The Implications Of The Concept Of Fishing Entities To Taiwan’s Participation In Non-Fisheries Intergovernmental Organizations
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1. Introduction

The adoption of UN Resolution 2758 (XXVI) in 1971 (See Annex) which legitimized the representation of the People’s Republic of China and removed the representation of Chiang Kai-shek in the United Nations resulted in a significant decrease in the participation of Taiwan in inter-governmental organizations (IGOs). Taiwan’s membership in IGOs diminished from 39 in 1966 to 13 in 1997.\textsuperscript{2} It has been asked to leave inter-governmental organizations such as the World Bank, UNESCO, World Health Organization (WHO), and the International Atomic Energy Agency (IAEA).

Taiwan is currently a member of inter-governmental organizations such as the World Trade Organization (WTO), Asia-Pacific Economic Cooperation (APEC), Asian Development Bank (ADB), the International Cotton Advisory Committee (ICAC), the Asian Productivity Organization (APO), the Pacific Economic Cooperation Council (PECC), and the Central American Bank for Economic Development (CABEDE)....
Integration. It also holds membership in other international and regional organizations such as the International Chamber of Commerce (ICC), Pacific Basin Economic Cooperation Council (PBEC), International Confederation of Free Trade Unions (ICFTU), World Confederation of Labour (WCL), and the International Olympic Committee (IOC). Taiwan also participates actively in the programmes of the Organization for Economic Cooperation and Development (OECD).

This paper describes the participation of Taiwan in various non-fisheries inter-governmental organizations such as WTO, APEC, ADB, ICAC, APO, PECC, PBEC, ICFTU, and IOC as well as the challenges in its application to become an observer to the World Health Organization. It also provides a comparison between its membership in these non-fisheries inter-governmental organizations and its participation as a fishing entity in regional fisheries management organizations.

2. Taiwan’s Participation in Inter-governmental Organizations

Much of Taiwan’s participation in inter-governmental organizations has been achieved through extensive lobbying and negotiations. Various names have been used by IGOs to refer to Taiwan (e.g. Republic of China; China, Taiwan; Chinese Taipei) in order to diminish political challenges in its membership in such organizations. A number of references to its "capacity" has also been used in its participation in different IGOs, such as "economy" at the Asia-Pacific Economic Cooperation, "separate customs territory" at the World Trade Organization, and as “fishing entity” in various regional fisheries management organizations (RFMOs). Taiwan is also using the term "health entity" in pursuit of its participation as an observer in the World Health Assembly.

Taiwan’s membership in the WTO and APEC, as well as in RFMOs such as the International Commission on the Conservation of Atlantic Tunas (ICCAT), Commission for the Conservation of Southern Bluefin Tuna (CCSBT), Inter-American Tropical Commission (IATTC), and the Western and Central Pacific Fisheries Commission (WCPFC) has been considered as milestones in Taiwan’s re-integration in the international community as a distinct entity that endeavors to
address the socio-economic needs of its people. Its acceptance as member of IOGs is in no doubt an acknowledgement on the part of such organizations of Taiwan’s significant contribution in achieving, at the very least, their objectives, or economic progress in general. But what may be less apparent is the extent to which member states of IOGs are willing to accept Taiwan’s participation in their decision-making and other activities alongside China’s persistent opposition in support of One China Policy.

The inter-governmental organizations to which Taiwan is a member or pursues to become a part of can be categorized in three groups. This characterization will illustrate the nature of Taiwan’s participation in those organizations and how states embrace such involvement. The first category includes IOGs which have adopted regulations that directly permit the membership of Taiwan. The second category includes IOGs which provides for the membership of persons and other organizations rather than states. The last category, which poses challenges to Taiwan’s participation, includes those organizations which require sovereign states as members.

### 3. Inter-governmental Organizations with Regulations Allowing Taiwan’s Membership

#### 3.1 World Trade Organization (WTO)

The World Trade Organization was established in 1995 as a result of the Uruguay Round Negotiations. Its functions include administering of WTO trade agreements, providing forum for trade negotiations, handling trade disputes, and monitoring national trade policies. The WTO is the successor to the General Agreements on Tariff and Trade. While GATT had dealt mainly with trade in goods, the WTO and its agreements also cover trade in services and intellectual property. The World Trade Organization currently has 148 members and has also granted observer status to numerous governments and international intergovernmental organizations.

