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The Chinese (Taiwan) Yearbook of International Law and Affairs: Contributing to the Grotian moment in Asia

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Chinese (Taiwan) Yearbook of International Law and Affairs: Contributing to the Grotian Moment in Asia

Ying-jeou Ma, Chun-i Chen and Pasha L. Hsieh

Contents

9.1 Introduction	100
9.2 The Formative Years of the Yearbook	101
9.3 The Current Operation and Challenges	103
9.4 Contents Focused on Asia and International Law	105
9.5 Collaboration with the ILA and ASIL	106
References	108

Abstract The contribution examines critical developments of the Chinese (Taiwan) Yearbook of International Law and Affairs and its contribution to the ‘Grotian moment’ in Asia. The Yearbook is the first publication specialized in international law in Greater China, a Chinese-speaking region that includes Mainland China, Taiwan, Hong Kong and Macau. The founding of the Yearbook in 1981 was a response to the unique status of the Republic of China (ROC) rendered after its loss of representation

Ying-jeou Ma received his S.J.D. from Harvard Law School in 1981 and taught international law at National Chengchi University (NCCU) as an adjunct associate professor from 1981 to 1998. After he served as President of the Chinese (Taiwan) Society of International Law from 1999 to 2002, he became the Editor-in-Chief of the Chinese (Taiwan) Yearbook of International Law and Affairs. In the meantime, he was President of the Republic of China (ROC) from 2008 to 2016. Chun-i Chen is the Associate Editor-in-Chief and Executive Editor of the Yearbook and a professor of law at NCCU. Pasha L. Hsieh is the Managing Editor of the Yearbook and an associate professor of law at Singapore Management University.

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in the United Nations under General Assembly Resolution 2758 of 1971. Over the past 40 years, the Yearbook has become an intellectual depository of research on the Diaoyutai/Senkaku Islands, the Taiping Island (known as Itu Aba in the West), and related territorial and delimitation disputes in the East and South China Seas. It also provides a scholarly forum for discussions on the ROC's state practice, concepts of recognition in divided states, cross-Taiwan Straits relations and the status of Hong Kong. To foster dialogues on transnational legal issues related to the Asia–Pacific region, the Yearbook has published papers selected for presentation at research forums jointly organized by the International Law Association and the American Society of International Law. The Yearbook will further digitalize its contents and enhance collaboration with academic societies around the globe in order to galvanize the understanding of international law from Asian perspectives.

Keywords Asia · Cross-Strait Relations · Greater China · Recognition · Taiwan · UN

9.1 Introduction

On behalf of the editorial board, we are honored to contribute a chapter on the history, function, operation and future of the Chinese (Taiwan) Yearbook of International Law and Affairs. As the first yearbook of international law in the Chinese-speaking world, our Yearbook continues to be among the few Asia-based publications specialized in international law. Since its first publication in 1981, the Yearbook has galvanized Asia's 'Grotian moment' by universalizing international law and documenting key events in the Asia–Pacific region with global implications.

The background of the Yearbook is intertwined with modern China's reception of international law and the unique legal status of Taiwan since 1895. The beginning of international law research can be traced back to the publication of Hugo Grotius' *De Jure Belli ac Pacis* (On the Law of War and Peace) in 1625. Nevertheless, China's early encounters with foreign (primarily Western) nations did not affect the evolving international law in the West. The Netherlands, which placed Taiwan under its colonial rule from 1624 to 1662, played a momentous role in Chinese diplomacy. The 1662 peace treaty that General Zheng Chenggong (Koxinga) of China's Ming Dynasty concluded with the Dutch governor constituted the prelude to China's international agreements with foreign countries.¹ After Zheng won the nine-month battle, the Treaty led to the withdrawal of the Dutch troops from Taiwan. In the following two and half centuries, understanding international law ascended to China's top priority. The primary reasons were the proliferation of 'unequal treaties' after the signing of the 1842 Treaty of Nanjing with the United Kingdom as a result

