

**CHINESE (TAIWAN) YEARBOOK OF INTERNATIONAL
LAW AND AFFAIRS**

Vol. 26 (2008)

Edited by Ying-jeou Ma

TABLE OF CONTENTS

PREFACE

Ying-jeou Ma xv

ARTICLES

Stefan P. Fleischauer, Non-State Negotiations between China and Taiwan – On the Road to European-Style Integration? 1

Tom Hart, How Far Can They Succeed? Systematic Speculation on the Prospects for Further Advances in Cross-Strait Relations 20

Der-Chin Horng, The EU Model for a Taiwan-China Free Trade Agreement 35

Michael Romancov & Magda Leichtová, Kosovo, Ossetia and Abkhazia – A New Strategy of Superpowers? Challenges and Risks for Taiwan 56

Günter Schucher, Where Minds Meet: The “Professionalization” of Cross-Strait Academic Exchange 71

Han-yi Shaw, Revisiting the Diaoyutai/Senkaku Islands Dispute: Examining Legal Claims and New Historical Evidence under International Law and the Traditional East Asian World Order 95

ESSAYS AND RECENT DEVELOPMENTS

Chun-Yuan Lin, Global Positioning and Transjudicialism: Taiwanese Experience from a Global Perspective 169

Ivan Willis Rasmussen, Regional Conflict and Contrasting Nationalisms: The Impact of Nationalism on the China-Taiwan Conflict Negotiation 186

**CONTEMPORARY PRACTICE AND JUDICIAL DECISIONS OF
THE REPUBLIC OF CHINA RELATING TO INTERNATIONAL
LAW, 2008**

Compiled by Chun-i Chen, with the Assistance of Lee & Li Attorneys-at-Law, Pasha L. Hsieh, Chun-Liang Lai, I-Hon Hsiao, Zhuo-Ning Su, Pei-Lun Tsai, and Tsung-Hui Danny Wu

Explanatory Note	205
I. International Law in General	
President Inaugural Address: Taiwan's Renaissance (May 20, 2008)	205
Presidential Remarks at Ministry of Foreign Affairs: The Concept and Strategy of the "Flexible Diplomacy" (August 4, 2008)	210
Foreign Policy Report, 7th Congress of the Legislative Yuan, 1st Session (March 5, 2008)	214
Foreign Policy Report, 7th Congress of the Legislative Yuan, 1st Session (June 25, 2008)	222
Foreign Policy Report, 7th Congress of the Legislative Yuan, 2nd Session (September 25, 2008)	229
II. Subjects of International Law	
MOFA's Statement on Recognizing the Republic of Kosovo	238
III. International Organizations	
General	
Republic of China and Intergovernmental Organizations	238
Republic of China and International Nongovernmental Organizations	240
UNITED NATIONS	
Government Position on the Results of the Referendums on Taiwan's UN Entry and UN Return	241
Request of the ROC's Diplomatic Allies for the Inclusion of a Supplementary Item in the Agenda of the Sixty-Third Session: Need to Examine the Fundamental Rights of the 23 Million People of the Republic of China (Taiwan) to Participate Meaningfully in the Activities of the United Nations Specialized Agencies	242
IV. Individuals	
Human Rights	
Criteria for Residency Qualification and Countries or Regions Where a Permanent Residency Certificate is Difficult to Obtain for the Year 2009	247
Ministry of the Interior, Ref. No.: Tai-Nei-Hu-Zi-0970177458 Authentication of Translation of Foreign Divorce Judgments,	249

