



TAIWAN'S FOREIGN OFFICES OF REPRESENTATIVES

STATEHOOD AND INTERNATIONAL RECOGNITION



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“每一次外交都是用其他手段延续战争。”

"Every diplomacy is a continuation of war by other means."

Zhou Enlai.

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Abbreviations:

- CCP: Chinese Communist Party.
- MC: Montevideo convention, 1933.
- RC: Republic of China (Taiwan/Taipei).
- PRC: Peoples's Republic of China (Mainland China).
- FOR: Foreign Offices of Representatives.
- FORIN: Foreign Offices of Representatives in Taiwan.
- KMT: Kuomintang (nationalist party of China/Taiwan).
- UNSC: United Nations Security Council.
- VCCR: Vienna Convention on Consular Relations, 1963.
- VCDR: Vienna Convention on Diplomatic Relations, 1961.

1. Introduction

Taiwan is the biggest geopolitical and legal conundrum of our time. Being the main chess piece disputed between both great powers in their lust for global supremacy, a plethora of narratives surround the possible status of Formosa. In a world in which international law can be either a tool for peace or a possible *casus belli*, the correct and scientific use of the law is of the utmost importance. Addressing this, one of the bigger legal disagreements when debating Taiwan's possible Statehood are the offices of representatives that Taiwan has in over 50 countries. This fact is usually cited by the press and politicians as a justification for Taiwan's Statehood. Therefore, the legal questions that must be asked are, do the Taiwanese offices of representatives represent proof of Statehood by themselves according to international law? And could they be a form of tacit international recognition on their own? To respond to these questions, first one will explore the geopolitical and historical context in which they subsist, afterwards, one will establish a legal framework that may be used as a basis for the analysis of the offices of representatives, lastly, one will seek to apply this framework to extract conclusions that may serve as answers to our questions.

1.1. Historical context.

The island of Taiwan (called Formosa by the Europeans) is located to the southeast of China, in an important straight that has its same name and connects the South China Sea and the East China Sea. There was a notable Dutch colony on the island, that served as a base for trading operations in Japan and China for the notable Dutch East India Company (beginnings of the XVII century). At the same time, Spain tried to install a colony of their own but to no avail.¹

The Dutch-influenced the island greatly, and it is impossible to understand modern Taiwan without analyzing some of the main changes that they brought. First, they build a large amount of infrastructure to connect the island and further their needs, also, they built a lot of churches and schools that served to influence the local tribes and even today there's a large Christian minority on the island and its Han religious practices are visibly influenced by the biblical faith. But most notably of all, the Dutch had a colonization policy, that tried to invite Han Chinese settlers to the more fertile parts of the island so that they could be much more productive.² This policy started the Chinese colonization of the island marking

¹ Andrade, T. (2005). Pirates, Pelts, and Promises: The Sino-Dutch Colony of Seventeenth-Century Taiwan and the Aboriginal Village of Favorolang. *The Journal of Asian Studies*, 64(2), 295–321.
<http://www.jstor.org/stable/25075752>

the prelude of the almost extinction of the indigenous Taiwanese, which nowadays only number around half a million people.²

Even if it was influential, the Dutch control of Taiwan only lasted about half a century. In the year 1662, they were expelled from the island by what will probably sound familiar. A Chinese faction loyal to the Ming dynasty fled to the island during a civil war to escape from the usurping faction that wanted their heads. They established their own kingdom on the island, the Zheng Kingdom, and marked the beginning of the integration process between Taiwan and the rest of China. Fast forward two centuries, there's already a full Chinese Taiwan, where the island became more and more integrated with the mainland and the Han population became dominant.² And then came the Japanese occupation. It lasted from 1895 to 1945 (it was ceded by the Qing empire before the second World War) and it became the most gruesome episode in Taiwan's history. The Japanese believed the indigenous peoples to be salvages and dangerous because of their refusal to accept Japanese imperial rule over their tribes. And they viewed some of their practices (like the raids on villages, the display of human heads, or the shooting of arrows to prisoners) as backward. The result was a campaign that could only be described as genocidal. By the end of their rule, most indigenous peoples were either dead or integrated into the Han or Japanese.³

As said, their rule ended with the end of the war, and it was in practice occupied by the Chinese nationalistic government in September 1945. Although formally only ceded to China in the Treaty of San Francisco, that resolved the Pacific theatre, where Japan in its article 2. *b) Japan renounces all right, title and claim to Formosa and the Pescadores.*⁴ It is important to recall that China was in the midst of a civil war between the central government and several warlords that occupied a big part of the country. One of these warlords was Mao Zedong, the famous Chinese dictator that was leading the communists. At the time when Taiwan was ceded the central government was still powerful enough to be able to take control of the island. As the war dragged on, and the communists slowly but surely took control of the country, the Kuomintang (the Chinese Nationalist Party, KMT for short) fled in 1949 to

² Andrade, T. (2000). Commerce, culture, and conflict: Taiwan under European rule, 1624–1662. (Doctoral dissertation). Yale University, ProQuest Dissertations Publishing.
<https://www.proquest.com/openview/9ca242d11a5beb38555b7867ef691a4e/1?cbl=18750&diss=y&pq-origsite=gscholar>

³ Takekoshi, Y. (1957). Japanese rule in Formosa. (G. Braithwaite, Trans.). Longmans, Green, and Co. Retrieved from <https://archive.org/details/japaneseruleinf00takegoog/page/n24/mode/2up> Take note that this is an indirect source.

⁴ Treaty of San Francisco. Signed at San Francisco, on 8 September 1951.
<http://www.taiwandocuments.org/sanfrancisco01.htm>

Taiwan. With them came around 1.3 million refugees, government officials, and army personnel that took refuge there.⁵

And that's how the present situation started. The mainland was controlled by the Chinese Communist Party (CCP, for short) and Taiwan by the KMT. The communists were at the time not able to take control of Taiwan mainly because of a lack of naval and aerial military capabilities. So, both stayed at their respective part of the Taiwan strait and claimed to be the legitimate leaders of the whole of China. At the time, the Cold War was just starting, and so the neighboring powers recognized the CCP or the KMT depending on their ideological alignment. Notably, the USA recognized the KMT, and the Soviets recognized the CCP. It is important to say that the involvement of these powers was not trivial, even during the Chinese civil war, both superpowers supported their respective ideological allies. Both knew the pivotal role that having a favorable China could entail for them in the coming years, even if during the cold war China was only an economic backwater. When the KMT fled, and it became pretty clear that the Chinese were going to become hostile to the US for their help to the KMT, the US took interest in the strategic importance of Taiwan. This is for several reasons.

The KMT at the time was still holding the UNSC seat of China, which was a substantial asset. Besides the geographical location of Taiwan is of extreme geopolitical importance. First, the Taiwan Strait is a commercial hotspot for the whole of Eastern Asia (as the Dutch well knew 300 years earlier). Secondly, it is a military stronghold that allows the launching point of a naval invasion to the mainland of China by foreign powers. This is especially worrying to the PRC (the People's Republic of China, to clarify: Mainland China), and rightfully so, the island was used during the Second World War by the Japanese to invade the major port cities of the mainland; the KMT used it to harass multiple ports like the one in Shanghai once it had been exiled, and military experts call the island the unsinkable aircraft carrier. All of this makes the Chinese nervous since it's a major strategic weakness that has been exploited throughout recent history to attack China.

As was said, this is not a minor issue, especially if we consider the first major events of the cold war. First, the Korean War 1950-1953, which escalated from a proxy war to a direct confrontation between the US and its allies against China and the North Koreans, in what became a very bloody affair. The Chinese again found themselves having a déjà vu, in the form of a hostile power trying to take another major geostrategic and military weak spot of China; after all, Korea is very near to Beijing and other major population centers. As Zhou Enlai (Chinese prime minister at the time) put it: *"They [The US] are following the old maxim that whoever wants to annex China must first occupy the Northeast, and*

⁵ Wachman, A. (2007). *Why Taiwan? Geostrategic Rationales for China's Territorial Integrity*. Studies in Asian Security. Stanford University Press.

that to occupy the northeast one must first seize Korea.” The CCP’s central committee had this to say: *“The kind of American plan is nothing but a copy of Japan’s aggression of China in history... Considering all this, we cannot make no response to America’s aggression against Korea for the sake of our country’s security.”*⁶

The same goes for the decades-long Vietnam War 1955-1975, where China found itself in a geostrategic conundrum, on one side, the idea of splitting Vietnam in half sounded good for the CCP; after all, historically Vietnam had been unfriendly to China and having a unified 50 million people strong foe on its doorstep wasn’t appealing. On the other side, Ho Chi Minh (the Vietnamese Communist dictator or liberator), was on very friendly terms with Mao, they were ideological allies and shared the same geostrategic foe. Besides, having the US take a position in Vietnam would jeopardize the security of the South of China. The truth is that the Chinese felt caged from north and East already, they could not allow this.⁷

To better understand the Chinese perspective on the matter is vital to understand the clashes that ensued during the cold war over Taiwan, in other words, to answer the question of: Why risk war with the US over a tiny island in the Pacific? Going back a few years, tensions between the PRC and the RC were at a breaking point during 1949-1950. The RC had been raiding coastal cities like Jinmen and Mazu, both sides viewed the island as a possible launching point for an invasion of the mainland, and the PRC had a sufficient mass of naval forces amassed to attempt an attack on the island. The Americans at first were undetermined, they didn’t want to intervene in the issue, President Truman said at the time: *“The United States will not pursue a course which will lead to involvement in civil conflict in China.”* But then the Korean War started in the summer, and the geopolitical calculations shifted, the strategic value of Taiwan grew in mass and Truman ordered the positioning of the US’s Seventh Fleet on the Taiwan Strait securing an alliance with the RC in the process and thwarting any invasion attempts.^{5,6} This established a series of principles and ideas that are the basis of the present China-US dispute over Taiwan. 1. The US is an informal ally of the RC because being so is more beneficial strategically than detrimental to them. 2. China desires the island but is not able or willing to directly confront the US for it. This cost-benefit calculation should be kept in mind considering the following events.