¹Taiwan was under Dutch rule from 1624 to 1662. The Zheng-Dutch Peace Treaty consists of Dutch and Chinese versions, which include 18 and 16 provisions, respectively. This treaty preceded the 1689 Treaty of Nerchinsk relating to Sino-Russia border conflicts.

of the Opium War (1839–42) and Qing officials' participation in two Hague Peace Conferences.²

Following the overthrow of the Qing (Manchu) empire in 1912, the newly founded Republic of China (ROC) government upheld the concept of civilized nations, so that China could 'obtain the rights of a civilized state.'³ In Republican China from 1912 to 1949, university education and academic societies largely accelerated international law knowledge. China's first-generation international lawyers took part in the League of Nations and contributed to the founding of the United Nations (UN). ROC diplomats and judges, including Wang Chung-hui (王寵惠 1920–30; 1931–36) and Cheng Tien-hsi (鄭天錫 1936–45) of the Permanent Court of International Justice and Hsu Mo (徐謨 1946–56) and Wellington Wei-jun Koo (顧維鈞 1957–67) of the International Court of Justice, advanced the nation's international status during World War II and in the post-war era.⁴ They also significantly enhanced the ROC's international law capacity after it relocated to Taiwan following the civil war (1947–49) with the Chinese communist forces. Since 1949, the ROC's new international law challenges shifted to its diplomatic competition in the international community with the People's Republic of China (PRC) on the Chinese mainland.

9.2 The Formative Years of the Yearbook

There are two pivotal events that prompted the idea for publishing a Taiwan-focused international law yearbook. First, the 1971 UN General Assembly Resolution 2758 transferred the ROC's 'China' representation to the PRC. Notably, the title "Republic of China" continues to remain in Articles 23 and 110 of the UN Charter. Second, Washington decided to switch diplomatic recognition from Taipei to Beijing in 1979 but continued to keep "unofficial" relations with Taiwan.

Diplomats and legal academics realized that the ROC's state practices and agreements were no longer included in UN materials and the 'Treaties in Force' published by the US Department of State.⁵ Accompanied by the wave of de-recognition, the decrease in Taiwan's visibility on the global stage weakened the ROC government's diplomatic capacities. An international law yearbook pertinent to Taiwan could thus serve two fundamental purposes. First, it documents the ROC's participation in international organizations and bilateral relations, including particularly those treaties and agreements concluded with the United States, which de-recognized the ROC

²The term 'unequal treaties' was first coined by the Chinese Nationalist Party (KMT). See Chiu 1972.

³Proclamation of President Sun Yat-sen on the Establishment of the Republic of China on 1 January 1912.

⁴For details, see Hsieh 2015.

⁵Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force, US Department of State, <https://www.state.gov/treaties-in-force/> (accessed 27 August 2019). After 1979, the US Federal Register includes only the reference number rather than the text of the ROC-US agreements.

diplomatically in 1979 but re-recognized Taiwan domestically as a foreign state or government under the Taiwan Relations Act (TRA) in the same year. These official materials that symbolize the sovereign status of the ROC counter the PRC's claim to be the 'only legitimate government of China.' Second, the publication provides a forum for scholarly works that focus on legal issues related to Mainland China and Taiwan such as cross-strait relations. It also enables foreign academics and governments to understand Taiwan's domestic implementation of international law in legislation and judicial decisions irrespective of its diplomatic isolation.

The predecessor to the current Yearbook is the *Annals of the Chinese Society of International Law (CSIL)*. Nineteen volumes of the *Annals* were published in English from 1964 to 1982. As its title suggests, the *Annals* was affiliated with the CSIL, an academic society that was established in Taipei in 1958 and joined the International Law Association (ILA) in 1961.⁶ As the first CSIL president, Tien-fong Cheng (程天放), emphasized in the first volume, the purpose of the *Annals* was 'to arouse the interest in and to propagate the study of international law.'⁷ The first Editor-in-Chief of the *Annals* was Professor Yi-ting Chang (張彝鼎) of National Chengchi University (NCCU), a former secretary to Generalissimo Chiang Kai-shek. From Volume 7, Professor Yuen-li Liang (梁鑿立) assumed the Editor-in-Chief position.⁸ Liang had served as the Director of the UN Secretariat's Division of Development and Codification of International Law before he returned to Taiwan. While almost all editors were based in Taiwan, Professor Bing Cheng (鄭斌) of the University College London, a leading authority on air and space law, joined the editorial board in 1970 and contributed several articles to the *Annals*.⁹