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3 Marrakesh Agreement Establishing the World Trade Organization, 01 January 1995, Article III.
Article XII(1) of the Marrakesh Agreement establishing the WTO provides that "any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations…may accede to this agreement, on the terms to be agreed between it and the WTO." The terms of accession are agreed upon by at least two-thirds majority of the membership of the organization. These provisions are the foundation of the WTO Decision of 11 November 2001 on the Accession of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu which approved the application of Taiwan to become a member of the World Trade Organization. The Protocol of Accession of the Separate Customs Territory of Taiwan, Penghu, Kin Men and Matsu, which accompanied the Decision of the WTO, lays out the terms of Taiwan's membership in the organization. It binds Taiwan to implement not only the WTO Agreement and its annex Multilateral Trade Agreements, but also its commitments under the Report of the Working Party on the Accession of Chinese Taipei to the WTO Agreement in 2001.

This Working Party examined the application of Taiwan to accede to the WTO General Agreement 1947 and negotiated the terms of its accession to the Marrakesh Agreement. In its report, the Working Party highlighted the general commitment of Taiwan to fully implement its obligations under the WTO Agreement and the Protocol of Accession and further eliminate and nullify measures taken by its local governments which were inconsistent with WTO provisions from the date of its accession. The report also noted the specific commitments of Taiwan to the WTO on numerous aspects of trade such as the pricing policies of some commodities, advertising and trade in alcohol and tobacco products, tariff rate quotas, fees and charges for services rendered, import licensing, customs valuation, rules of origin, industrial policies including subsidies, technical barriers to trade, trade-related investment measures, privatization of enterprises, and intellectual property rights.

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4 Marrakesh Agreement, Article XII(2).
7 Report of the Working Party on the Accession of the Separate Customs Territory of Taiwan, para. 15.
8 The specific commitments of Taiwan are referenced in paragraph 224 of the Report of the Working Party.
Taiwan's membership to the WTO has been considered to serve the best interest of the world economy by facilitating the free flow of goods and services. WTO broadens the opportunities to import to Taiwan and opens many of the protected industries such as agriculture, automotives, consumer electronics, and tobacco to the global market.

3.2 Asia-Pacific Economic Cooperation (APEC)

The Asia-Pacific Economic Cooperation was established in 1989 to enhance economic growth and prosperity for the region and strengthen the Asia-Pacific community. Unlike the WTO or other multilateral trade organizations, APEC does not impose treaty obligations to its member economies; its decisions are reached by consensus; and commitments are undertaken by its members on a voluntary basis. It currently has 21 Member Economies.

At the Second APEC Ministerial Meeting in 1990, the Ministers of Member Countries acknowledged the significant role of the economies of the People's Republic of China, Taiwan, and Hong Kong in the Asia-Pacific region and agreed that consultations with these three economies be undertaken with a view of reaching arrangements for their participation in APEC.\(^9\) In its Third Ministerial Meeting, APEC welcomed the three economies and reaffirmed that their participation would contribute to the process of economic cooperation in the region.\(^10\) There was direct reference to Taiwan, under the name of Chinese Taipei, as an economy in the Joint Statement issued by the Third APEC Ministerial Meeting.

The Seoul Declaration was subsequently adopted by APEC member economies in the Third Ministerial Meeting which highlighted the objectives, principles, scope of activities, and modes of operations of the organization. It particularly stated that participation in APEC will be open to those economies in the Asia-Pacific region which have strong economic linkages in the region and accept the


objectives and principles of APEC.\textsuperscript{11} Being a new member of this economic organization, Taiwan joined the other member economies in the development of this declaration and agreed to strengthen open multilateral trading system, reduce barriers to trade in goods and services consistent with GATT principles, enhance positive gains resulting from increasing economic interdependence, and sustain the growth and development of the region.\textsuperscript{12}

By being part of APEC, Taiwan can participate as a full and equal member to the negotiation process of economic cooperation in the region. Its participation in this organization is also a significant step in gaining membership to other economic intergovernmental organizations. Taiwan’s approach to APEC has been viewed in three dimensions, namely, economic cooperation, political significance, and international participation.\textsuperscript{13} Taiwan supports APEC’s commitment to open regionalism or the non-discriminatory or non-exclusive regional trading liberalization. Participating in APEC also opens the door for Taiwan to take part in regional and international economic affairs. Since APEC has also been a vehicle for discussions of common interest and mutual benefit beyond economic matters, being its member may also give the government of Taiwan an opportunity to participate equally in a regional forum that may help create a better environment in conducting cross-strait talks with China.