Entering the 70s, the high of the Cold War, the situation had changed in one major way. The US and the PRC now had a common foe, the USSR. The Chinese had even had minor border skirmishes with the Soviets, and it was clear that Maoism and Stalinism had drifted apart one from the other to an

⁶ Bureau of Public Affairs, Office of the Historian. (n.d.). Taiwan Strait crises. U.S. Department of State. Retrieved from <https://history.state.gov/milestones/1953-1960/taiwan-strait-crises>

⁷ Zhang, X. (1996). The Vietnam War, 1964-1969: A Chinese Perspective. *The Journal of Military History*, 60(4), 731–762. <https://doi.org/10.2307/2944663>

irreconcilable point. The enemy of my enemy is my friend, and therefore during the Nixon administration, a rapprochement ensued. The elephant in the room was Taiwan. The island had been assured, defended, and heavily armed by the US during the last two decades, being of major strategical importance. The Chinese were livid about this and saw the US's arms sales as an interference in the internal affairs of China. Therefore, there wouldn't be any major diplomatic relations between the two giants until the matter reached a compromise. And so, it did. Nixon, in his famous visit to Beijing in 1971, established the beginning of the "One China" policy, without specifying who was that China in the case of Taiwan. This policy implies that there is a conflict in relation to the island of Taiwan between two entities (the RC and the PRC) and that this conflict is to be settled by them in a **peaceful manner**. This last wording is of grave importance since it is the main justification that the US has used for its ambiguous stance over Taiwan is to ensure that peaceful process.⁸

The big consequence of all this is that the RC was no longer formally recognized by the US as a state. The dominoes started to fall. In that same year, the UN's General Assembly voted Resolution 2758,⁹ effectively expelling the RC from the UN and putting the PRC in its place.¹⁰ This also terminated the involvement of the RC in most international organizations and, most importantly, it took its permanent seat away from the UNSC. The PRC made its "one China principle" clear, either you recognized the mainland or Taiwan, but you can't have both. Given the economic and political significance of the PRC nowadays most of the countries in the world recognize only the mainland. The RC is only recognized by 14 countries around the world. Most of them are in the Caribbean or Central America, where the US's influence is hegemonical. Even with this in mind, we are talking about mostly island nations. There are a few notable nations like The Vatican, Paraguay, or Honduras, but still, even these are being swayed by the PRC to change their recognition status.¹¹

⁸ Roy, D. (2003). *Taiwan: A Political History*. Cornell University Press.

⁹ United Nations General Assembly. (1971). Resolution 2758 Restoration of the lawful rights of the People's Republic of China in the United Nations. <https://digitallibrary.un.org/record/192054>

¹⁰ Chen, L. (1996). Taiwan, China, and the United Nations. *Articles & Chapters*, 1211. Retrieved from https://digitalcommons.nyls.edu/fac_articles_chapters/1211

¹¹ Since the time of writing Honduras has severed diplomatic relations with the RC, so there's currently 13 countries recognizing Taiwan: <https://www.theguardian.com/world/2023/mar/26/honduras-says-there-is-only-one-china-as-it-officially-cuts-ties-with-taiwan>

1.2. The geostrategic situation of Taiwan.

Having established the major flow of events that marked the island's geopolitics throughout history, one will proceed to analyze the situation of the island in the year 2023. But first, some of the main economic and political characteristics of Taiwan will be showcased.

Its economy is the 9th largest in Asia and the 19th largest in the world, which is a lot for a 20 million populated country. But the size is not the only substantial thing, its exports are enormous and highly specialized, 80% of its exports are manufactured goods and capital goods. Some relevant sectors are Metallurgy, the chemical industry, machinery, food, textiles, and electronics. The most relevant of these exports geopolitically speaking are semiconductors, Taiwan is the biggest producer worldwide by a large margin, and they are the main component of microchips.^{12,13} In fact there have been major shifts in policy in the EU and the US to confront a possible shortage of semiconductors because of the economic catastrophe that such a thing could entail. We have seen it recently with the strains that Covid put on the global supply chains, Mercedes, for example, slowed its car production significantly because of it.¹⁴ The EU's Next Generation program and the US's Green New Deal bill have both plans to promote local semiconductor productions. China is also doing a 1.4tn \$ investment on becoming a self-sufficient semiconductor producer by 2025.¹⁵ It is to be seen if all these programs generate fruitful results, the industry is highly specialized, and experts are skeptical that just by throwing money into the problem governments will be able to enter the market. Much less to be able to create profitable companies or industries. Either way, at the moment Taiwan's semiconductors are of great security and strategic importance to all major powers.¹⁶

The destination of these exports is also of significant importance. 42.3% of its exports go to Mainland China, 15.7% to ASEAN and only 14.7% to the US, and 8.6% to the EU.¹⁷ There is relative

¹² Liu, D.-N., & Shih, H.-T. (2013). The Transformation of Taiwan's Status Within the Production and Supply Chain in Asia. Brookings. Retrieved from <https://www.brookings.edu/opinions/the-transformation-of-taiwans-status-within-the-production-and-supply-chain-in-asia/>

¹³ The Economist. (2018). TSMC is about to become the world's most advanced chipmaker. Retrieved from <https://www.economist.com/business/2018/04/05/tsmc-is-about-to-become-the-worlds-most-advanced-chipmaker>

¹⁴ Mercedes-Benz USA. (n.d.). Semiconductor Shortage. Retrieved from <https://www.mbusa.com/en/semiconductor-shortage>

¹⁵ Sinclair, M. (2022). China's attempts of self-sufficiency in the semiconductor supply line. Foundation for the future supply chain. Retrieved from <https://futuresupplychains.org/chinas-semiconductor-supply-line/#:~:text=China%20is%20making%20attempt%20at,has%20yet%20to%20be%20achieved.>

¹⁶ Boniface, P. (2021). Géopolitique de l'intelligence artificielle, comment la révolution numérique va bouleverser nos sociétés. Éditions Eyrolles.

¹⁷ Ma, Y. (2022). Statista. Share of main export partners of Taiwan 2021. Retrieved from <https://www.statista.com/statistics/1266748/main-export-partners-for-taiwan/#:~:text=In%202021%2C%20mainland%20China%20and,Taiwan's%20total%20exports%20that%20year.>

insignificance of the West in Taiwan's trade, and overwhelming dependency on the PRC. This is a major strategic weakness of the island and one of the major factors that incentivize the mainland to seek reunification.

On the other side, Taiwan's political system is also relevant to consider whilst analyzing its role on the global chessboard. Taiwan is a democracy, and it has been so since fairly recently, its first elections were held in 1996 and marked the end of the one-party rule of the KMT.¹⁸ The young democracy has a multiparty system but of relevance to us are the two main parties: the KMT and the DPP (Democratic Progressive Party) which won the last 2016 and 2020 elections. The KMT had agreed on a consensus with the PRC on the year 1992 that somewhat normalized the relations between both sides, on which both parties simply agreed to disagree, and the option of unification was left on the table as a vague possibility. The DPP on the other hand heavily criticized this consensus and once elected, it moved away from it altogether.¹⁹ This is relevant because, during the time this consensus lasted, the PRC stopped its efforts to undermine Taiwan's diplomatic recognition by other countries. This is no longer the case though, as the losses of Panamá and El Salvador as official recognitions show.¹¹

As for its unofficial ties, most of them stem from former embassies that the RC had established throughout the 20 years following the exile of the KMT. At the beginning of the 60 several western countries sought to improve their relations with the PRC, foreseeing its crescent economic importance and wanting to benefit from the Chinese newfound hostilities towards the soviets. France did downgrade its embassy in 1964 and the US did the same in 1971 marking the beginning of the One-China policy. With the US's lead most of the international community shifted its existing embassies to offices of representatives.²⁰ As a notable example Japan did so in 1972, converting its embassy to the so called "Interchange Association."²¹ The UK, on the other hand, had already cut its relations with the KMT much earlier than most of the western block. It did so after the KMT was defeated in the mainland, it actually opened an unofficial Taiwanese representation in the year 1962, the "Free Chinese Centre."

The RC's democratic system, along with its history, very clearly aligns the island with the Western bloc. Although in a very informal manner since all these powers want to be able to trade with the PRC.

¹⁸ Rigger, S. (2018). Studies on Taiwan's Democracy and Democratisation. *International Journal of Taiwan Studies*, 1(1), 141-144. Retrieved from https://brill.com/view/journals/ijts/1/1/article-p141_141.xml

¹⁹ Karackattu, J. T. (2019). The Case for a Pragmatic India-Taiwan Partnership. In *The State of Cross-Strait Ties 2019* (pp. 58-66). Carnegie Endowment for International Peace. Retrieved from <https://www.jstor.org/stable/resrep20962.4?seq=3>

²⁰ Copper, J. F. (1992). Taiwan's Diplomatic Isolation: How Serious a Problem?. *The Journal of East Asian Affairs*, 6(1), 202-215.

²¹ Liff, A. P. (2022). Japan, Taiwan and the "One China" Framework after 50 Years. *The China Quarterly*, 252, 1066-1093. <https://www.cambridge.org/core/journals/china-quarterly/article/japan-taiwan-and-the-one-china-framework-after-50-years/14816CCA1B6E067452E15B2CED381165>

Therefore, if we look at Taiwan's diplomatic situation, we can quickly untangle a wide net of informal diplomatic relations with most Western or Western-aligned countries.²² Its main ally is the US, which has historically defended it, regularly sells it weapons, and has given informal assurances of its defense in case of an invasion.²³ Japan in the same vein has issued also informal assurances of defense to the island²⁴ as have other democratic countries in the region.

We can conclude on a situation that is very conflictive. Where the PRC is determined by historical, political, economic, and geostrategic incentives to take control of the island of Taiwan, which it sees as a part of China. On the other hand, we have a crucial island that has been independent of the mainland *de facto* for almost 80 years, that increasingly sees itself as its own, and that has established a vibrant economy and a functioning democracy. All of this is under the umbrella of historical, economic, and strategic interests of the US. But at the same time, we must view this whole mess under the diplomatic view of the "one China Policy" and the "one China Principle" that leaves us with an ambiguous situation over the diplomatic situation of the RC. Where no one claims Taiwan to be an independent nation, but everyone seems to act as if it was. They do because of these same two principles that were laid down beforehand: 1. The US is an informal ally of the RC because being so is more beneficial strategically than detrimental to them. 2. China desires the island but is not able or willing to directly confront the US for it. Recently things are beginning to change since the economic relevance of Taiwan has been growing for the PRC, and the strategic importance of the island has grown for the US. In addition, China's military might seem on par with the Americans (at least in the Pacific).

Taking all of this into account, all further practical and geopolitical considerations have one single unsolved legal issue underneath them: Is Taiwan a state? Given the extensive network of unofficial relations that the RC has, one will attempt to answer this question from the standpoint of diplomatic law. That is, by analyzing the legal condition of Taiwan's offices of representatives and determining if they are embassies or not according to international law.