While the *Annals* gathered a team of international law scholars, the fact that it was only published in Taiwan severely limited its distribution. In 1981, President Yi-ting Chang of the CSIL invited Professor Hungdah Chiu of the University of Maryland School of Law to serve as the Editor-in-Chief and to compose a new editorial board for the new Yearbook that replaced the *Annals*.¹⁰ Chiu's scholarship, capability and international prestige significantly influenced foreign and domestic legal scholars who focus on China and Taiwan issues. He was a key figure to advocate and advise for the passage of the TRA of 1979 by the U.S. Congress. The TRA preserves the legal status of the ROC as a foreign state or government under US law in US courts

⁶Chen 2003.

⁷Cheng 1964.

⁸Yuen-li Liang was listed as the Editor-in-Chief from Volume 7 (1970) to Volume 10 (1973) and Yi-ting Chang was primarily responsible for subsequent volumes of the *Annals*. Chen 2005.

⁹Bin Cheng is the son of Judge Cheng Tien-hsi of the Permanent Court of International Justice. His contributions include Bin Cheng (1981) *Moon Treaty: Agreement Governing the Activities of States on the Moon and Other Celestial Bodies within the Solar System Other Than the Earth*, December 18, 1979. 18 *Annals of the Chinese Society of International Law* 1 and Bin Cheng (1994–95) *How Should We Study International Law?* 13 *Chinese Yearbook of International Law* 214.

¹⁰The Chinese version of the Yearbook 中國國際法與事務年報 (with similar but different contents from the English version), which was published by Taiwan Commercial Press, includes 17 volumes from 1989 to 2003. Chiu also served as the first Editor-in-Chief.

and the ROC embassy property known as the ‘Twin Oaks’ Estate even after the United States established diplomatic relations with the PRC.¹¹

Since its initial publication in 1981, the format of the Yearbook has been influenced by that of British, Canadian, German and the Netherlands Yearbooks of International Law, as well as the American Journal of International Law. Based on Professor Chiu’s suggestions, the title of the Yearbook includes the word ‘affairs’ because international law is intertwined with foreign affairs, particularly in the case of Taiwan.¹² Different from the previous Annals, the new Chinese Yearbook of International Law and Affairs was published in the United States with the financial support of the CSIL.¹³

On Mainland China, the PRC’s Chinese Society of International Law, which was founded in 1980, only started publishing its Chinese Yearbook of International Law in Chinese in 1982.¹⁴ Operated by Mainland Chinese scholars, the Chinese Journal of International Law, published in English, commenced publication in 2002.¹⁵ Distinct from the Yearbook published in Beijing, the Journal is affiliated neither with the PRC’s Society nor its government and only includes limited PRC state practice materials.

9.3 The Current Operation and Challenges

In 2001, the executive board meeting chaired by CSIL President Ying-jeou Ma passed a resolution to change the title of the Yearbook to the Chinese (Taiwan) Yearbook of International Law.¹⁶ The resolution was to differentiate the Yearbook from the one published in Mainland China and to reflect the change of the CSIL’s title in the ILA from the China (Taiwan) Branch to the Chinese (Taiwan) Branch in 1976.¹⁷ In addition, Chiu stepped down as the Editor-in-Chief after being responsible for

¹¹Based on the Taiwan Relations Act (22 U.S.C. § 3303 (2000)), the US court recognized that Taiwan is deemed ‘as if derecognition has not occurred.’ *Dupont Circle Citizens Ass’n v. D.C. Bd. of Zoning Adjustment*, 530 A.2d 1163, 1170 (D.C. 1987).

¹²Chang 1981.

¹³The funding contributed to the East Asian Legal Studies Program of the University of Maryland School of Law. Two full-time staff members and editors, Chih-Yu T. Wu and Yu-fan Li, were recruited to assist Hungdah Chiu. The predecessors to Wu and Li were Shirley Lay and Su Yun Chang.