\subsection*{3.3 \textit{Asian Productivity Organization (APO)}}

The Asian Productivity Organization was established in 1961 as a non-political, nonprofit, and nondiscriminatory regional intergovernmental organization which aims to contribute to the socioeconomic development of Asia and the Pacific by increasing the production of goods and service of Asian countries.\textsuperscript{14} The projects of the organization are formulated and implemented consistent with the main thrusts of the APO which include the management of knowledge to advance productivity

\begin{itemize}
\item \textsuperscript{11} Seoul APEC Declaration, 14 November 1991, para. 7.
\item \textsuperscript{12} Seoul APEC Declaration, para. 1.
\item \textsuperscript{13} Yang, Taiwan’s Approaches to APEC.
\item \textsuperscript{14} The Convention on the Asian Productivity Organization, Manila, Philippines, 14 April 1961, Articles 1 and 2.
\end{itemize}
movement, propagation of consciousness on sustainable development in productivity programs, development of small and medium enterprises, integration of the community in economic development, and strengthening of National Productivity Organizations.\textsuperscript{15}

The APO currently consists of 20 member countries. Each member country designates a national body to be its National Productivity Organization which is entrusted with the task of promoting productivity in their respective countries. Membership to the APO is open to all Asian and Pacific governments that are members of the Economic and Social Commission for Asia and the Pacific (ESCAP) of the United Nations.\textsuperscript{16} Governments outside the Asian region may also become associate members of the APO subject to the approval of two-thirds of the Directors of the Governing Body.\textsuperscript{17} Taiwan is one of the first signatories of the 1961 APO Convention. Even though it is no longer a member of UN ESCAP, Taiwan remains as a member of the organization by means of Schedule II of the APO Convention. The schedule enumerates the 16 countries eligible to become members of the APO, one of which is the Republic of China. The China Productivity Center is listed as the national productivity organization of Taiwan under the APO which is given the responsibility to liaise with the APO Secretariat and implement the organization's projects.

3.4 International Cotton Advisory Committee (ICAC)

The International Cotton Advisory Committee was established in 1939 to assist governments in fostering a healthy world cotton economy. Its functions include the provision of statistics on world cotton production, consumption, trade and stocks and identification of emerging changes in the world cotton market.\textsuperscript{18} The ICAC represents the international cotton industry before UN agencies and other international

\textsuperscript{16} APO Convention, Articles 3 and 46.
\textsuperscript{17} APO Convention, Article 4.
\textsuperscript{18} Rules and Regulations of the International Cotton Advisory Committee, Adopted by the 31st Plenary Meeting, 16 June 1972, Article 1.
organizations and serves as a clearing house for technical information about cotton and cotton textiles as well as a forum for the discussion of cotton matters.19

The ICAC is an association of more than 41 governments of cotton producing, consuming and trading countries. Taiwan has been a member of ICAC since 1946. The Rules and Regulations of ICAC allows for the participation of Taiwan, referred to as China (Taiwan), in this inter-governmental body. Article II of ICAC’s rules and regulations opens membership not only to all members of the United Nations and the Food and Agriculture Organization but also to other governments expressing an interest in the production, export, import, and consumption of cotton. As a member of ICAC, Taiwan has the obligation to submit information concerning its cotton industry and other related matters, render financial contributions, and participate in the activities of the committee.

As part of its involvement with international organizations, ICAC was designated as an International Commodity Body on cotton in 1990 under the terms of the Agreement Establishing the Common Fund for Commodities.20 This agreement was adopted under the auspices of the United Nations Conference on Trade and Development. Nine projects which are sponsored by ICAC are now being financed by the Common Fund for Commodities.21

4. Inter-governmental Organizations Which Allow Persons and Organizations as Members

4.1 International Chamber of Commerce (ICC)

The International Chamber of Commerce, also known as the World Business Organization, was founded in 1919 which aims to serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital. Its main functions are to represent trade, industry, finance, transport,

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insurance and other sectors of international business; ascertain the views of corporations, companies, organizations, and individuals and voice them to relevant intergovernmental institutions; assure effective and consistent action in the economic and legal fields; provide practical and expert services to the international business community; and encourage effective cooperation among businessmen in different countries.\textsuperscript{22}

Under the ICC Constitution, membership is open to "national and local organizations which are truly representative of the business and professional interests of their members and which are not conducted primarily for political purposes" and "corporations, companies, firms and other legal entities as well as individuals involved in international business activities."\textsuperscript{23} The companies, corporations, and business organizations of a country are entitled to establish a National Committee or Group which will represent ICC in that country.\textsuperscript{24} In Taiwan, the Chinese Taipei Business Council is the ICC group which acts as the liaison between the ICC Headquarters and the Chinese Taipei member companies and business associations.