²² Rawnsley, G. D. (2000). *Taiwan's Informal Diplomacy and Propaganda*. Springer. Retrieved from <https://books.google.es/books?hl=es&lr=&id=kHGMDAAAQBAJ&oi=fnd&pg=PP1&dq=taiwan%27s+informal+relations&ots=bi-PLz3S7X&sig=QCr9cYsCCq1V2orfj65hGlnrBbk#v=onepage&q=taiwan's%20informal%20relations&f=false>

²³ McDonell, S. (2021, October 7). Biden says US will defend Taiwan if China attacks. BBC News. Retrieved from <https://www.bbc.com/news/world-asia-59005300>

²⁴ CNBC. (2021, December 1). Former Prime Minister Shinzo Abe says Japan and the U.S. could not stand by if China attacked Taiwan. Retrieved from <https://www.cnbc.com/2021/12/01/japan-us-could-not-stand-by-if-china-attacked-taiwan-shinzo-abe-.html>

2. Legal framework.

In the following pages, the main goal will be to determine the current legal situation of Taiwan's foreign representative offices. In the sense of establishing and interpreting the legal texts relevant to the issue. This will accomplish a few things: shed light on the current legal situation of the offices, the relevance on state recognition that the offices may have, establish which criteria should be used to determine their status as diplomatic missions, and which are the legal consequences of the conclusions reached.

In that sense, first, the Montevideo Convention will be analyzed, as will the relevance of the main constitutional and declarative theories in the case of Taiwan. It will be important to understand the current level of international recognition and explore what the current situation means for the Island, as will be the application of the principles of the Montevideo Convention. The offices themselves will also be explored, as the law needs facts to be applied. And lastly, to better understand the factual situation of the offices, and their legal standing, the framework provided by both Vienna Conventions will be applied. All this with the intention of resulting in a clear methodology that could be applied to any given foreign office of representatives during the rest of the essay.

2.1 The Montevideo Contention.

The Montevideo Convention, 1933 (MC from now on) on the rights and duties of States is probably one of the best examples of what customary international law is. For its wide acknowledgment in the international community as the basis for defining statehood, we are going to use it as our main legal tool for the analysis of the present case. The MC establishes the basic principles used in international law to define and determine Statehood. In this sense, the first article of the convention states as follows:

“The state as a person of international law should possess the following qualifications:

- A) a permanent population;*
- B) defined territory;*
- C) government; and*
- D) capacity to enter into relations with the other states.”*

For the purposes of this essay, the focus on Taiwan's Statehood will be directed solely on the fourth criterion. Although it is to be said that in the case of the RC there might be other doctrinal issues regarding the definition of its territory and the legitimacy of its government. Our main goal is to

determine the relationship between the RC's foreign offices and its capacity to enter into relations with other states, understood in the context of the MC.

First, as a basis for the analysis, this undefined legal concept must be clarified. To that end, the traditional international legal doctrine should be consulted. In it, State recognition is generally viewed as crucial to determine the capacity to enter into relations with other states by a subject in question. Even so, there are two differing academic views on the importance of said recognition for the acquisition of Statehood.

On one hand, the constitutive theory views international recognition as a condition without which there can be no State. According to Kelsen (1941), it is the public acknowledgment of the willingness to establish relations with the recognized. And it is by interaction with other states that the object of international law is fulfilled, and therefore, how one can become a subject of it.²⁵ On that note, Lauterpacht (1947) said the following “*that, prior to recognition, the community in question possesses neither the rights nor the obligations which international law associates with full Statehood*” (p.2).²⁶ According to this understanding, recognition (even if tacit) by other states of the RC, would lead it to be *de iure* a State, and therefore the lack of said recognition would mean the contrary.

On the other hand, the declaratory theory states that recognition is a discretionary act that States can do of their own volition. In their view, recognition is only an acknowledgment of a reality and doesn't constitute the Statehood of the subject on itself. According to Chen (1951) “*...political recognition is a political démarche and is, therefore, discretionary.*” “*Any reference to the act of recognition must mean the political act, which is declaratory.*” (p.49).²⁷ More recently, Talmon (2004) said the following: “*The now predominant view in the literature is that recognition merely establishes, confirms or provides evidence of the objective legal situation, that is, the existence of a State.*” (p.105).²⁸ With this position in mind, the RC would be (or not) a State independently of international recognition. Although recognition itself would still have value since it would serve as proof of Statehood, and it would be opposable to the recognizing states.

There are some authors that combine some elements of both theories. Notably Crawford (1976):

²⁵ Kelsen, H. (1941). Recognition in International Law: Theoretical Observations. The American Journal of International Law, 35(4), 605-617. <https://doi.org/10.2307/2192561>

²⁶ Lauterpacht, H. (1947). Recognition in International Law (p.2). Cambridge University Press.

²⁷ Chen, T. (1951). The international law of recognition (p.49). The London Institute of World Affairs.

²⁸ Talmon, S. (2004). The Constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur? (p.105). British Yearbook of International Law, 75(1), 101-181. <https://doi.org/10.1093/bybil/75.1.101>

“To some extent one can sympathize with these views (constitutive theory): none the less, the proper position is that in principle the denial of recognition to an entity which otherwise qualifies as a State cannot entitle the non-recognizing States to act as if the entity in question were not a State. The categorical constitutive position, which implies the contrary view, is unacceptable. But it would be equally unacceptable to deny that, in practice, recognition can have important legal and political effects.” (p.106)²⁹

Crawford’s position seems the most representative of current recognition practice and one could even suggest that it is not necessarily contradictory to the more modern and moderate declaratory theorists like Talmon. This is also the approach that this essay is going to take. Recognition is a political act with legal consequences that acknowledges the existence of an entity as a State but does not constitute it. This understanding will be favored because:

- A) The EU’s position on the issue follows declaratory theory. Such views are visible in the Badinter Arbitration Committee’s opinion on the dissolution of SFRY (former Yugoslavia).³⁰
- B) The International Court of Justice on its advisory opinion of 22 July 2010 on accordance with international law of the unilateral declaration of independence in respect of Kosovo establishes the following: That the declaration of independence of Kosovo is not *per se* unlawful. This necessarily implies the existence of a subject that may be recognized or not, but that is a subject nonetheless (although not necessarily a State).³¹
- C) MC convention in its article 3 establishes the following:

“The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its

²⁹ Crawford, J. (1976). The Criteria for Statehood in International Law (p.106). British Yearbook of International Law, 48(1), 93-182. <https://doi.org/10.1093/bybil/48.1.93>

³⁰ Badinter Arbitration Committee. (1991). Opinion No. 1: The Arbitration Commission’s Opinion Concerning the dissolution of SFRY. The arbitration committee was established by the council of ministers of the European Economic Community, and it consisted of the presidents of several constitutional courts in Europe. It clearly states that “the effects of recognition by other states are declaratory.”

³¹ International Court of Justice. (2010). Accordance with international law of the unilateral declaration of independence in respect of Kosovo. (Request for Advisory Opinion). <https://www.icj-cij.org/case/141/advisory-opinions> Note that the opinion is made in the context of UNSC resolution 1244/99. As for the conclusions of the tribunal read point 115 of the opinion. For the implications on declaratory recognition theory read point 51.

courts. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law.”

The MC should serve as a strong legal case for the declaratory theory. On the other hand, it is true that the ICJ's opinion on the matter is not clear enough to take definitive conclusions. Lastly, the Banditer Arbitration Committee's resolution is quite clear and is an example of international practice that supports the argument (one of many). All these points interpreted together, and in conjunction with the legal doctrine mentioned, suffice to justify this position.

From this analysis, the following methodological principles arise regarding the essay's relevance, scope, and overall legal condition of Taiwan. The Essay will try to determine the ability of Taiwan to enter relations with other States. It will do so by focusing on its offices of representatives as a possible form of tacit recognition. The overall level of recognition should be proof of Statehood, which means that a conclusion that states a lack of international recognition would not mean that Formosa does not have an independent State (although it would be a strong argument against such a claim). It is important to clarify, that this overall level of recognition is not the aim of this essay, the essay pretends to create a framework to clarify the situation. On the other hand, the existence of such recognition would be a strong point in favor of Taiwan's Statehood according to international law but would not by itself be determinant. In other words, the aim is not to solve the overall question of Taiwan's Statehood, but only to shed light on one of the main legal issues that surround it.

2.2. Taiwan's current international recognition, express and tacit.

We are going to analyze the official and tacit recognition status of the RC. As for the current standing of Taiwan's international recognition, there are 13 Sovereign States that recognize it officially: Marshall Islands, Republic of Nauru, Palau, Tuvalu, Eswatini, The Holy See, Belize, Guatemala, Haiti, Paraguay, St. Kitts and Nevis, Saint Lucia and St Vincent & the Grenadines.³² Since we have established that recognition is a form of proof of Statehood, we should determine how strong this proof is. The more countries recognize the subject, the better the evidence is. So, if we establish that recognition by the whole of the international community (193 Un members plus the two observer States: The Holy See and Palestine) is our golden standard of proof and an absence of any recognition is a lack of said proof, we can make the following spectrum:

³² Ministry of Foreign Affairs, Republic of China (Taiwan). (n.d.). Taiwan's diplomatic allies. Retrieved April 10th, 2023, from <https://en.mofa.gov.tw/AlliesIndex.aspx?n=1294&sms=1007>

0-1 States	2-20	21-40	41-60	61-80	81-100	101-120	121-140	141-160	161-195
No recognition									Full recognition

Obviously, the numbers used on the chart are discretionary and it should only be used to illustrate the previous point. Another problem with this approach is that all States are being treated equally. It could be argued that the recognition of certain States has more worth than that of others (the members of the UNSC for example), but even under such conditions, the conclusions regarding Taiwan’s status would be the same. What is clear is that the closer to green the better the proof of statehood and the closer to grey the worst. Therefore, we can conclude that the level of explicit recognition of Taiwan is existent but weak.

Having established the level of formal recognition, the level of tacit recognition must be determined to have a full view of the situation. As for tacit recognition the MC’s article 7 states as follows:

“The recognition of a state may be express or tacit. The latter results from any act which implies the intention of recognizing the new state.”

Tacit recognition, as understood in the MC, creates two problems. Which acts are considered valid to extract such implications and which are not? ³³ There are certain behaviors that are generally accepted to imply tacit recognition: The establishment of diplomatic relations and voting in favor of the admission of the State in an International Organization (especially those in which only States can take part).³⁴ There are other acts that some authors suggest also carry tacit acknowledgment like the signing of a treaty with the subject in question or congratulating the new State. In addition, some authors would suggest that the intent found in the act to recognize is relevant. That is, if a State openly states that it has no intention of acknowledging the State with its action, the action has no effect on recognition. The logic behind the claim is that if recognition is a free and political act, it cannot be given against the

³³ Bou Franch, V. (2023). Nacimiento y reconocimiento de nuevos Estados. (p.5).

https://scholar.googleusercontent.com/scholar?q=cache:-YBzmnIz3PAJ:scholar.google.com/+reconocimiento+t%C3%A1cito+de+los+estados&hl=es&as_sdt=0.5

³⁴ FRENZKE, D. (1970). Die völkerrechtliche Anerkennung und die Mitgliedschaft in der UNO: Zu einem Teilproblem der Pläne für die Aufnahme beider deutscher Staaten in die UNO. Vereinte Nationen: German Review on the United Nations, 18(5), 148–154.

