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What do Taiwan's trade agreements say about its sovereignty as a sui generis state in the international system?

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**What do Taiwan's trade agreements say about its sovereignty as a sui generis
state in the international system?**



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Abstract

The concept of sovereignty is increasingly challenged by the emergence of sui generis states that do not fit into the conventional nation-state definitions. This thesis looks into Taiwan's trade agreements to better understand how they reflect and affect its sovereignty as a sui generis state. Through a qualitative, doctrinal analysis of Taiwan's Free Trade Agreements (FTAs), Economic Cooperation Agreements (ECAs) and Economic Cooperation Framework Agreement (ECFA) with mainland China, the research explores the legal and political tools Taiwan uses to maintain its sovereignty. Findings show that through its FTAs and ECAs, Taiwan uses economic diplomacy to gain international support and assert its sovereignty. However, its ECFA with mainland China highlights how it has to balance between economic benefits and political sovereignty. Moreover, this thesis emphasizes Taiwan's distinct position among sui generis states as its advanced economy and democratic government set it apart from other entities with comparable goals. Despite this, the study offers valuable insights for other sui generis states on how to handle the challenges of limited recognition and use of economic diplomacy to strengthen international legitimacy.

List of Abbreviations

ANZTEC: Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Partnership

ARAT: Association for Relations Across the Taiwan Straits

ASTEP: Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Partnership

BRI: Belt and Road Initiative

DPP: Democratic Progressive Party

ECA: Economic Cooperation Agreement

ECFA: Economic Cooperation Framework Agreement

FTA: Free Trade Agreement

IGO: intergovernmental organization

KMT: Kuomintang

LAC: Latin America and the Caribbean

PRC: People's Republic of China

RoC: Republic of China

SEF: Straits Exchange Foundation

TPKM: Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu

UN: United Nations

UN GA: United Nations General Assembly

US: United States

VCLT: Vienna Convention on the Law of Treaties

WTO: World Trade Organization

1. Introduction

Based on the United Nations' ([UN], 2024) list of member states there are currently 193 sovereign states across the globe. This list is not necessarily exhaustive, nevertheless being listed on it is considered to be a strong indicator of recognition and legitimacy as a sovereign state. The question of what defines a state is typically approached by two perspectives - one, that statehood is a general legal status with a certain set of consequences, and second, that states are to be established by particular conditions and capabilities, rather than based on any general concept (Crawford, 2007, p. 197). A very basic outline of what a state is has been defined in the 1933 Montevideo Convention, those criteria however have evolved since, together with the progression of international law and the increase of cases with non-conventional characteristics. The emergence of entities that cannot be classified in traditional terms have created the term *sui generis* cases of statehood in international law. *Sui generis* cases encompass entities that do not fully fit the attributes of the universally accepted Montevideo criteria and therefore, are difficult to define as one single group of entities but are notwithstanding a group of their own. *Sui generis* states are versatile and can take many forms but they all have their unique characteristics and obstacles in becoming fully recognized as states of the traditional form (Crawford, 2007, p. 197). Among these *sui generis* states, Taiwan stands prominently, meeting the Montevideo criteria, yet recognized by only 12 states (World Population Review, 2024). Despite its adherence to established norms, Taiwan's sovereignty remains contentious, particularly evident in its limited recognition and diplomatic engagement. Central to the understanding of Taiwan's unique status is its ability to engage in relations with other states. Trade agreements are tangible indicators of such engagements. Taiwan's trade agreements are critical for Taiwan's economic stability and growth, showcasing its ability to maintain economic independence. Additionally, they highlight Taiwan's diplomatic strategies and its methods for balancing its international

interests without provoking China. The research question driving this inquiry is: *What do Taiwan's trade agreements say about its sovereignty as a sui generis state in the international system?* By analyzing Taiwan's position through the lens of trade agreements, this research seeks to underscore the legal and political challenges of sui generis states. It aims to shed light on broader issues of recognition, sovereignty and self-determination in contemporary international relations. The findings will clarify Taiwan's status as a not fully recognized state and illustrate the difficulties such states encounter in seeking full legitimacy in the international system. This analysis will also extend to the struggles of other similar entities, offering insights and potential solutions for their challenges.

First, the thesis will summarize the relevant literature and provide an overview of Taiwan's political history. Second, it will define the research methodology and conduct a thorough analysis. Lastly, the thesis will conclude with a discussion of the findings, address certain limitations and offer recommendations for further research.

2. Theoretical Framework

2.1 Sui generis States and Recognition

The main debate of sui generis cases of statehood, namely their ambiguous character, has to be first approached by the acts of recognition and non-recognition of states as this is what then enables or hinders their possibilities in the international arena. The road to recognition of states introduces disparate theories, on the one hand, the declaratory theory, on the other, the constitutive theory. According to the declaratory theory, a political organization claiming to be a state would be one if it on an objective basis met the statehood requirements outlined in the Montevideo Convention - a defined territory, a permanent population, an effective government, and the capacity to enter into relations with other states (Montevideo Convention on the Rights and Duties of States, 1933). On the contrary, the constitutive theory