Defendant's Attendance at the Hearing, Overseas Embassies
and Consulates

Treatment of Aliens

Enactment of the Social Worker Act	249
Amendment of the Civil Service Employment Act	250
Amendment of the Private School Act	250
Ministry of the Interior, Ref. No.: Tai-Nei-Di-Zi-0970042025 India, Land Act, Principle of Reciprocity	251
Ministry of the Interior, Ref. No.: Tai-Nei-Di-Zi-0970059761 Land Act, Principle of Reciprocity, Ukraine	252
Ministry of the Interior, Ref. No.: Tai-Nei-Di-Zi-0970057557 Arizona, Land Act, Louisiana, Mississippi, Principle of Reciprocity	252
Ministry of the Interior, Ref. No.: Tai-Nei-Hu-Zi-0970074053 Household Registration, Nationality, Parent-Child Relationship, Vietnam	253
Amendment of the Enforcement Act of the Part of General Principles of the Civil Code	253
Amendment of the Household Registration Law	254
Council of Labor Affairs, Ref. No.: Lao-Zh-Guan-Zi-0970509294 Alien Resident Certificate, Employment Service Act, Foreign Spouse, Principle of Legitimate Expectations	254
Mutual Recognition of Taiwanese and Quebec Driver's Licenses	255
Child Welfare Bureau of the Ministry of the Interior, Ref. No.: Tong-Zhong-Zi-0970008522 Applicable Scope of Laws, Child and Youth Welfare Act, Foreign Media Company	256
Ministry of the Interior, Ref. No.: Tai-Nei-Hu-Zi-0970103816 Foreign Spouse, Nationality Act, Statelessness	257
Enactment of the Speech Therapists Act	257
Amendment of the Employment Service Act	257
Ministry of the Interior, Ref. No: Tai-Nei-Hu-Zi-0970152850 Civil Code, Foreign Spouse, Nationality Act, Naturalization, Proof of Livelihood	258
Financial Requirement Abolished for Foreign Spouses	259
Supreme Court Judgment (December 18, 2008) 97-Tai-Shan-Zi-2642 Acquisition of Real Property by Mainland Citizen or Foreigner, Canada, Legitimate Interest of Transnational Probate Lawsuits, Principle of Reciprocity, Act Governing	259

Relations between Peoples of the Taiwan Area and the Mainland Area, Validity of Wills	
Ministry of the Interior, Ref. No.: Tai-Nei-Di-Zi-0970209595 Land Act, Norway, Principle of Reciprocity	261
V. Territory and Territorial Jurisdiction	
Supreme Court Judgment (July 24, 2008) 97-Tai-Shan-Zi-3508 Judicial Assistance, Jurisdiction, Foreign Judicial Authorities	261
ROC Reiterates its Sovereignty over the Spratly Islands and Proposes a Spratly Initiative that Focuses on Environmental Protection	262
VI. State Responsibility	263
VII. The Law of the Sea, Environment, Health, and Aviation	
Ministry of Transportation and Communications, Ref. No.: Jiao- Hang-Zi-0970058742 Long-Range Identification and Tracking System, International Convention for the Safety of Life at Sea, Maritime Safety Committee, International Maritime Organization	263
VIII. The Law of Treaties	263
IX. Diplomatic, Consular, and Similar Relations	
Republic of China Terminates Diplomatic Relations with the Republic of Malawi	263
Taiwan Commercial Office in Tripoli Officially Began Functioning in Libya on February 13, 2008	264
ROC and Guatemala Sign Joint Communiqué	265
X. Peaceful Settlement of International Disputes	
The Lienhe Incident and the Diaoyutai Islands	
Presidential Office's Statement on Sinking of Taiwan Sports Fishing Boat after Being Bumped by Japanese Coast Guard Vessel off the Diaoyutai Islands	266
Protest of the Minister of Foreign Affairs Regarding the Lienhe Incident	266
ROC Reaffirms Sovereignty over Diaoyutai Islands and Strives to Protect the Rights and Interests of Taiwanese Fishermen	267
Presidential Office's Statement on Peaceful Conclusion to the Incident off the Diaoyutai Islands	268

XI. Arms Control, Use of Force, and International Criminal Law	269
XII. International Economic Relations	
Restrictions Relaxed for Foreign Investment in Aviation	269
More Liberalization for Trading in Foreign-Currency Futures	269
Amendment of the Custom Act	270
The Free Trade Agreement between the Republic of China and Honduras Comes into Effect	270
Conditions Relaxed for Taiwan Listing by Overseas Enterprises	271
Success in Request to the WTO's DSB to Establish a Panel to Hear the Dispute with the EC Concerning its Tariff Treatment of Certain Information Technology Products	272
Financial Supervisory Commission, Ref. No.: Jin-Guan-Zheng-Ba-Zi-0970050376 Limits on Investment in ROC Securities, Regulation Governing Investment in Securities by Overseas Chinese and Foreign Nationals	275
Rules Eased for Setup of Commercial Banks by Foreign Institutions	276
Supreme Court Judgment (November 6, 2008) 97-Tai-Shan-Zi-5571 Copyright Act, Copyright Protection of Foreign Works	276
Intellectual Property Office of the Ministry of Economic Affairs, Ref. No.: Dian-Zi-You-Jian-Zi-971107a Copyright Act, Trade-Related Aspects of Intellectual Property Rights, Work of People in the Mainland Area	277
Supreme Administrative Court Judgment (November 20, 2008) 97-Pan-Zi-1019 Custom Value of Imported Goods, FOB Terms, Sales Commission	277
Taiwan to Accede to the WTO Agreement on Government Procurement	278
Supreme Administrative Court Judgment (December 11, 2008) 97-Pan-Zi-1126 Custom Value of Imported Goods, Royalties, Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade	281
XIII. Private International Law	
Enforcement of Foreign Judgments and Awards	
Supreme Court Judgment (April 24, 2008) 97-Tai-Shan-Zi-835 California, Compulsory Execution, Irrevocable Judgment	282