<http://www.jstor.org/stable/45232415>

State's will. And that only an international norm could force a State to recognize another.³⁵ This view seems acceptable in the case of a bilateral treaty, but it is less clear if consent for a diplomatic mission could be given with such reservations and negate the implied recognition. Especially if we consider recognition as a *conditio sine qua non* for diplomatic relations, as most of the current doctrine does.

As for these forms of tacit recognition, for the purposes of our analysis, the focus will be set on the possible tacit recognition that the RC may enjoy thanks to its offices of representatives.

2.3. Taiwan's Offices of Representatives.

Taiwan's offices of representatives are generally used as an example of tacit international recognition by the press and politicians. Certainly, according to the former analysis, this is in theory possible. First, for the purposes of this essay, we will define the foreign offices of representatives (FOR from now on) as any bureau outside of Taiwan that is constituted with the intention of representing the RC's interests abroad, and that is owned and directed by the Taiwanese government. Only the ones officially listed by the government of Taipei will be considered.³⁶

For explanatory purposes, here's a list of all the FOR operated by Taiwan.³⁷

1. United States of America: Taipei Economic and Cultural Representative Office in the United States (Washington, D.C.)
2. Canada: Taipei Economic and Cultural Office in Canada (Ottawa)
3. Mexico: Taipei Economic and Cultural Office in Mexico (Mexico City)
4. Guatemala: Taipei Representative Office in Guatemala (Guatemala City)
5. Honduras: Taipei Representative Office in Honduras (Tegucigalpa)
6. Nicaragua: Taipei Representative Office in Nicaragua (Managua)
7. Costa Rica: Taipei Representative Office in Costa Rica (San Jose)
8. Panama: Taipei Representative Office in Panama (Panama City)
9. Colombia: Taipei Representative Office in Colombia (Bogota)
10. Brazil: Taipei Economic and Cultural Center in Brazil (Brasilia)
11. Argentina: Taipei Representative Office in Argentina (Buenos Aires)

³⁵ BINDSCHEDLER, R. L. (1962). Die Anerkennung im Völkerrecht. Archiv Des Völkerrechts, 9(4), 389. <http://www.jstor.org/stable/40796690>

³⁶ Ministry of Foreign Affairs, Republic of China (Taiwan). (n.d.). Overseas Office Link. [Webpage]. Retrieved April 11, 2023, from <https://en.mofa.gov.tw/OverseasOfficeLink.aspx?n=1573&sms=957>

³⁷ If there is more than one office in a given country, they will be counted as one and will be referenced by the one located in the capital city of the host nation. With these criteria, we get the following 55 FOR.

12. Chile: Taipei Economic and Cultural Office in Chile (Santiago)
13. Peru: Taipei Economic and Cultural Office in Peru (Lima)
14. Paraguay: Taipei Representative Office in Paraguay (Asuncion)
15. Uruguay: Taipei Representative Office in Uruguay (Montevideo)
16. France: Taipei Representative Office in France (Paris)
17. United Kingdom: Taipei Representative Office in the U.K. (London)
18. Germany: Taipei Representative Office in Germany (Berlin)
19. Italy: Taipei Representative Office in Italy (Rome)
20. Spain: Taipei Representative Office in Spain (Madrid)
21. Belgium: Taipei Representative Office in the EU and Belgium (Brussels)
22. Netherlands: Taipei Representative Office in the Netherlands (The Hague)
23. Luxembourg: Taipei Representative Office in Luxembourg (Luxembourg City)
24. Switzerland: Taipei Representative Office in Switzerland (Bern)
25. Austria: Taipei Representative Office in Austria (Vienna)
26. Czech Republic: Taipei Representative Office in the Czech Republic (Prague)
27. Slovakia: Taipei Representative Office in Slovakia (Bratislava)
28. Hungary: Taipei Representative Office in Hungary (Budapest)
29. Poland: Taipei Representative Office in Poland (Warsaw)
30. Romania: Taipei Representative Office in Romania (Bucharest)
31. Bulgaria: Taipei Representative Office in Bulgaria (Sofia)
32. Greece: Taipei Representative Office in Greece (Athens)
33. Turkey: Taipei Representative Office in Turkey (Ankara)
34. Russia: Taipei Representative Office in Russia (Moscow)
35. Ukraine: Taipei Representative Office in Ukraine (Kiev)
36. Australia: Taipei Economic and Cultural Office in Australia (Canberra)
37. New Zealand: Taipei Economic and Cultural Office in New Zealand (Wellington)
38. Japan: Taipei Economic and Cultural Representative Office in Japan (Tokyo)
39. South Korea: Taipei Representative Office in Korea (Seoul)
40. Philippines: Manila Economic and Cultural Office (MECO) in the Philippines (Manila)
41. Vietnam: Taipei Economic and Cultural Office in Vietnam (Hanoi)
42. Thailand: Taipei Economic and Cultural Office in Thailand (Bangkok)
43. Indonesia: Taipei Economic and Trade Office in Indonesia (Jakarta)
44. Malaysia: Taipei Economic and Cultural Office in Malaysia (Kuala Lumpur)
45. Singapore: Taipei Representative Office in Singapore (Singapore)
46. Cambodia: Taipei Economic and Cultural Office in Cambodia (Phnom Penh)
47. Myanmar: Taipei Economic and Cultural Office in Myanmar (Yangon)
48. India: Taipei Economic and Cultural Center in India (New Delhi)

49. Nepal: Taipei Economic and Cultural Center in Nepal (Kathmandu)
50. Sri Lanka: Taipei Representative Office in Sri Lanka (Colombo)
51. Bangladesh: Taipei Representative Office in Bangladesh (Dhaka)
52. Pakistan: Taipei Economic and Cultural Center in Pakistan (Islamabad)
53. Saudi Arabia: Taipei Economic and Cultural Representative Office in Saudi Arabia (Riyadh)
54. United Arab Emirates: Taipei Representative Office in the United Arab Emirates (Abu Dhabi)
55. Brunei: Taipei Representative Office in Brunei Darussalam (Bandar Seri Begawan)

The offices located in capital cities are going to be preferred for the analysis. That doesn't negate the fact that Taiwan has a plethora of regional offices in plenty of countries like the US and Japan. The possible legal effects of these regional offices will be discussed separately later. As another side note, because of the criteria that have been chosen, the list does not include the representative offices located in Hong Kong and Macao although their existence does deserve mention. Some other facts of note regarding the list are that all the members of the G20 have FOR. As do all the members of the UNSC (that is if we count the offices in Hong Kong and Macau for China). Note too, that the office of the EU appears included in the list because it serves as an office for Belgium as well..

On the other hand, there are a great number of foreign offices of representatives of other countries in Taiwan itself. The aim of the essay is only to analyze the FOR, but it is certain that the offices inside Formosa may have the same consequences in regard to recognition as the external ones. As of today, there are 53 of these, and further analysis on each is required.³⁸

2.4. The Vienna Conventions of 1961 and 1963.

The claim to analyze then, is if the FOR could be considered a form of tacit international recognition according to international law. In principle, the establishment of diplomatic relations is considered a form of tacit recognition. Therefore, it is crucial to ascertain if the FOR are a form of diplomatic relations. The main question that will be resolved is therefore if each individual office is a form of embassy or consulate. The Vienna Convention on Diplomatic Relations of 1961 (VCDR from now on) in conjunction with the Vienna Convention on Consular Relations of 1963 (VCCR from now on) are the main legal tool for this issue since they have been ratified by most of the international community and are generally followed in international practice. It will be also determined to which extent they are like embassies and consulates in case they cannot be considered as such fully.

³⁸ EmbassyPages. (n.d.). Embassies and consulates in Taiwan. Retrieved April 12, 2023, from <https://www.embassypages.com/taiwan> Important to note that no official figure on the part of Taiwan exists, this is a third party list and although the ones included exist, there might be others that are not listed.

According to Jara Roncati, diplomatic relations can be defined as the following: *“Las relaciones diplomáticas son los vínculos formales que mantienen entre sí los Estados y otros sujetos de derecho internacional, que se autorizan recíprocamente la existencia de Misiones permanentes destinadas a cumplir funciones diplomáticas.”*³⁹

According to Article 2 of the VCDR diplomatic relations between and the establishment of diplomatic missions needs mutual consent. According to the ICJ on the Judgment of 11 December 2020 about the legality of an embassy of Equatorial Guinea in Paris⁴⁰ the norm must be interpreted to mean that: No diplomatic mission should acquire such status by unilateral action. And that an objection of the receiving State in the appropriate form will prevent the mission from achieving such status.

In a similar manner, article 2 of the VCCR states that consular relations can only be established with mutual consent. The VCCR is much more explicit in what this consent must imply, even though the admission of consular relations can be implicit, the acceptance of the head of a consular post must be given expressly with the exequatur (article 12 VCCR). The convention does allow freedom of form of the act, but it is still necessarily an express one. The acceptance of diplomatic relations too, does imply the establishment of consular relations unless stated otherwise (article 2.2 VCCR) this should be understood as the main form of tacit acceptance of consular relations. And the severing of diplomatic relations does not necessarily mean the severing of consular relations.⁴¹

These rules do allow the drawing of a few maxims for our analysis. First, if a head of a consular post does not have an exequatur his position is not recognizable legally speaking. Second, if a country has severed diplomatic relations with the RC but hasn't expressly severed consular relations too, these might still subsist. Although, the existence of consular relations on its own does not seem to imply any form of recognition as demonstrated by international practice. Some examples might be the consular relations between Germany and Cambodia (1962), Western Germany and Finland throughout the cold

³⁹ Jara Roncati, E. (1989). La función diplomática. (p. 19) Proyecto de Cooperación con los Servicios Exteriores de América Latina.

https://scholar.googleusercontent.com/scholar?q=cache:aPUqthSBmQMJ:scholar.google.com/+las+funciones+de+las+misiones+diplom%C3%A1ticas&hl=es&as_sdt=0.5 *“Diplomatic relations are the formal links that States and other subjects of international law maintain with each other, which authorize the reciprocal existence of permanent Missions intended to fulfill diplomatic functions.”*

⁴⁰ Judgment of the International Court of Justice. (2020). Immunities and Criminal Proceedings (Equatorial Guinea v. France). Available at: <https://www.icj-cij.org/case/163> View paragraph 63.