¹⁴Introduction to the Chinese Society of International Law, 10 May 2014, <https://www.csil.cn/News/Detail.aspx?Aid=16>, accessed 28 August 2019. In 1983, Beijing’s Chinese Society of International Law published the ‘Selected Articles from Chinese Yearbook of International Law’, which translated Volume 1 of their Yearbook into English. Subsequent volumes were not accompanied by English translations.

¹⁵Chinese Journal of International Law, <https://academic.oup.com/chinesejil/issue/1/1>, accessed 28 August 2019.

¹⁶Volume 19 (2001) is the first volume of the Yearbook that uses the revised title.

¹⁷Chen 2003, at 423. As of 2019, the People’s Republic of China has yet to accede to the International Law Association.

volumes 1–22 of the Yearbook. In 2007, Ma succeeded as the Editor-in-Chief and moved the editorial board back to Taiwan.¹⁸

When Ma was elected ROC President in 2008, he simultaneously served as the Editor-in-Chief during his eight-year presidential terms. From Volume 23, Professor Chun-i Chen of NCCU became the Associate Editor-in-Chief and Executive Editor. At the invitation of Chen, Pasha L. Hsieh, who was a legal affairs officer at the World Trade Organization, joined the editorial board as the Managing Editor. Under the supervision of Pei-Lun Tsai, the Associate Editor, student editors at NCCU and Singapore Management University have assisted in editing the Yearbook. Since 2015, NCCU's Research Center for International Legal Studies and its Hungdah Chiu International Law Library have also provided academic and logistical support to the editorial board.

There are two important steps that the editorial board of the Chinese (Taiwan) Yearbook of International law took in order to increase its impact on academic and professional communities. First, we have significantly 'internationalized' our editorial board in the past decade. Our editorial board encompasses members of the advisory board and editors. Senior colleagues who joined the advisory board in recent years include Professor Jerome A. Cohen of New York University, Professor Jacques deLisle of the University of Pennsylvania, Professor Stefan Talmon of the University of Bonn, and former Judge Helmut Tuerk of the International Tribunal for the Law of the Sea (ITLOS). Almost all advisory board members have visited Taiwan and consistently provided feedback to the Yearbook. Our editors who ensure the efficient review and editing of our submissions are professors and judges in Mainland China, Japan, Singapore, Taiwan and United States. With the assistance of editors and invited external reviewers, we are able to reach the publication decision and provide review comments within four to six weeks from the dates of submission.

Second, the commercialization and digitalization of the Yearbook have become critical to the timely dissemination of developments in contemporary international law. Commercialization denotes the academic society's cooperation with established publishers with experience in marketing. It also substantially reduces human resource costs for the editorial board and enhances the efficiency of publication. From Volume 22 to 30, the Yearbook was published by CMP Publishing (formerly Cameron May).¹⁹ Since Volume 31, Brill Publishers (Brill) became the publisher of the Yearbook.²⁰ Unlike journals, yearbooks are published on an annual basis and the fact that volumes are often published one or even two years behind the year that the volume actually presents can undermine the prospective authors' interests in submission. We find it efficient to complete typesetting in Leiden, where Brill is based, in six months. Complimentary copies are also directly mailed to authors and main research institutions from the Netherlands.

¹⁸Ma has been the Editor-in-Chief for Volume 23 (2005), which was published in 2007, to Volume 37 (2019), which is expected to be published in 2020.

¹⁹The agreement was concluded in 2007.

²⁰The agreement was concluded in 2015.

The salience of digitalization responds to the reality of contemporary legal research that relies more on electronic files. Many university libraries also tend to subscribe to lower-cost electronic versions of publications. Consequently, based on the CSIL's agreements with William S. Hein & Co., Inc. and Thomas Reuters, all volumes of the Yearbook are made available on HeinOnline and Westlaw.²¹ Furthermore, Brill's website allows the purchase of files of Yearbook chapters on an individual basis. The royalty payments that we have received demonstrate the increase in the use of the Yearbook's electronic files over its print copies.

