will be determinant of the long-range standing of the PRC or the Republic of China in the interstate system.

Second, the new world international law issues, such as the rights of self-determination and independence, are also political questions, for as long as they are not explicitly construed as contradictions of positive international legal interests. To get there, there must be both declarations of principle and assertions of right. Generally, however, there is no compelling principle which could prevent such an assertion of independent
sovereignty, if all other material conditions of statehood are demonstrably satisfied.

Third, international law issues based on international community interests are established unequivocally in the legal and juridical texture of the law. That shapes the nature of the question of Taiwan as a question which concerns primarily at this time the law of peace and security –especially in the context of the indeterminacy of the second type of issues and given the political nature of the rights inter partes at stake in relation to the first type of issues. Moreover, for as long as it remains a situation likely to endanger international peace and security, the rights related to the first and second type of issues must be construed in light of the universal obligation to preserve peace. As things stand now, this obligation is in the first place demandable from the party which is threatening to use force. But it is also opposable to the international community, and the Security Council, in order to exercise the necessary preventive measures. Such an obligation however is no static and it also demands from the parties and the international community the adequate action to achieve a just and final settlement of the dispute, which requires to take into account the interests, fairly and freely manifested, of the peoples of Mainland China and of the island of Taiwan. This appears to be also the most adequate framework for an effective foreign policy on the conflict.

NOTES

1. Government Information Office, Presidential Election Updates. The final count of the vote gave the DPP (Chen Shui-bian) 39%, the independents (James Soong) 37%, and the


7. On April 26, 1999, some 10,000 people staged a surprise demonstration across the
State Council (China’s government cabinet) headquarters, near the Forbidden City in Beijing, which was followed by a massive, systematic crackdown by the government. See Chinese fight for right to meditate, BBC News, April 26, 1999; Hewitt, China’s perplexing crackdown, BBC News, November 21, 1999; General jailed for Falun Gong links, BBC News, January 14, 2000; Security clamp on Falun Gong, BBC News, April 24, 2000.

8. The new fiscal year came with a record increase of over 12% (more than $14 bn) in the defense budget for 2000-2001, as announced early in March 2000 by Xiang Huaicheng, the Finance Minister; see, China ups military spending, BBC News, March 6, 2000; Marcus, Analysis: China’s military thinks long-term, BBC News, March 6, 2000. China’s official data on defense expenditure shows an 80% increase in the period 1989-1998; see The SIPRI Military Expenditure Database, Military Expenditure in China 1989-98 [at <http://first.sipri.org:7020/milex_retrieve>].


13. Id., at 3. The White Paper turns somewhat cryptic here, in stating that “this is a replacement of the old regime by a new one in a situation where the main bodies of the same international laws have not changed and China” sovereignty and inherent territory have not changed therefrom”.


15. Id., at 4. UNGAR 2758 (XXVI) was adopted by 76 votes in favor, 35 against, and 17 abstentions, on a draft introduced by Albania and 20 other states, over the opposition of the United States, and without a formal recommendation of the Security Council, as required by Article 4(2) of the U. N. Charter. See Tanner, U. N. seats Peking and expels Taipei, The New York Times, October 26, 1971. The resolution decided “to restore all its
rights to the People’s Republic of China and to recognize the representatives of its government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the U. N. and in all the organizations related to it”. Id., para. 3. The resolution declared nothing, however, concerning the status of Taiwan in relation to the PRC’s sovereignty claims. See U. N. Report, *Representation of the People’s Republic of China within the Organizations of the United Nations System*, XI International Legal Materials 3, 561 (May 1972).


17. Id., at 6.

18. Id., at 8-11.

19. Id., at 12. The document rejects also in this part any comparison with the ‘two German states formula’, on the grounds this was the result of a partition imposed by the conditions of foreign occupation, in the context of the “confrontation between the United States and the Soviet Union”. Id., at 12-13.


22. Id., at 15-16.

23. *Statement of the Ministry of Foreign Affairs of the Republic of China responding to the PRC white paper of February 21*, TDP, supra n. 28 [at <http://newtaiwan.virtualave.net/mofa01.htm>]. A problem for establishing the true nature of the claims in this case is that the pressure exercised upon the Taiwanese authorities, and generally the Taiwanese people, both by Beijing and its various partners, especially trade partners, in the Asia-Pacific region, and by Taiwan’s official main ally, the U. S., have a negative effect upon Taipei’s capacity for expressing truthfully its perceptions and claims.


27. For an early statement of the question of China, see the confidential Memorandum of the U. N. Secretary-General, “concerning the problem of recognition raised by the claim of the Communist government to represent China in the organs of the United Nations”, transmitted to the President of the Security Council in a letter of March 8, 1950, partially reprinted in Quincy Wright, *Some Thoughts About Recognition*, 44 AJIL 3 at 548-549 (1950).

28. In order to clarify the 1991 Guidelines, the ROC’s National Unification Council issued on August 1, 1992, the document *The Meaning of “One-China”*, stating Taipei’s recognition of two concepts of China, PRC’s and ROC’s. and its position that, nevertheless, China is as a matter of fact divided, and neither of those two entities has any jurisdiction over the other. Therefore, the ROC government encourages “the mainland authorities [to] adopt a pragmatic attitude, set aside prejudices, and cooperate [] toward the building of a free, democratic and prosperous China”. The document also includes the rather cryptic statement, in this context, that “Taiwan is part of China, and the Chinese mainland is part of China as well”, which may be construed by some at least as that, given that there are two practical concepts of china, and two sovereign entities claiming to be China, neither is actually China, and if any one-China is ever going to emerge out of this situation, it will be trough the joint dissolution of the two entities. See <http://www.gio.gov.tw/info/mainland/index1.html>.


32. [the doctrine of estoppel in its application to divided states with separate, effective governments]

33. See Chiu, *Communist China’s Attitude Toward International Law*, 60 AJIL 2, 245 (April 1966); Id., *Chinese Views of the Sources of International Law*, Occasional Papers / Reprints Series in Contemporary Asian Studies, No. 2 (University of Maryland School of Law, 1988).

34. See Chiu, *Communist China’s Attitude*, and *Chinese Views*, supra n.311. In this latter material, however, the author documents the significant evolution experienced in China’s concepts of international law, generally from the Maoist period, 1949-1976, to the post-Maoist, *Deng period*, after 1978. For the official approach to international law, see *China’s Work on Treaty Law*, Ministry of Foreign Affairs, Policy, PRC; at <http://www.fmprc.gov.cn/english/dhtml>.

35. There is no integrated body of rules on the conditions of statehood. But see the 1949 Draft Declaration on Rights and Duties of States, 1961 Convention on Diplomatic Relations, 1969 Convention on the Law of Treaties, and 1978 Convention on Succession of States in respect of Treaties, International Law Commission, at <http://www.un.org/law/ilc/convents.htm>. The U. N. Charter constitutes the most general code on the rights and obligations of states. Article 2(1), which provides for the right of sovereign equality, must be construed in light of the obligations in Article 2(3), requiring that members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, and Article 2(4), prohibiting the threat or use of force against the purposes of the United Nations.


37. U. N. Charter, Articles 1(1), 103.


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