⁴¹ Maftei, J. (2020). Application of the Principle of Mutual Consent in the Consular Relations between States. (p.97) Acta U. Danubius Jur., 88.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/actdaj2020&div=12&id=&page=>

war.⁴² And the fact that some non-State entities have consular relations with States, for example, Hong Kong and Macau. Although it is true that it might be a factor that could be used in conjunction with others discussed further on to justify the existence of tacit recognition. The main fact to be considered in regard to recognition is therefore the establishment of diplomatic relations, having consular relations only an auxiliary role.

An important question to be asked though is, does this have effects on the fulfillment of the fourth criterion of the Montevideo Convention? The declaratory theory was established as our baseline; therefore, recognition is just proof of Statehood. Diplomatic relations are a form of relating with other states, fulfilling MC's requirement, but it could also be said that they could lack a certain degree of intensity for that, or that such a thread would imply the recognition of any para-diplomatic entity as a State. Therefore, being an impractical interpretation. That's why thorough criteria have to be established to be able to certify the existence of valid diplomatic relations between States.

Another relevant criterion for our framework is the functional one. The VCDR states all the functions that a diplomatic mission has, therefore for something to be considered a diplomatic mission, besides the formalities established by law, the entity should be fulfilling the following (Article 3 VCDR):

"1. The functions of a diplomatic mission consist, inter alia, in:

- (a) Representing the sending State in the receiving State;*
- (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;*
- (c) Negotiating with the Government of the receiving State;*
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;*
- (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations."*

An issue that should be discussed is what will be called the symbolic aspect of the mission. Under Article 20 of the VCDR the mission has the right to display the symbols associated with the sending State, like the flag and the emblem, on the building of the mission itself, its vehicles, or the residence of the head of the mission. Under international law, this is a right given to the mission, therefore if a mission doesn't display it this shouldn't in theory imply that it stops being one. In the case of Taiwan though, the lack of display could imply that it has been prohibited privately (or publicly) to appease the

⁴² Bierzaneck, R. (1962). La non-reconnaissance et le droit international contemporain. *Annuaire français de droit international*, 8, 117-137. <https://doi.org/10.3406/afdi.1962.960m>

PRC. This would certainly undermine the RC's capacity to enter diplomatic relations as in the 4th criterion of the MC but in theory, it shouldn't stop a given FOR from being considered a diplomatic mission under the VCDR. A similar issue is the forced use of the name "Taipei" in its FOR. Again, this doesn't impede a FOR from being a mission legally speaking, but it does jeopardize Taiwan's supposed independence and sovereignty.

The last criterion of relevance is diplomatic immunity. According to article 31 of the VCDR "*A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction...*" Therefore, if the agents in question are granted this immunity, it could imply that they are viewed by the host state as diplomats. In this sense, it is generally accepted that diplomatic immunity is acquired when the *agrément* is given to the head of the diplomatic mission as understood in Article 4 of the VCDR.

Under all these circumstances we can consider the following in the case of Taiwan. For a FOR to be considered a diplomatic mission (or even a consulate) there must be a form of consent present. The specific form of this consent is irrelevant, but it must be clear that the host acknowledges the mission for what it is. The FOR must fulfill the functions assigned by law to a diplomatic mission (at least a majority of them). And the agents sent by Taipei should be granted diplomatic immunity. Having fulfilled all these circumstances, the mission will be unequivocally considerable as diplomatic under international law.

A problem that will have to be addressed is what consideration to give to a FOR that fulfills some of these criteria but not all of them. If we encounter a FOR without formal acknowledgment or acceptance that has diplomatic immunity for its members and that does all the functions assigned to a diplomatic mission, could it be still considered a mission *de facto*? Could this be considered a form of diplomatic recognition, despite it not being a formal diplomatic mission? Does this have any value in international law at all? The answers to these questions will be addressed whilst analyzing the specific situation of the FOR.

3. Offices of representatives of Taiwan in the permanent five UNSC nations.

Having established the framework, one will proceed to use it to demonstrate the current standing of some of the FOR and see what their legal consequences regarding recognition are. Given the extensive amount of FOR that exist, a sample is required, to ensure a proper analysis of each office. The objective of this study is to better understand the role of the FOR in international law, not the exact number of tacit recognitions that Taiwan may enjoy, in that sense, therefore, taking a more limited approach to the number of offices analyzed should be beneficial to extract more meaningful conclusions. Our sample of choice will be the UNSC P5, unarguably some of if not the most powerful nations on our planet militarily, and even diplomatically speaking. All the P5 happen to have FOR in their countries (counting Hong Kong and Macao's offices for China). And given the very differing geopolitical standings of each member regarding Taiwan, their exploration should be an ideal test for the framework that has been established. Besides, it will allow us to shed some light on the legal consequences of each type of practice regarding the FOR.

3.1. Methodology.

To do a proper scientific review a series of criteria will be defined. To establish those criteria, the conclusions that were extracted from the legal framework should suffice. In this sense the data that will be focused on are the following:

- The accomplishment of the functions listed in article 3 VCDR.
 - (a) *Representing the sending State in the receiving State.* Any formal acknowledgment of this representation will be considered valid. In case there is none to be found, then indirect means will be looked at, for example, the signing of a treaty/accord, the involvement in negotiations with the host, the response to public statements, and other possible instances in which the members of the FOR are clearly being understood as representing Taiwan.
 - (b) *Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law.* It will be considered fulfilled if one of the following is met: Taiwan intervened in an international court on behalf of itself or one of its citizens/companies. Taiwan negotiated with the host

country in any public form on behalf of its interests or its citizens, so long as the intervention is done by the perceived head of the diplomatic mission.⁴³

(c) Negotiating with the Government of the receiving State. For this criterion, it will be considered accomplished if any kind of accord exists between the host and Taiwan. If there are several accords or treaties existent between both nations, there's an implication that the mission must have had some kind of involvement in them. Note that the article doesn't require the signing of a treaty, which according to the Vienna Convention of 1969 in its article 2.1. a) can only be done between States.⁴⁴

(d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State. As for section d) it is safe to assume that any given FOR is doing this function in one way or the other, the mere existence of the office facilitates information gathering. It is true that hypothetically speaking there might not be any information sent back to Taipei from a given Office, but this is highly unlikely. It would be also impossible to restrict by the host country. And the existence of this information sharing is very hard to prove from the outside. With all things considered this criterion will be automatically considered as fulfilled by the mere existence of the office.

(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural, and scientific relations.” It will be determined by the existence of specific public actions that may serve as proof of such promotion.

- The existence of consent on behalf of the host state on the given office. To ascertain this consent the preferred method of proof will be some form of official communication from the host State celebrating or acknowledging the opening of the office. If no communication of this kind exists, then the consent will be understood as tacit. No consent will be present if the host country has given an objection in a proper and timely manner. The validity of the objection will be measured according to the criteria established in the ICJ on the Judgment of 11 December 2020 about the legality of an embassy of Equatorial Guinea in Paris; that is promptness, consistency of the objection, and maintenance in time.⁴⁵

⁴³ Vermeer-Künzli, A. (2006). *Exercising diplomatic protection: the fine line between litigation, demarches and consular assistance.* (p.334)

⁴⁴ Vienna Convention on the Law of Treaties. Done at Vienna on 23 May 1969. (UN) https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

⁴⁵ International Court of Justice. (2020). Immunities and Criminal Proceedings (Equatorial Guinea v. France). Judgment of 11 December 2020. Available at: <https://www.icj-cij.org/case/163> View paragraph 92.

- If the agents of the mission enjoy diplomatic immunity or not, to the extent of the VCDR. Articles 33 onwards. And the inviolability of the mission according to article 22.1 VCDR. Only official statements will be considered valid proof. In this sense, ideally, for this analysis, the existence of an official *agrément* in the terms of article 4 of the VCDR that validates the head of the possible diplomatic mission should be preferred, since it would necessarily imply diplomatic immunity and inviolability of the mission. The problem is that *agréments* are generally discussed, granted, or denied privately. It is therefore not viable to include this as a possible point of analysis in this essay. Although, if a country officially grants diplomatic immunity to a given FOR, it could be assumed that they will issue an *agrément* privately to the head of the mission present or future.⁴⁶ The same goes for the presentation of the credentials of the head of the diplomatic mission as in article 13 VCDR.

- Lastly, the usage of its official symbols will be considered in the terms present in article 20 of the VCDR. In this sense, the existence of these symbols on the supposed diplomatic mission should serve as a sort of circumstantial evidence. In a democratic country like France or the US technically any private citizen is allowed to display Taiwan's flag, therefore it could be argued that its presence in the FOR is of little relevance to legitimize it. Besides, as discussed earlier, article 20 of the VCDR states the display is a right and not a prerequisite. All these arguments have some truth in them, but it would be naïve to forget that several governments have prohibited the display of such symbols to the FOR in an attempt to delegitimize it. In this sense, it could be argued that even if the lack of symbols does not negate the possible condition of the FOR as a diplomatic mission, it might have implications on the 4th criterion of the MC.

If a FOR accomplishes all the stated criteria it will be considered a diplomatic mission according to international law. And therefore, a form of tacit international recognition of Taiwan's Statehood. If one of the functions is not being met, then it will depend on to which extent and why that conclusion has been reached. If it is only a question of lack of proof, then the FOR will be considered a diplomatic mission with reservations. All this with the understanding that proof may very likely exist but be publicly unavailable. If there's no consent present, either express or tacit, then there cannot be a diplomatic mission. In that case, the FOR would be considered as some form of para-diplomacy. If there's an official statement negating diplomatic immunity or inviolability to the FOR, that will be seen as a determinant and as a negation of consent.

⁴⁶ Oelfke, C. (Ed.). (2018). Vienna Convention on Diplomatic Relations of 18 April 1961: Commentaries on Practical Application. BWV Verlag. (p. 75)

3.2 United States of America.

Taipei Economic and Cultural Representative Office in the United States. 4201 Wisconsin Avenue, N.W., Washington, D.C. 20016, U.S.A.⁴⁷.

The US has regulated its relations with Taiwan and the legal standing of the FOR in the Taiwan Policy Act (2022). Which will be our main legal tool for this analysis. This bill has been ratified by the Biden Administration.⁴⁸

(a) Representing the sending State in the receiving State; To consider the representation function fulfilled we will be looking for official acknowledgement of this fact, or indirectly by having both countries sign a treaty or accord. The US Department of State does say, in its official website, that “Taiwan has representation throughout the United States through Taipei Economic and Culture Offices.”⁴⁹ Between that, the referral of the official status of the FOR by the Taiwan Policy Act and all the treaties existing between both States the criteria is definitely fulfilled.