of the US, Legality of Punitive Damages, Public Good and Customs, Recognition of Foreign Judgment	
Supreme Court Judgment (September 18, 2008) 97-Tai-Shan-Zi-1941 California, Compulsory Execution, Foreign Arbitral Award, Irrevocable Judgment of the US, Principle of Reciprocity, Prohibition of Substantive Re-Review	284
Supreme Court Judgment (September 30, 2008) 97-Tai-Shan-Zi-2051 Foreigner's Capacity to Acquire Real Property, Inheritance, Principle of Reciprocity	285
Supreme Court Judgment (October 16, 2008) 97-Tai-Shan-Zi-2155 Capacity to Sue, Legal Act, Unrecognized Hong Kong or Macau Area Legal Person	286
Supreme Court Judgment (October 23, 2008) 97-Tai-Shan-Zi-2247 Australia, Irrevocable Judgment of the ROC, Legally Protectable Interest, Recognition and Execution of Foreign Judgment	287
Supreme Court Judgment (October 24, 2008) 96-Tai-Shan-Zi-2258 Irrevocable Civil Judgment of the Mainland Area, Termination of Partnership Agreement, Recognition of Judgment, <i>Res Judicata</i> , Unjust Enrichment	289

XIV. Others

Presidential Office Statement on the US Administration's Approval of Arms Sale to Taiwan	290
--	-----

Cross-Strait Relations

Rules Governing Review of the Establishment and Supervision of Foundations for Mainland Affairs by Mainland Affairs Council	291
Mainland Affairs Council's Note on the Significance of the Second "Chiang-Chen Talks"	298
MAC's Response to the Statement Made by the Mainland Chinese President Hu Jintao on December 31, 2008	305

TREATIES/AGREEMENTS AND OFFICIAL, SEMI-OFFICIAL OR UNOFFICIAL AGREEMENTS CONCLUDED BY THE REPUBLIC OF CHINA WITH OTHER COUNTRIES IN 2008

Compiled by Chun-i Chen and Pei-Lun Tsai

Chronological List	307
Selected Texts	312

Central American States	
Comunicado Conjunto de la XIV Reunión de la Comisión Mixta de Cooperación entre Países del Istmo Centroamericano y la República de China (Taiwán)	312
Honduras	
Convenio de Asistencia Técnica y Cooperación Agropecuaria entre la República de China (Taiwán) y la República de Honduras	315
Jordan	
Memorandum of Understanding between the Financial Supervisory Commission, Taiwan, R.O.C. and the Insurance Commission of Jordan Concerning Mutual Cooperation	318
Saint Christopher and Nevis	
Agreement on Technical Cooperation between the Government of the Republic of China (Taiwan) and the Government of Saint Christopher and Nevis	321
Saint Lucia	
Agreement on Technical Cooperation in Agriculture between the Government of the Republic of China (Taiwan) and the Government of Saint Lucia	325
Solomon Islands	
Agreement of Agricultural Technical Cooperation between the Government of the Republic of China (Taiwan) and the Government of Solomon Islands	328
Swaziland	
Agreement of Agricultural Technical Cooperation between the Republic of China and the Kingdom of Swaziland	331
United Arab Emirates	
Memorandum of Understanding between Financial Supervisory Commission, Taiwan and Dubai Financial Services Authority	335
United States	
Memorandum of Understanding between the Money Laundering Prevention Center and the Financial Crimes Enforcement Network Concerning Cooperation in the Exchange of Information Related to Money Laundering and Terrorist Financing	341
Agreement between the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan for Cooperation in Astronomy and Astrophysics Research	344

Implementing Arrangement between the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan for Cooperation in Astronomy and Astrophysics Associated with the Atacama Large Millimeter Array Project	349
Memorandum of Understanding on Educational Cooperation between the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan	354
TABLE OF CASES	363
INDEX	364
GUIDELINES FOR SUBMISSIONS TO THE CHINESE (TAIWAN) YEARBOOK OF INTERNATIONAL LAW AND AFFAIRS	375