\textbf{4.2 Pacific Economic Cooperation Council (PECC)}

The Pacific Economic Cooperation Council was established in 1980 to serve as a forum to discuss cooperation and policy coordination in areas that would promote economic growth and development in the Pacific Region.\textsuperscript{25} It is a policy-oriented organization\textsuperscript{26} which consists of a forum for trade, finance and community building and its projects address issues of mutual concern such as the role of the airline industry in trade liberalization, ecotourism, and environmental impacts of mining.\textsuperscript{27}

The PECC grants full membership, associate membership, and observer and guest status to organizations and individuals with an interest to participate in the activities of the PECC. Full members of the PECC are committees from economies in

\textsuperscript{23} ICC Constitution, Article 2.
\textsuperscript{24} ICC Constitution, Article 3(1).
\textsuperscript{25} The Pacific Economic Cooperation Council Charter, Canberra, Australia, 1980, Article 2.1.
\textsuperscript{26} PECC Charter, Article 3.1.1.
the Pacific Region that have been admitted to the organization through unanimous agreement. These member committees are the basic units of the PECC organization, through which member economies participate.

One of the criteria for full membership of committees is the endorsement of the Vancouver Statement on Pacific Economic Cooperation. The Vancouver Statement lays out the premises of the PECC process, the structure of the organization, and its activities. The PECC believes that cooperation of business, industry, government, and academic entities can promote the acceleration of economic growth, social progress and scientific and technological development in the Pacific region. The Vancouver Statement also affirms that increased cooperation in trade and development of natural resources, e.g. agriculture, fisheries, minerals, energy, industrial adjustment, expansion of free and open trade and investment, and improvement of transportation and communication capabilities, will contribute to raising the standard of living throughout the Pacific Region. Member Committees of the PECC are also required to signify commitment to economic cooperation in the Pacific based on free and open exchanges, extensive economic activities in the region, a viable tripartite member committee, and substantial tripartite contribution to PECC work programs.

These qualifications for full membership to the PECC have been fulfilled by Taiwan. Referred to as Chinese Taipei, Taiwan is now one of the 25 full Member Economies of the organization from the Pacific region. The Chinese Taipei Pacific Economic Cooperation Committee is the Member Committee of Taiwan in the PECC. It upholds the principle of regional economic cooperation by participating actively in the activities of the organization.

4.3 Pacific Basin Economic Council (PBEC)

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28 PECC Charter, Articles 4.1.1 and 4.1.2.
29 PECC Charter, Articles 3.2.4.1 and 3.2.4.2.
30 PECC Charter, Article 4.1.3.
32 PECC 1986 Vancouver Statement.
33 PECC Charter, Article 4.1.3.
The Pacific Basin Economic Council is an international non-governmental organization that was established in 1967 to strengthen cooperation among the economies of the Asia Pacific region. This organization provides vital services to increase commercial opportunities and cooperation across the region such as networking of business entities, information analysis, and policy development. The PBEC has participated in the activities of APEC, the Asian Development Bank, the Organization for Economic Cooperation and Development, and other economic organizations. It has also been involved in the advocacy of certain issues such as the liberalization of trade and open markets, protection of intellectual property rights, creation of robust domestic financial systems, continuation of six-party talks on the Korean peninsula, promotion of regulatory reforms, and business process outsourcing.\textsuperscript{34}

The Pacific Basin Economic Council is an association of senior business leaders representing nearly 1,000 major corporations in 20 economies around the Pacific.\textsuperscript{35} Taiwan, referred to as Chinese Taipei, is a member of this business organization, through the Chinese Taipei Pacific Basin Economic Committee.