(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law; To fulfill this criterion there should be either judicial or arbitral intervention by Taiwan in defense of its citizens or the direct involvement of the mission in protecting these interests. In this sense, the involvement of the mission in open negotiations is very publicly evident as in the amount of accords existent between both countries in an indirect manner and more directly with the press appearances of the representative Hsiao Bi-khim.⁵⁰ There are also some court cases involving Taiwanese companies in the US, but the involvement of the FOR in these is unclear.⁵¹ This criterion is fulfilled.

(c) Negotiating with the Government of the receiving State; There are a plethora of agreements signed between both parties, an example would be the National Security Language Initiative for Youth, promoted by the U.S. Department of State.⁵² Besides, as will be discussed subsequently, The Taiwan Policy Act does give implicit negotiating powers to the FOR. It’s considered fulfilled.

⁴⁷ Taipei Economic and Cultural Representative Office in the United States. (n.d.). Retrieved April 22, 2023, from https://www.taiwanembassy.org/us_en/index.html

⁴⁸ Taiwan Policy Act (2022). Approved on the 14th of September in Washington DC. (United States Senate). <https://www.congress.gov/bill/117th-congress/house-bill/9010/text#toc-HB4224B1DDA9E49E4B335CDDA1EA8FBA0>

⁴⁹ U.S. Department of State. (n.d.). U.S. Relations With Taiwan. Retrieved April 22, 2023, from <https://www.state.gov/u-s-relations-with-taiwan/>

⁵⁰ Taipei Times. (2022, December 14). Hsiao ‘looking forward’ to further US trade talks. Retrieved April 22, 2023, from <https://www.taipeitimes.com/News/taiwan/archives/2022/12/14/2003790703>

⁵¹ P. Chadha, E. Iverson, JP, Duffy. (2014). US court refuses to enforce award issued in Taiwan. Retrieved from: <https://www.lexology.com/commentary/arbitration-adr/usa/kl-gates/us-court-refuses-to-enforce-award-issued-in-taiwan>

⁵² Global Talent Report. (n.d.). US-Taiwan Initiative. Retrieved April 22, 2023, from <https://www.talentcirculationalliance.org/us-taiwan-initiative>

(d) *Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;* Assumed fulfilled.

(e) *Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.*” It’s considered fulfilled as for the Statement by the Department of State about shared Science, Economic, technological and “people-to-people Ties.”⁴⁵ In this statement the extent of these ties is made explicit, besides, an equivalent statement can be found in the official webpage of the Washington FOR. And the extensive connections present between Taiwanese and American institutions in these matters are also proof of this.⁴⁵

As for the consent present and the diplomatic immunities given to the Office of Representatives. The Taiwan policy act of 2022 Title I Section 106 states the following: “Designation and References to Taiwan Representative Office. Establishes de facto diplomatic treatment for Taiwan equivalent to other foreign governments.” This is clear consent to the existence of the office and, by being treated in the same manner as the missions of other nations it is being implied that it has diplomatic immunity, although this has not been tested in court yet. Also, this bill should serve to clarify any doubts that may subsist regarding the functions that are being fulfilled by the mission. Both criteria are fulfilled. It is also worth mentioning that section 105 of the same legislation does authorize full usage of Taiwanese symbols, civil or military, in the FOR.

Even if the United States publicly states its non-recognition of Taiwan as a State, its actions indicate otherwise. As has been determined, there are formal diplomatic relations present between both countries in accordance with international law and practice. And even if the senate bill states that the mission is considered as such “de facto” it should not be forgotten that this condition is still given to the FOR of Washington by a bill, therefore it is necessarily *de iure*. In conclusion, the bill gives Taiwan a form of tacit international recognition by the US. And even if it were considered that the negation of express recognition negates the possibility of tacit recognition of existing, the fact that the mission is being treated as any other diplomatic mission does serve to justify the completion of the fourth criterion of the MC by Taiwan.

3.3. French Republic.

Bureau de Représentation de Taipei en France. 78, rue de l'Université 75007 Paris, France.

There aren't any French legal texts regulating its relationship with Taiwan or the situation of the FOR. Therefore, the analysis will be done regarding official statements of the French government first and second, the actions (or inactions) taken by French institutions regarding the FOR.

(a) Representing the sending State in the receiving State; The French foreign affairs ministry does refer to the FOR as a “représentation diplomatique et consulaire en France” on its official website. Besides, as will be discussed further connections between French institutions and the FOR exist and there are several accords between both nations. That should be proof enough of the fulfillment.⁵³

(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law; Taiwan has engaged in Paris in plenty of arbitration proceedings in defense of its own national interests. It has been especially litigious in France since the International Chamber of Commerce is located in Paris and it has plenty of security contracts with French weapons manufacturers. An example could be the case Thales-Taiwan where de French company was condemned to pay hundreds of millions in reparations to the RC in regard to some frigates.⁵⁴ The function is fulfilled.

(c) Negotiating with the Government of the receiving State; There are plenty of accords signed between both subjects. An example corroborated by both sources is the non-double imposition accord.⁵⁵ Note though that France in the does mention Taiwan as a territory of China, but this does not hinder from determining if the mission in question is doing a negotiating function.⁵⁶ This is fulfilled.

(d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State; The function is assumed fulfilled.

⁵³ Ministère de l'Europe et des affaires Étrangères. (20 avril 2023). France Diplomatie, Taiwan. Retrieved 23 of April 2023, from <https://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays-destination/taiwan/#:~:text=Dispositions%20en%20vigueur%20%C3%A0%20Ta%C3%AFwan&text=Depuis%20le%2012%20septembre%202022,une%20limite%20de%2090%20jours>.

⁵⁴ International Chamber of Commerce. (2011). Sté Thalès SA et Sté Thalès Underwater Systems SAS c/ Marine de la République de Chine (Taïwan), No. 10/11853, Paris, pôle 1 - chambre 1, 9 juin 2011. <https://www.iabase-lextenso.fr/cahiers-de-larbitrage/CAPJIA2011-3-006>

⁵⁵ Arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income to be implemented by the Taiwan Taxation Agency and the French Public Finance General Directorate. (12 of December 2010). Laws and regulations Database of the Republic of China. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Y0040224>

⁵⁶ France. (2010). LOI n° 2010-1658 du 29 décembre 2010 de finances rectificative pour 2010. Retrieved from <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000023546202/>

(e) *Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.*” There are plenty of examples of cooperation between French and Taiwanese institutions linked to the FOR. Here is one that has been corroborated by a French institution. On one side the Science and Technology division of the FOR in France mentions a collaboration with the Académie des Sciences to encourage bilateral research.⁵⁷ Which appears promoted on the website of the Académie.⁵⁸ The function is fulfilled.

As for diplomatic immunity. Even though there’s no official statement granting such benefits to the ROC in Paris by the government of France, there has been one instance in which the immunity of the ROC has been challenged judicially and settled by France’s Supreme Court. In the case: Cour de cassation. (2014). Pourvoi n° 11-20.312, 19 mars 2014. An American arms company named Strategic Technologies tried to execute a decision made by a court in Singapore assigning a substantial monetary debt to the RC by confiscating the property of the RC in Paris, in other words, the ROC. The decision of the French courts stated the following:

*“Ayant constaté l’existence d’un ministère taïwanais des affaires étrangères et estimé que la République de Chine-Taïwan bénéficiait d’une reconnaissance de fait par la France, une cour d’appel en a déduit exactement que ladite République était un bénéficiaire de l’immunité de juridiction au sens de l’article 684 du code de procédure civile. Dès lors, en l’absence de signification par l’intermédiaire du ministère taïwanais des affaires étrangères, une assignation délivrée contre un organe de ladite République, en exequatur d’une décision étrangère, encourt la nullité sur le fondement de ce texte.”*⁵⁹

It is important to note that the decision over recognition is a power granted only to the executive branch of the State since it is a political act. Therefore, the legitimacy of the court in making such a bold claim is questionable at best. There is a question that arises though, since the immunity has been given by the judiciary, it is technically possible that the French government doesn’t issue *agrément* to the head of

⁵⁷ Science & Technology Division, Taipei Representative Office in France. (n.d.) Retrieved April 23, 2023, from <https://www.nstc.gov.tw/france/fr/list/74bc22a9-f782-4544-9c3f-065b4533ac82>

⁵⁸ Académie des sciences. (n.d.). Prix de la Fondation scientifique franco-taiwanaise. Retrieved April 23, 2023, from <https://www.academie-sciences.fr/fr/Prix-internationaux/prix-fondation-scientifique-franco-taiwanaise.html>

⁵⁹ Cour de cassation. (2014). Pourvoi n° 11-20.312, Première chambre civile, 9 mars. Bulletin, C100282. ECLI:FR:CCASS:2014:C100282. <https://www.courdecassation.fr/decision/60797bfd9ba5988459c4a177> Note that the quote is the official summary of the case, the ideas are still all present throughout the text. "After noting the existence of a Taiwanese Ministry of Foreign Affairs and considering that the Republic of China-Taiwan enjoyed de facto recognition by France, an appeals court correctly concluded that the said Republic was a beneficiary of jurisdictional immunity within the meaning of Article 684 of the Code of Civil Procedure. Therefore, in the absence of service through the Taiwanese Ministry of Foreign Affairs, a summons issued against an organ of the said Republic, in the enforcement of a foreign decision, is null and void under this provision."

the FOR in Paris as understood in article 4 VCDR and still has diplomatic immunity. Nevertheless, disregarding the reasons for the ruling, the consequences of it are still remarkable. The ROC in Paris has diplomatic Immunity, the criterion is fulfilled.

Lastly, we should analyze the consent present in the existence of the FOR. The official stance of France toward Taiwan is the One-China Policy. Having said this, as discussed previously, the ministry of Foreign Affairs does refer to the mission as a “*représentation diplomatique*” and the mission is protected by diplomatic immunity. There are also no direct or indirect sources stating the existence of any kind of opposition by the French Government to the existence or status of this office. Quite the contrary, even if not published, sources speak of several approvals by the French Government of the acquisition of different consular functions by the FOR or of its change in name.⁶⁰ Even less if we consider the opposition standards set by the ICJ. All of these factors point to the existence of tacit consent for the existence of the mission.