9.4 Contents Focused on Asia and International Law

In comparison with law journals, the Yearbook aims to publish scholarly works that address more doctrinal, historical and fundamental legal issues. Most volumes of the Yearbook are divided into the following sections. The Articles section covers three key areas or 'selling points' that make the Yearbook authoritative in international law scholarships. First, the section focuses on the legal status and foreign agreements of the ROC on Taiwan, cross-strait relations, and the status of Hong Kong in light of the 1984 Sino-British Joint Declaration and the PRC Basic Law.²² Second, the section provides rich literature on the concept of divided states after World War II, the criteria of statehood, recognition of states and governments in international law, state immunity and succession.²³ These issues are closely intertwined with the pragmatic legal challenges that Taiwan has faced.

Finally, the section puts a particular emphasis on the law of the seas research on Diaoyutai/Senkaku Islands in the East China Sea and the Taiping/Itu Aba Island in the South China Sea.²⁴ As the ROC has exercised effective control over the Taiping Island (the largest natural island among the Spratly Islands) since 1945, the Yearbook offers first-hand information on the area. For example, Volume 33 of the Yearbook reprints the CSIL's *amicus curie* submission to the Tribunal of the South China Sea Arbitration in 2016, which dealt with disputes between the PRC and the Philippines. The CSIL's 400-page submission includes a variety of scientific and photographic evidence to demonstrate that the Taiping Island meets the definition of 'an island' rather than a rock under Article 121 of the UN Convention on the Law of the Sea. Volume 34 includes a special section on the decision of the South China Sea Arbitration, contributed by German, Taiwanese, Vietnamese and US scholars.

In addition to academic articles, our Essays section includes personal reflections of prominent legal scholars. A leading Chinese law expert, Professor Jerome A. Cohen, authored the first essay that explains the beginning of his research on the

²¹The two agreements were signed in 2007 and 2009, respectively, and continue to be implemented by Brill Publishers. HeinOnline also includes electronic files of the previous volumes of the Annals.

²²E.g. Chiu 1988–89; Mushkat 2013.

²³E.g. McWhinney 1997–98; Roth 2012.

²⁴E.g. Ma 1982; Yu 1989–90; Chiu 1996–97; Shaw 2008.

legal system of ‘red China’ in the 1960s.²⁵ The Special Report section provides a concise analysis of contemporary Asia or Taiwan-specific events and compiles relevant official documents that facilitate easy reference for readers. For instance, the section includes detailed information on the Kuang Hua Liao (光華寮 in Chinese and Kokaryo in Japanese) case rendered by Japanese courts on the ownership of the dormitory property that the ROC purchased in 1952.²⁶ It also covers the first-ever Beijing-Taipei free trade agreement entitled the ‘Cross-Strait Economic Cooperation Framework Agreement’ (known as the ECFA) of 2010.²⁷

Tellingly, the Contemporary Practice and Judicial Decisions section compiles selected official documents on the ROC government’s position on key issues, ranging from its participation in the World Health Assembly to the legalization of same-sex marriage. Assisted by judges and Lee and Li Attorneys-at-Law, the section includes translations of judicial and administrative interpretations of Taiwan’s application of international law. To illustrate, the issues cover the court’s recognition of arbitral awards in line with the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the implementation of the 1966 International Covenant on Civil and Political Rights in cases involving the death penalty.

The Treaties/Agreements section also provides a chronological list of international agreements that Taiwan concluded with international organizations and countries with which Taiwan has and does not have diplomatic relations. Selected texts of critical agreements are also reprinted in the section. Some volumes of the Yearbook also contain the Book Review section that includes review comments on monographs and edited collections relating to legal issues on Taiwan or the Asia-Pacific.

9.5 Collaboration with the ILA and ASIL

To promote the Grotian moment in Asia, we have strived to enhance the quality and quantity of submissions to the Yearbook. Other than regular email submissions, the Yearbook accepts submissions via ExpressO, an online manuscript delivery service that many US-based law journals use. As QS World University Rankings that take into account citations in the Scopus database became increasingly influential, academics in the region (particularly junior scholars) prefer to submit manuscripts to Scopus-indexed journals. The Yearbook is currently going through a review process for it to be a Scopus-indexed publication.