### 4.4 International Confederation of Free Trade Unions (ICFTU)

The International Confederation of Free Trade Unions, which traces its roots to the Free World Labour Conference held in 1949, aims to promote cooperation between all trade unions in order to give workers greater bargaining power.\textsuperscript{36} It specifically aims to promote the rights and interests of workers at the global, regional, and national levels, extend trade union representation in the world, guarantee full integration of women in trade union organizations, end discrimination and racism, and promote respect for diversity in society and employment, among others.\textsuperscript{37} The Confederation organizes and directs campaigns on issues such as the eradication of forced and child labour, respect and defence of trade unions and workers' rights, promotion of equal rights for working women, healthy, safety, and the environment,

\begin{itemize}
  \item \textsuperscript{34} Pacific Basin Economic Council website. www.pbec.org.
  \item \textsuperscript{35} PBEC website.
  \item \textsuperscript{37} International Confederation of Free Trade Unions Constitution, as Amended by the Eighteenth World Congress, Miyazaki, December 2004, Aims.
\end{itemize}
fight against AIDS, and organization of young workers. The ICFTU also cooperates closely with the International Labour Organization, and has consultative status with the United Nations' Economic and Social Council and other specialized agencies such as UNESCO and FAO, and maintains contacts with the World Bank and the World Trade Organization.

Membership to ICFTU is open to all bona fide and representative national trade union centres which adhere to the aims and Constitution of the Confederation. Individual trade union organizations may also be admitted into the ICFTU upon the decision of the majority of the organization's Executive Board. Continued membership is conditional upon fulfillment of the obligations laid down in the Constitution. ICFTU is composed of three major regional organizations in the Asia and the Pacific, Africa, and the Americas, with a total of 233 affiliated organizations in 154 countries and territories. Taiwan's Chinese Federation of Labour is an affiliate of the ICFTU-Asia and Pacific Regional Organization.

4.5 International Olympic Committee (IOC)

The International Olympic Committee was established in 1894 as an international non-governmental and non-profit organization which serves as the umbrella organization for the Olympic Movement. The roles of the IOC include the development and coordination of sport and sports competitions, promotion of the principle of equality of men and women in sports, protection of the health of athletes, and promotion of ethics in sport and concern for environmental issues.

The Olympic Movement encompasses organizations, athletes or other persons who agree to be guided by the Olympic Charter. The three main constituents of the Olympic Movement are the International Olympic Committee, the International Sports Federation, and the National Olympic Committees. It also encompasses the

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38 ICFTU Website.
39 ICFTU Constitution, Article 1(a).
40 ICFTU Constitution, Article 1(b).
41 ICFTU Constitution, Article 1(d).
43 The Olympic Charter, Article I.1.1.
44 The Olympic Charter, Article I.1.2.
Organizing Committees of the Olympic Games and national associations, clubs and persons belonging to the International Sports Federation and the National Olympic Committees.\(^{45}\)

The National Olympic Committees have the exclusive authority for the representation of their respective countries at the Olympic Games and other multi-sports competitions patronized by the IOC.\(^{46}\) It is also tasked to develop, promote, and protect the Olympic Movement in their respective countries, in accordance with the Olympic Charter.\(^{47}\) There are currently 202 National Olympic Committees within the Olympic Movement, one of which is Taiwan's Chinese Taipei Olympic Committee.

5. Inter-governmental Organizations Which Require Sovereign States as Members

5.1 Asian Development Bank (ADB)

The Asian Development Bank was established in 1966 to foster economic development and cooperation in Asia and the Pacific. Its primary responsibility is to promote investment of public and private capital in the region, utilize resources for financing the development of developing member countries, assist members in the coordination of their development policies and plans, and provide technical assistance for the preparation, financing and execution of development projects and programmes.\(^{48}\) The members of ADB also conduct activities in line with the bank's strategic development objectives such as the reducing poverty, promoting economic growth, supporting human development, improving the status of women, and protecting the environment.\(^{49}\)

\(^{45}\) The Olympic Charter, Article I.1.3.
\(^{46}\) The Olympic Charter, Article 28.3.
\(^{47}\) See The Olympic Charter, Article 28.
\(^{48}\) Agreement Establishing the Asian Development Bank, Manila, Philippines, 04 December 1965, Article 2.
\(^{49}\) Asian Development Bank Website, www.adb.org
Membership in the ADB is open to "members and associate members of the United Nations Economic Commission for Asia and the Far East and other regional countries and non-regional developed countries which are members of the United Nations or of any of its specialized agencies."\(^{50}\) Taiwan is one of the 31 founding members of the Asian Development Bank and the 18\(^{th}\) largest shareholder among the ADB members. Although Taiwan is no longer a member of the UN, it has managed to stay as a member of the bank even after the adoption of UN Resolution 2758(XXVI). However, in 1986, after China joined the Asian Development Bank, the bank decided to change Taiwan’s representative name to from Chinese Taipei to Taipei, China in order to make possible the full membership for both governments. In protest of the unfair treatment, Taiwan refused to take part in any ADB initiatives in 1986 and 1987. However, Taiwan resumed its involvement under protest with ADB and returned to the annual board meeting in 1988.\(^{51}\)