There’s a question to be asked though, is a tacit consent to the existence of the mission compatible with the One-China policy? If we’re considering express consent like in the case of the US, then the answer is clearly no. In the sense that, as was discussed previously, diplomatic ties with a given country are widely considered a form of international recognition. The US’s Taiwan Policy Act in establishing formally its FOR as a diplomatic mission is clearly being incongruent. But in the case of France, there could be an argument made that consent should be interpreted in the context of the One-China policy. That is, that consent should be assumed nonexistent until proven otherwise because it would imply recognition. This position should be seen as unsustainable if the argument is followed strictly, it would imply that the actions and behaviors of a given State are irrelevant so long as the diplomatic mission’s State is not formally recognized. And this is incompatible with the existence of any kind of tacit recognition. The criterion is therefore considered fulfilled.

3.4. United Kingdom of Great Britain and Northern Ireland.

Taipei Representative Office in the U.K. 50 Grosvenor Gardens London SW1W 0EB United Kingdom.

There’s no specific legislation in the UK governing their relationship with Taiwan. There are general principles followed by British institutions regarding diplomatic law, which derive from the VCDR. For our intended purposes the following statement by the Crown Prosecution Service is of relevance: “*To qualify for this immunity and inviolability, the staff must be: (1) accepted by His Majesty's Government*

⁶⁰ Cabestan, J.-P. (2014). China's Taiwan policy under Ma Ying-jeou: The end of the special relationship? *Taiwan Journal of Democracy*, 10(1), 71-91. Retrieved from <https://www.sciencespo.fr/cei/sites/sciencespo.fr/cei/files/jp>

(HMG) as the receiving State, and (2) notified to the Foreign and Commonwealth Office (FCO).’’⁶¹ This is a premise that matches Article 2 of the VCDR, although seemingly removes the possibility of tacit consent, which would have to be tested in court and may be contradictory to ICJ jurisprudence. The closest existing to a legal text affecting the FOR in London is the “Agreement on Educational and Cultural Matters Between the Taipei Representative Office in the United Kingdom and the British Trade and Cultural Office in Taipei.”⁶² Which has dubious effects, since it is signed between two supposedly private entities. The text should still be a valid tool to ascertain the current status given by the British Government to the FOR.

(a) Representing the sending State in the receiving State; The “Agreement on Educational and Cultural Matters Between the Taipei Representative Office in the United Kingdom and the British Trade and Cultural Office in Taipei,” which will be discussed later, is signed and negotiated by the FOR in London, therefore its representative function is evident. The criterion is fulfilled.

(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law; One instance of public intervention of the ROC in the UK in defense of one of its citizens. In the following case, the ROC asked a Scottish court to extradite a person convicted for a hit-and-run action to Taiwan.⁶³ The press release seems to indicate a heavy involvement of the FOR in the resolution of the case, although this account may very well be biased. No instances of Taiwan intervening in the London Court of International Arbitration have been found, contrary to our analysis of France. The case referred to beforehand does on its own not justify the completion of the criterion but taking into account its involvement in the Overseas Community Affairs Council (a Taiwanese government program that offers a myriad of services to its citizens abroad),⁶⁴ and the reasonable assumption that there’s plenty more examples of FOR intervention for citizens interests, the criterion will be considered fulfilled.

(c) Negotiating with the Government of the receiving State; There are accords signed between both nations. An example would be the UK-Taiwan Double Taxation Agreement.⁶⁵ The criterion is fulfilled.

⁶¹ Crown Prosecution Service. (2022). Diplomatic immunity and diplomatic premises. Retrieved from <https://www.cps.gov.uk/legal-guidance/diplomatic-immunity-and-diplomatic-premises>

⁶² Taipei Representative Office in the United Kingdom & British Trade and Cultural Office in Taipei. (2001). Agreement on Educational and Cultural Matters. <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Y0060121>

⁶³ Ministry of Foreign Affairs of the Republic of China (2014). Press release: ROC government welcomes Scottish court ruling that Mr. Zain Dean be extradited to Taiwan, setting positive precedent for Taiwan-UK judicial cooperation. Retrieved from: https://en.mofa.gov.tw/News_Content.aspx?n=1329&s=32552

⁶⁴ Overseas Community Affairs Council (n.d.). Home page. Retrieved from: <https://www.ocac.gov.tw/OCAC/Eng/>

⁶⁵ HM Revenue & Customs. (2021). Double Taxation Agreement with Taiwan (Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

(d) *Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;* The criterion is assumed fulfilled.

(e) *Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.*” The previously stated agreement on educational and cultural matters does offer a framework for such exchanges. Another example could be the publicly promoted UK government program. The UK Science and Innovation Network Taiwan (SIN Taiwan). Which has ties to the FOR.⁶⁶ Besides, there’s a comprehensive list of all forms of cooperation existent between both countries done by the FOR.⁶⁷ The criterion is fulfilled.

As for immunity, the “Agreement on Educational and Cultural Matters Between the Taipei Representative Office in the United Kingdom and the British Trade and Cultural Office in Taipei,” states the following in section 3: “...not enjoying administrative privileges and immunities unless previously agreed upon in writing...” There seem to be some limited privileges given to Taiwanese diplomats like the protection of Import/Export of Articles for Official/Personal Use or the protection of diplomatic pouches. Since the FOR of the UK does have forms for their staff that are used whilst entering the country.⁶⁸ But these privileges are severely limited and nowhere near the extent required by the VCDR. The criterion is not fulfilled.

There is no express consent present regarding the existence of a diplomatic mission on behalf of Taiwan. There appears to be some sort of tacit consent for a representative office to exist, the FOR is allowed to operate on British soil and to do the functions of the CVDR. Nevertheless, the lack of official acknowledgment of said FOR, the lack of diplomatic immunity, and the limited reach of the mission make it impossible to suggest that there might be tacit consent for a diplomatic mission in the context of international law. Nevertheless, given the circumstances and functions of the FOR, it might be plausible to consider it a consulate, even if only *de facto* and not *the iure*. However, this is still not enough to satisfy the requirements of international tacit recognition and has very limited effects on Taiwan’s ability to enter diplomatic relations as in MC’s fourth requirement. The criterion is not fulfilled.

and on capital gains) (Cm 9511). Retrieved April 24, 2023, from <https://www.gov.uk/government/publications/taiwan-tax-treaties>

⁶⁶ UK Science and Innovation Network in Taiwan. (n.d.). GOV.UK. Retrieved April 24, 2023, from <https://www.gov.uk/world/organisations/uk-science-innovation-network-in-taiwan>

⁶⁷ Taipei Representative Office in the U.K. (2023). Taiwan-UK Relations. Retrieved from https://www.roc-taiwan.org/uk_en/post/39.html

⁶⁸ Ministry of Foreign Affairs, Taiwan. (2012, May 17). Privileges and Immunities for Diplomatic Missions and Foreign Offices. Retrieved April 24, 2023, from https://en.mofa.gov.tw/News_Content.aspx?n=1337&s=34555

The current bilateral relation, explicit or otherwise, between Taiwan and the UK is very well summarized by Lord Ahmad of Wimbledon, former Minister of State at the Foreign and Commonwealth Office when he stated the following in a parliamentary debate:

*“The United Kingdom’s long-standing policy on Taiwan has not changed. We have no diplomatic relations with Taiwan, but a strong unofficial relationship based on dynamic commercial, educational and cultural ties. We regularly lobby in favour of Taiwan’s participation in international organisations where statehood is not a prerequisite, and we make clear our concerns about any activity that risks destabilising the cross-strait status quo. We have no plans to recognise Taiwan as a state.”*⁶⁹

3.5. Russian Federation.

Representative Office in Moscow for the Taipei-Moscow Economic and Cultural cooperation Commission. 25 Yermolayevsky Pereulok, 5th FL., Moscow 123001, Russian Federation.

In the analysis of the FOR in Russia, we are going to focus on the Russian decree that regulates it. The Decree on relations between the Russian Federation and Taiwan (1992) is still in place today and establishes the basic framework for the relations between both subjects.⁷⁰ The rule is relevant because it establishes an express norm that negates the possibility of tacit implications.⁷¹

(a) Representing the sending State in the receiving State; The decree states that all ties are to be executed by individuals and non-governmental organizations. The implication here is that even if there are people in Moscow sent by the Taiwanese government, they are not diplomats in the eyes of the Kremlin. There are also no official bilateral treaties or accords existing between both countries. There might be some unofficial ones, but this is not enough to justify the fulfillment of the criteria. Not fulfilled.

(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law; No records have been found of the mission defending its

⁶⁹ House of Lords library. (2022). The House of Lords is scheduled to consider the following question for short debate: Baroness D’Souza (Crossbench) to ask Her Majesty’s Government what steps they are taking, if any, to support democracy in Taiwan. UK support for democracy in Taiwan. Retrieved from <https://lordslibrary.parliament.uk/uk-support-for-democracy-in-taiwan/>

⁷⁰ Указ. Президент РФ. (1992, 15 сентября). Об отношениях между Российской Федерацией и Тайванем [Decree. President of the Russian Federation. (1992, September 15). On relations between the Russian Federation and Taiwan]. Retrieved from http://www.businesspravo.ru/Docum/DocumShow_DocumID_54290.html

⁷¹ Bazhanov, Y. (1996). Russia and Taiwan. (Berichte / BIOst, 29-1996). Köln: Bundesinstitut für ostwissenschaftliche und internationale Studien. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-42513>

citizens or interests in Russia to the level required for this section to be fulfilled. Besides, according to the Decree, the FOR doesn't appear to be a subject itself to begin with. Not fulfilled.

(c) *Negotiating with the Government of the receiving State;* Because of the facts stated in section a), and the fact that no accords or treaties exist between both subjects, this criterion can also not be considered fulfilled.

(d) *Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;* This criterion is Assumed fulfilled.

(e) *Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.*” According to the decree, these are the main and only functions allowed to the office of Representatives. This also appears to be true in practice given the self-reported activities of the FOR.⁷² The criterion is fulfilled.

As for diplomatic immunities, the Decree states there to be none. As the FOR is considered a private matter when the decree states in its second paragraph “Their legal basis is determined by local legislation.” Therefore, the criterion is not fulfilled. Lastly, there is no consent express or tacit for the existence of the mission since the objection of Russia does comply with the criteria established in the ICJ court ruling of *Guinea v France*: promptness, consistency of the objection, and maintenance in time. Therefore, the criterion is also not fulfilled.

It seems quite undisputable that there is no form of international recognition present neither tacit nor express regarding Taiwan by the side of Russia. It is also clear that the FOR in Russia does not have the requirements to make it a diplomatic mission. The FOR in Moscow is, therefore, some form of Para-diplomacy, with no effects on Taiwan's international recognition.

3.6. People's Republic of China.

Taipei Economic and Cultural Office. Room 4907, 49/F, Central Plaza, 18 Harbour Road, WAN CHAI, HONG KONG.