More importantly, the Yearbook and the CSIL have organized international conferences with the ILA and the American Society of International Law (ASIL). Members of ILA branches in Australia, Japan and Korea have actively participated in these events. The proceedings and selected articles from speakers have been published in

²⁵Cohen 2015.

²⁶Chen 2007.

²⁷Hsieh and Tsai 2010.

the Yearbook. Holding the conferences not only provides a forum for Asia-focused international law scholars, but also increases submissions from both prominent jurists and young scholars. Organized by the Yearbook's late Editor-in-Chief, Hungdah Chiu, the first ILA's Asia-Pacific regional conference was held in Taipei in 1995. ILA President, Ricardo R. Balestra and Chairman of the Executive Council of the ILA, Lord Slynn of Hadley gave the opening remarks.²⁸ The CSIL also hosted the ILA's 68th Biennial Conference in 1998, in which President of the ITLOS, Judge Thomas A. Mensah and Professor Louis B. Sohn, delivered keynote speeches on the law of the sea and international law.²⁹

To commemorate the centennial anniversary of the founding of the ROC, the CSIL held the ILA's Asia-Pacific regional conference in 2011. The current Editor-in-Chief, also the ROC President Ying-jeou Ma, gave his welcome address and explained Taiwan's Mainland China policy based on the 'mutual non-recognition of sovereignty and mutual non-denial of governing authority' principle. Distinguished speakers include ILA President Nicolas J. Schrijver, the Chair of the Executive Council of the ILA, Lord Mance, and Justice Mariano C. Del Castillo of the Supreme Court of the Philippines. The keynote speeches of Judge Helmut Tuerk, Vice President of the ITLOS, and ASIL President David Caron are included in the Yearbook.³⁰

Further collaborating with the ASIL, the CSIL organized the biennial ILA-ASIL Asia-Pacific Research Forum since 2013.³¹ Invited guests, including Brill's International Law Publishing Director, Marie M. Sheldon, also met with President Ma and discussed regional developments and the Yearbook operation in the Presidential Office. The recent forums have focused on the South China Sea, mega-regional trade agreements and human rights issues. Prominent speakers include ASIL President Lori Damrosch, Professor Torsten Stein, President of the ILA's German Branch, and Chief Justice Michael Hwang of the Dubai International Financial Centre. At the recent 2019 Research Forum, Dr. Christopher Ward, President of the ILA and its Australian Branch, gave the inaugural Hungdah Chiu Lecture.

The regional events that the CSIL and the Yearbook organize have fortified the 'voice of Asia' in international law research and cultivated the interests of academics and lawyers in exploring Asia-related legal issues with global significance. In our experience, the open call for papers has enabled the organizing committee and the Yearbook to attract scholars across the globe and the mere 40% acceptance rate indicates the quality of their submissions. Looking forward, we will seek additional funding to sponsor young scholar awards, and with senior academics' comments, help junior colleagues publish in the Yearbook. Furthermore, we noted that British, Japanese and the Netherlands Yearbooks of International Law and other eminent

²⁸13 Chinese Yearbook of International Law and Affairs 9, 10–14 (1994–95).

²⁹16 Chinese Yearbook of International Law and Affairs 50, 62–79 (1997–98).

³⁰29 Chinese (Taiwan) Yearbook of International Law and Affairs 172, 183–200 (2011).

³¹Yearbook editors, Chun-i Chen and Pasha L. Hsieh, served as Co-Chairs of the American Society of International Law-Pacific Rim Region Interest Group from 2016–18 and 2018–20, respectively. Recent research forums were organized with the Interest Group and financially supported by the Chinese (Taiwan) Society of International Law and NCCU.

journals have published articles on Taiwan's legal status.³² Many of the highly-debated issues are not geographically confined but are instead pivotal to international law developments. Consequently, we look forward to enhancing collaboration with our colleagues and promoting the universalization of international law.

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³²E.g. Sik 1982; Serdy 2004; Oda 2011.

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