5.2 World Health Organization (WHO)

The World Health Organization was established in 1948 as the UN-specialized agency for health. Its main objective is "the attainment by all peoples of the highest possible level of health."\(^{52}\) In order to achieve this objective, the WHO has been given the responsibility of assisting governments in strengthening health services, advancing work to eradicate diseases, establishing international standards on food, biological, pharmaceuticals and similar products, and promoting cooperation among scientific and professional groups to contribute to the advancement of health, among others.\(^{53}\)

Membership in the WHO is open to all states.\(^{54}\) Article 5 of the WHO Constitution further states that members of the United Nations may become members

\(^{50}\) Agreement Establishing the ADB, Article 3(1).
\(^{51}\) FBIS, China, 26 April 1994, page 63, as cited in Yang, Taiwan’s Approaches to APEC, 1997.
\(^{53}\) WHO Constitution, Article2.
\(^{54}\) WHO Constitution, Article 3 and Chapter XIX.
of the organization by signing or accepting the Constitution. 55 States which do not become members in accordance with these provisions may apply to become members and shall be admitted when the application has been approved by a majority vote of the World Health Assembly. 56 Territories or groups of territories which are not responsible for the conduct of their international relations may also be admitted as Associate Members by the Health Assembly upon application made by the Member or authority responsible for the international relations of such territories or groups of territories. 57 The nature and extent of the rights and obligations of Associate Members shall be determined by the World Health Assembly. 58 The WHO is now governed by 192 Member States through the World Health Assembly.

The WHO can also invite non-member states or other organizations to participate in the meetings of the Health Assembly. Article 18(h) of the WHO Constitution states that one of the functions of the WHO is "to invite any organization, international or national, governmental or non-governmental, which has responsibilities related to those of the Organization." The same provision states that the WHO may appoint representatives to participate in its meetings or in those of the committees and conferences convened under its authority, without the right to vote and based on the conditions prescribed by the Health Assembly. In case of national organizations, invitations shall be issued only with the consent of the government concerned. 59 The Rules of Procedure of the World Health Assembly also states that the assembly's Director-General may invite states which have made application for membership, territories on whose behalf application for associate membership has been made, and states which have signed but not accepted the Constitution to send observers to sessions of the Health Assembly. 60 These provisions provide a wide scope of participation for states and other organizations in the WHO.

55 WHO Constitution, Articles 4 and Chapter XIX.
56 WHO Constitution, Article 7.
57 WHO Constitution, Article 8.
58 WHO Constitution, Article 8.
59 WHO Constitution, Article 18.
60 Rules of Procedure of the World Health Assembly, Rule 3.
Taiwan has participated in the programs and activities of the World Health Organization as a full member since its creation in 1948. However, it was forced to withdraw from WHO after the UN Resolution 2758 (XXVI) was adopted. Taiwan has been trying to persuade the members of WHO to grant it an observer status for nine years now. However, its application has continuously been denied by the organization in view of the UN Resolution and World Health Assembly Resolution 25.1. The latter resolution follows the text of the UN Resolution which recognizes the representation of China in the World Health Organization. WHA25.1 on the Representation of China in the World Health Organization states:

"The Twenty-fifth world Health Assembly,

Recalling the United Nations General Assembly Resolution 2758 (XXVI) of 25 October 1971 by which it decided to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United nations and to expel forthwith the representative of Chiang Kai Shek from the place which they unlawfully occupied at the United Nations and in all organizations related to it;

Noting that the Executive Board, in its resolution EB49.R37, has recommended to the World Health Assembly that it recognize the Government of the People's Republic of China as the only Government having the right to represent China in the World Health Organization,

Decides to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the World Health Organization, and to expel forthwith the representatives of Chiang Kai Shek from the place which they unlawfully occupy at the World Health Organization."

This resolution forms the basis for the exclusion of Taiwan in the World Health Organizations.

In the Fifty-seventh World Health Assembly in 2004, more than half of the General Committee member states expressed their opposition to the proposal of inviting Taiwan to participate in the WHA as an observer. These states maintain

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63 There were 34 representatives of WHO member states which opposed the recommendation to invite Taiwan to participate in the WHA while 27 representatives of states supported the proposal.
that Taiwan is a province of China and its application as an observer in the WHO has no legal basis. On the contrary, a number of states and organizations support the participation of Taiwan in the WHO. In 1999, the US enacted Public Law 106-137 which supports the participation of Taiwan in the WHO. During the Fifty-seventh session of the UN General Assembly, the representatives of Taiwan’s diplomatic allies spoke in favor of its participation in the WHO. Similarly, the World Medical Association urged the World Health Assembly in 2003 to grant Taiwan the status of observer in order to facilitate international cooperation in situations such as the SARS outbreak.