Taipei Economic and Cultural Office. Alameda Dr. Carlos d' Assumpcao, No.411-417, Edif. Dynasty Plaza, 5 Andar J-O, Macau.

The situation in China is very particular, especially compared to the other countries analyzed in this essay. First, there are no offices of representatives official or unofficial of Taiwan in the mainland of China, which given the circumstances is not surprising. Still, there are two FOR technically present in the PRC, one of them in Hong Kong and the other in Macao. The mere existence of these is remarkable,

⁷² Representative Office in Moscow for the Taipei-Moscow Economic and Cultural cooperation Commission. (n.d.). Последние Новости [Latest News]. Retrieved from https://www.tmeccc.org/ru_ru/cat/10.html

given the blatant animosity between the PRC and the RC, and they present a case for which our current method of analysis is not suitable.

First, one must analyze the reasons (factual and legal) for these offices' existence and then some conclusions on their current legal standing regarding the VCDR and VCCR may be drawn. Both exist under the umbrella of the one country two systems policy, which means that they have been granted extraordinary levels of autonomy. And curiously, they are also able to engage in diplomatic relations with other states, although in a limited capacity. Both's relationship to the mainland is regulated by the "Basic Law" for Hong Kong and its equivalent for Macao the "*Ley Básica*". These laws explicitly give the territories the competence to enter treaties and international organizations.⁷³

The *Ley Básica* on its article 135 states the following:

*"Representatives of the Government of the Macao Special Administrative Region may, as members of delegations of the Government of the People's Republic of China, participate in negotiations at the diplomatic level directly affecting the Region conducted by the Central People's Government."*⁷⁴

The basic law of Hong Kong in Article 152 states the same but for the case of Hong Kong.⁷⁵ This, in conjunction with their ability to engage in international organizations and sign treaties seem to have given them unique competencies regarding international relations. Especially Hong Kong has been able to transform itself into a diplomatic hub, with over 64 embassies and consulates present on the peninsula. Even so, given the tight control of the PRC of these territories, one may suspect that these competencies are somewhat limited to the will of the Chinese Communist Party. Independently from this, it seems that at least in the context of the Chinese legal system, the decision of allowing the offices to exist has been taken by both regions. The FOR in both territories are privately owned and have officially registered names that are much different than the self-advertised ones. In the case of Hong Kong, its registered name is Chung-Hwa Travel Agency. And their main functions seem to be the facilitation of travel between the territories and the improvement of economic relations.⁷⁶ Under these circumstances there can be no talk of diplomatic missions or even consulates, much less of international

⁷³ Ip, E. (2016). COMPARATIVE SUBNATIONAL FOREIGN RELATIONS LAW IN THE CHINESE SPECIAL ADMINISTRATIVE REGIONS. *International & Comparative Law Quarterly*, 65(4), 953-968. doi:10.1017/S0020589316000427

⁷⁴ Basic Law of the Macao Special Administrative Region of the People's Republic of China. (1993). Retrieved from <https://www.wipo.int/wipolex/es/text/185900>

⁷⁵ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. (2021) Retrieved from <https://www.basiclaw.gov.hk/en/basiclaw/index.html>

⁷⁶ Chu, Y. H. (2010). Taiwan and Hong Kong Re-Embrace Each Other. *Hong Kong Journal*. https://scholar.googleusercontent.com/scholar?q=cache:tlkFYytGJVEJ:scholar.google.com/+office+of+representatives+of+taiwan+in+hong+kong&hl=es&as_sdt=0,5

recognition. Even if the regions of Hong Kong and Macao have limited competencies in international relations the consent for a full-fledged diplomatic mission as understood in the VCDR has to be given by Beijing. The lack of consent, the lack of diplomatic immunity, and the limited functions of these FOR make them a form of para-diplomacy at best.

Having considered all the UNSC P5 nations FOR the results regarding their status as for international law can be illustrated in the following table:

	USA	France	UK	Russia	China
Functions	5/5 Fulfilled	5/5 Fulfilled	5/5 Fulfilled	2/5 Not fulfilled	1/5 Not fulfilled
Diplomatic Immunity	Fulfilled	Fulfilled	Not fulfilled	Not fulfilled	Not fulfilled
Consent	Fulfilled	Fulfilled	Not Fulfilled	Not fulfilled	Not fulfilled

3.7. The People’s Republic of China’s Influence over Taiwanese Foreign Offices of Representatives.

The last issue that will be addressed in this essay is the role of the PRC in the establishment, scope, and maintenance of the FOR. As well as the possible legal effects that the influence may have, especially relating to their standing as diplomatic missions, their capacity to provide Taiwan with tacit recognition, and ultimately their independence and capacity to enter diplomatic relations.

At the beginning of last year, there was an unlikely incident that occurred between Lithuania and the PRC regarding a new FOR that was opened there on the invitation of Lithuania. The Chinese government did certainly disapprove of it, responding with a barrage of sanctions against the Baltic nation. On the issue, the Chinese foreign ministry had the following to say:

*"We urge the Lithuanian side to honestly abide by basic norms governing international relations, keep its own promises and correct its mistake that undermined China's national sovereignty and core interests as soon as possible."*⁷⁷

⁷⁷ Wenbin, F. M. (2021). Press briefing in Beijing. Retrieved from http://in.china-embassy.gov.cn/eng/fyrth/202108/t20210813_8928570.htm

The issue centered around the fact that the office was named “Taiwanese Office of Representatives”. Instead of “Taipei Office of Representatives”. The Chinese government believes that the difference in nomenclature misrepresented Taiwan as an independent entity from China or in their words “*it openly created a false impression of one China, one Taiwan.*”⁷⁸ The Chinese are implying two things with their statements and reactions. First, the existence of these offices is a threat to the “one China” principle, and therefore they must be granted to Beijing’s eyes some level of international recognition. And secondly, there’s a distinction between these offices being called “Taiwanese” or “Taipei’s”.

The understanding is, that by calling the office “of Taipei”, the country in question is admitting that the FOR is of a region and not of a State, limiting its recognition capabilities. Even so, perhaps more important than the terminology is the fact that Beijing may have a say on how the offices are to be named or conducted, which would pose serious questions about Taiwan’s capacity to engage in international relations since a lot of its attempts could be thwarted or limited by the mainland.⁷⁹ It could even be argued that Taiwan’s FOR are equivalent to Hong Kong’s foreign consulates, and therefore don’t merit any kind of effects on international recognition.

On the other hand, Taiwan’s office in Lithuania is still called “of Taiwan”, therefore whatever attempts were made by China to coerce the Baltic State have not worked. And in the US’s Taiwan Policy Act, despite vocal Chinese opposition, the capabilities and status of the mission were greatly expanded. Even so, the attempt by the Senate of granting the FOR the condition “of Taiwan” was in the end not implemented because of fears of Chinese retaliation. It’s undebatable that China has some form of indirect influence over Taiwan’s FOR. It is also undisputable that this influence is not absolute, if it were so, then probably most of these offices would either not exist or only do so in a limited fashion. And contrary to Hong Kong or Macao, Taiwan holds its FOR despite PRC intervention and not because of their consent.

What appears clear though, is that there’s no provision in the VCDR obligating the mission to be named in a particular manner to be considered as such. The closest applicable norm could maybe be Article 20 about State symbols. But still, their display is at the discretion of the sending State and not the receiving one. If a ROC, like in the case of the US or France, accomplishes all the functions of a diplomatic mission, has diplomatic immunity, and has the consent of the host (be it express or tacit) given by a piece of legislation or de facto by a court. Then it would be unreasonable to assume that only on the

⁷⁸ Jingxi, M. (2021, December 17). Beijing dismisses claims from Lithuania on safety. China Daily. Retrieved from <https://global.chinadaily.com.cn/a/202112/17/WS61bbcc75a310cdd39bc7bd7f.html>.

⁷⁹ Leuteritz, K. (2008). [Review of *Die völkerrechtliche Stellung Taiwans. Nomos Universitätsschriften Recht, Band 503*, by C. Petzold]. *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 41(4), 581–583. <http://www.jstor.org/stable/43239815>

basis of the FOR's name alone, their standing as diplomatic missions in accordance with international law. One could argue that the consent given by these nations to the existence of the mission is limited to the fact that Taiwan is to their eyes a region of China, although this is questionable at best since section 102 of the Taiwan Policy Act states the government of Taiwan as the legitimate government of the island and establishes on section 213 as a "major non-NATO ally". The effects of the Taipei nomenclature should be considered political and not legal.

4. Conclusions.

Throughout the essay, it has been attempted to better assess the extent and the relationships between the legal concepts of international recognition, tacit recognition, the ability to engage in diplomatic relations, and diplomatic missions. All of this applied to the context of Taiwan's foreign offices of representatives, with the intent of solving the question of if they are a possible form of international recognition.

After our analysis, the only possible answer to that inquiry is that it depends. First, there has been a distinction made between the MC's 4th criterion of being able to engage in international relations, and the typically accepted culmination of this criterion, that is international recognition. International recognition and the ability to engage in international relations are not equivalents, but recognition is a form of proof of this ability. Under this understanding, a State may exist in accordance with international law without being internationally recognized. Although, for this entity to be considered a State it will have to prove its ability to engage in diplomatic relations, and the other path of doing so in accordance with international law is by establishing diplomatic missions. That is creating a presence in foreign States that according to the VCDR can accomplish all the functions legally associated with it, having diplomatic immunity and invulnerability, and having the consent of the receiving States in accordance with the ICJ's jurisprudence. The establishment of a diplomatic mission has other legal consequences besides being proof of MC's 4th, that is, a tacit recognition of the sending State.

With this understanding, the offices of representatives have differing legal effects depending on their status in any given country. In the case of the US, since they have been equated to any other diplomatic mission by a bill from the Senate, they have a form of diplomatic mission themselves, with all certainty helping to fulfill MC's 4th, and establishing tacit recognition towards Taiwan as a State. On the other end of the spectrum, the office in Russia has no diplomatic immunity and doesn't accomplish most of the functions typically assigned to a diplomatic mission. Therefore, according to international law, it cannot be stated that the FOR is a form of diplomatic mission, and so it has very few effects on MC's 4th if any, and it also doesn't imply international recognition. Lastly, the middle way is the case of the FOR in London. The office does all the functions typical of a mission but does not have immunity or

consent in the terms required by the VCDR. Therefore, it cannot be stated as a form of tacit recognition, but still, it is a form of proof of diplomatic engagement, helping to justify MC's 4th, even if not to the same level as the US's.

Therefore, as a definitive answer to the main question of this essay: Under the appropriate legal conditions the foreign offices of representatives of Taiwan can be a form of international recognition. And, in addition, they can be proof of Statehood.

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