China opposes the application of Taiwan as an observer in the World Health Organization for three reasons: a) that Taiwan’s participation in the WHO violates China’s sovereignty; b) that there is no precedent for Taiwan to participate in the WHO as a health entity; c) that PRC cares for the health of the Taiwanese people so there is no need for Taiwan to participate in a global health organization. These arguments have been countered by Taiwan which stated that its application for an observer status in the WHO responds to the health needs of 23 million Taiwanese people and does not have anything to do with China’s sovereignty. Taiwan emphasizes that gaining the status of an observer in the WHO does not require sovereignty. As a UN specialized agency, membership of WHO is only limited to sovereign states; however, the qualifications for an observer status are not specified. The World Health Organization invites various types of entities such as the Holy See, Palestine, the Sovereign Military Order of Malta, the International Committee of the Red Cross, and the International Federation of Red Cross and Red Crescent Societies as observers in the organization's meetings. Taiwan views this practice of inviting observers as constituting powerful precedents for its participation in the WHO.

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In May 2005, Taiwan's application to participate in the WHO as an observer was once again declined by the Assembly.\(^6^8\) During the 58th World Health Assembly, China reiterated its objection to Taiwan's proposal to participate in the WHO.\(^6^9\) However, China and the Secretariat of the WHO have signed a memorandum of understanding that promotes technical exchanges between health professionals from Taiwan and the WHO. The MOU includes the following text:

"...the WHO Secretariat can invite Taiwan's medical and public health experts to participate in its technical activities in private capacities. If necessary, Taiwan's experts can say they come from 'Taiwan, China'.

…the WHO Secretariat can send its staff and experts to Taiwan to investigate the public health and contagious disease situation, as well as discuss relevant issues with Taiwan's medical and public health experts, and provide medical and public health technical assistance.

…if Taiwan faces a serious outbreak, the WHO Secretariat will, if necessary, send experts to Taiwan as soon as possible and give technical assistance, or invite Taiwan's medical and public health experts to participate in technical activities initiated by the Secretariat."\(^7^0\)

While this MOU does not permit a distinct involvement of Taiwan in the affairs of the World Health Assembly, it will facilitate Taiwan's access to medical and technical assistance and information particularly in cases of public health emergencies.

Among the three groups of inter-governmental organizations discussed above, Taiwan’s participation has been accepted with fewer objections among IGOs which stipulate membership of persons, corporations, and other organizations, rather than individual states. On the other hand, strong opposition is rendered by states, particularly China, when Taiwan expresses its intent to participate in IGOs that limit their membership to UN members and associate members. In the latter case, the legitimacy of Taiwan’s representation in international and regional inter-governmental organizations has always been questioned. It can also be observed that


Taiwan has gained membership to economic organizations which recognize the strength of its economy and considerable contribution to the attainment of the objectives of such organizations. However, Taiwan is yet to be allowed attendance in political inter-governmental meetings such as the ASEAN Regional Forum which restricts memberships to sovereign states.

6. Comparison of Taiwan’s Participation in Regional Fisheries Management Organizations and Non-fisheries Inter-governmental Organizations

Taiwan’s participation in non-fisheries inter-governmental organizations largely follows the pattern of its involvement in regional fisheries management organizations. Just like the WTO, APEC, APO, and ICAC, regional fisheries bodies like ICCAT, IATTC, CCSBT, and WCPFC had adopted provisions, resolutions, and similar declarations that allow the participation of Taiwan as a fishing entity. Taiwan gained Cooperating Status in ICCAT through the ICCAT Criteria for Attaining the Status of Cooperating Non-contracting Party, Entity or Fishing Entity in ICCAT. It also became a Cooperating Fishing Entity of the IATTC through the Resolution on the Participation of Taiwan in the Work of the Inter-American Tropical Tuna Commission and the Criteria for Attaining the Status of Cooperating Non-party or Fishing Entity. The CCSBT allows the participation of Taiwan through Article 14 of the Convention on the CCSBT and the Resolution to Establish the Status of Cooperating Non-member in the Extended Commission. It is also a member of the WCPFC and signed its Arrangement for the Participation of Fishing Entities. Such mechanisms legitimized the participation of Taiwan in these fisheries inter-governmental organizations. Similar to economic organizations such as APEC and WTO, these RFMOs also acknowledge the significant participation of Taiwanese-flagged vessels in fishing for tuna and tuna-like species in areas under their competence and thus the need to bring Taiwan to its management regime.

The challenges that Taiwan face in becoming members to non-fisheries IGOs are also very similar to those that it encounters in regional fisheries management organizations. Taiwan’s basic difficulty in participating in some inter-governmental organizations involves the requirement as a member of the United Nations as a
prerequisite to membership to IGOs. A case in point is the continuous denial of Taiwan’s application to become an observer to the World Health Organization by its member states. The same legal limitation applies to the participation of Taiwan at the Indian Ocean Tuna Commission (IOTC), which is an FAO regional fisheries body. The Agreement for the Establishment of the Indian Ocean Tuna Commission is only open to members and associate members of the FAO and those which are members of the United Nations,\textsuperscript{71} to which Taiwan does not belong. Unlike the mechanisms established by ICCAT, IATTC, CCSBT, and WCPFC, the existing resolutions and recommendations of the IOTC do not contain provisions on "fishing entities".\textsuperscript{72}

The only way for Taiwan to become a member of the IOTC is for the latter to adopt a resolution that will allow the cooperation of a fishing entity. During the Eighth Session of the IOTC in 2003, it was agreed that a draft Resolution on the Status of Cooperating Fishing Entities will be considered in the next session.\textsuperscript{73} If the IOTC rules positively on the proposed cooperation of this fishing entity in the Commission, a precedent may be set on how Taiwan can be dealt with in other UN-related organizations. Until then there will be very little implication on the practice of RFMOs to that of non-fisheries IGOs with respect to legitimizing the membership of Taiwan in such organizations.

7. Conclusion

The increasing participation of Taiwan in economic IGOs and RFMOs may be seen as a direct recognition of its significant contribution in the affairs of the international community. Its membership in various international and regional organizations also demonstrates Taiwan’s readiness to assume obligations comparable to those undertaken by existing members of such organizations.

\textsuperscript{71} Agreement for the Establishment of the Indian Ocean Tuna Commission, Articles IV and XVII.
\textsuperscript{72} Only the following resolutions related to the status of cooperating non-parties have been adopted by the IOTC: Resolution 03/02 On Criteria for Attaining the Status of Cooperating Non-contracting Party, Resolution 99/04 on the Status of Cooperating Non-contracting Parties. The IOTC refers to Taiwan as “Taiwan Province of China.”
\textsuperscript{73} IOTC, Report of the Eighth Session of the Indian Ocean Tuna Commission, Victoria, Seychelles, 07-12 December 2003, par. 37.
The practice of inter-governmental organizations in accepting Taiwan’s membership varies from one organization to another in terms of their reference to its name (e.g. Chinese Taipei, China (Taiwan), Taiwan Province of China), reference to its capacity (e.g. separate customs territory, economy, fishing entity) and mechanisms of participation (e.g. adoption of protocols, declarations, resolutions). However, there is one challenge that seems to persist in Taiwan’s pursuit of membership to IGOs—the question of legitimate representation amidst sovereign states. Unless this legal predicament is overcome or a clear precedent is set on the membership of Taiwan in a UN-based inter-governmental organization, it will remain outside the legal regime of such type of fisheries or non-fisheries inter-governmental organizations.

Although the arrangement on fishing entities within regional fisheries management organizations does not present a strong precedent for the legal treatment of Taiwan in non-fisheries inter-governmental organizations, use of such concept has progressed relatively faster than in other areas and thus, merits some consideration. A closer look should further be given to the pending decision of the Indian Ocean Tuna Commission with respect to Taiwan’s bid to participate in the fishing activities within its area of competence. It will also be valuable to examine how Taiwan managed to stay as a member of the Asian Development Bank despite changes to its status brought about by the adoption of UN Resolution 2758(XXVI).
Annex

UN Resolution 2758 on Restoring the Rights of the PRC, 25 October 1971

The General Assembly,

Recalling the Principles of the Charter of the United Nations,

Considering that the restoration of the lawful rights of the People's Republic of China is essential both for the protection of the Charter of the United Nations and for the cause that the United Nations must serve under the Charter,

Recognizing that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council,

Decides to restore all its rights to the People's Republic of China and to recognize the representatives of its government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai Shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it.