of statehood is predicated on the idea that other states must acknowledge the political unit in question as a state. In international law, the vast majority of scholars embrace the declaratory theory as the demonstrative theory (Van der Vyver, 1991, p. 12). Skeptics of the theory have criticized it by suggesting that the Montevideo criteria should be extended with additional requirements. For instance, for it to be extended with the requirement of self-determination (Van der Vyver, 1991, p. 14). Moving on to the constitutive theory, Lauterpacht (1944) formulated a controversial and strict obligation to recognition by suggesting that once an entity is in full compliance with the prerequisites of statehood, the international community is pressed to recognize the entity as a state (Van der Vyver, 1991, p. 17). This legal norm means that states cannot just consider their own interests when recognizing entities, they have a legal duty to the entity and the international community. To the contrary, the positivist view, which bases its theory of sovereignty and consent as the cornerstone of international law, finds it unimaginable to think that states could be forced to abide by laws in relation to a new state without their consent (Lauterpacht, 1944, p. 445). Additionally, the question arises: how many states have to recognize a new entity for it to be a state? (Vidmar, 2019, p. 220). The majority of scholars continue to hold that politics, rather than law, is decisive on whether an act of recognition occurs or does not occur. In this sense, recognition is the outcome of a choice made in pursuit of the demands of national interest rather than in compliance with the law (Vidmar, 2019, p. 226). Consequently, the difference between the opposing theories is politics. While in the declaratory theory statehood is defined by a set of characteristics, the constitutive theory gives leeway to subjective national decisions (Lauterpacht, 1944, p. 386). Following this, a newly formed state obtains legal capacity by meeting the objective criteria of statehood but the state's practical ability is contingent upon state recognition (Vidmar, 2019, p. 228).

Through decades of practice, the Montevideo criteria have effectively become customary law for recognizing states. However, those who believe these criteria define statehood are careful not to present them as a final or comprehensive definition of statehood. Often, rather than framing it as a definition it is formulated as a concept of statehood and the base for what can constitute as a state. Building on this, the given criteria can be seen as a base formulation that did not yet concern itself with certain aspects of statehood in the 1930s, which have since altered the discussions surrounding the issues of statehood. The primary principles that are thought to now supplement or strengthen the Montevideo criteria are recognition, independence, self-determination and the non-violation of customary law in its formation (Dugard, 2021, p. 105).

2. 2 Taiwan as a Sui generis State

In order to understand the position of Taiwan in the international system, it is essential to first turn to its political history. This section will subsequently apply theories of recognition to the case of Taiwan, discuss its current position in the international system and touch on the term ‘sovereignty’.

2. 2. 1 Taiwan’s Political History

Taiwan was first officially a province of China only in 1886 but following their loss in the Sino-Japanese War in 1895, Taiwan was placed under Japanese rule by the Treaty of Shimonoseki. It was not until the end of the Second World War that the Republic of China (RoC), led by Chiang Kai-Shek and his Kuomintang Party, brought Taiwan back under Chinese sovereignty again. However, in 1949 the Chinese Civil War between Mao Zedong’s Chinese Communist Party (CCP) and the Kuomintang (KMT) ended in the officials of the KMT fleeing to Taiwan after their defeat and establishing a government in exile on the island (Ford, 2022, p. 2). Despite their clear loss on the mainland, the KMT persisted that they were

the legitimate government of China and that they would eventually retake the mainland. The People's Republic of China (PRC), for its part, considered Taiwan to be part of its territory and began long-term plans for an invasion. This is how the dispute over its control became controversial between the two governments, the RoC and the PRC (Carolan, 2000, pp. 431-432). In the meantime, the United States (US) became Taiwan's protector, signing a Mutual Defense Treaty, supplying Taiwan with aid and arms, and stationing significant forces on the island. This was then the genesis of the Taiwan question, as the US, the UN, and most of the non-communist world recognized the RoC as the official government of all China and withheld any sort of recognition from the PRC (Carolan, 2000, pp. 436-437). As a result of this, there were two Chinas - the RoC, located on Taiwan, and the PRC, located on the mainland. However, not for long, as in the 1960s, the PRC actively pursued recognition as the sole government of China and started to succeed at the RoC's expense. In 1971, the United Nations General Assembly (UN GA) finally decided to grant the PRC China's UN seat in Resolution 2758 (XXVI) (Crawford, 2007, p. 200). By this, the RoC was diplomatically cut off from the UN and lacked representation. Taiwan's situation worsened, when following the Sino-Soviet split in the 1970s, the US started mending relations with the PRC, which then in 1979 resulted in the US' formal recognition of the PRC as the only Chinese government (Carolan, 2000, p. 437). The US acknowledged, without necessarily agreeing, that "there is but one China and Taiwan is part of China" in communiqués to Beijing (Carolan, 2000, p. 438). After this, there was a culmination of states switching their recognition to the PRC instead of the RoC as the legitimate Chinese government, and by the turn of the millennium just above 20 states recognized the RoC (World Population Review, 2024).

In addition to this, between the RoC and the PRC the so-called '1992 Consensus', also known as the 'One-China policy', was established which provides legal support to one recognized Chinese government. Because their respective governments were unwilling to

have official contact with one another, the Straits Exchange Foundation (SEF) - established in the RoC - and the Association for Relations Across the Taiwan Straits (ARATS) - established in the PRC - were created as “non-governmental” organizations to facilitate negotiations and the signing of Cross-Strait agreements (Chen & Cohen, 2019, p. 9). After one of these negotiations, Su Chi, then Chairman of the RoC Executive Yuan’s Mainland Affairs Council, first used the phrase ‘1992 Consensus’, concluding that both parties agreed there is only one China, despite disagreeing on its legitimate government. Accordingly, from the perspective of mainland China that remained the PRC, and from the perspective of Taiwan, the RoC (Chen & Cohen, 2019, p. 14). Since then, Taiwan’s position on the One-China principle has constantly changed based on the government in power, with KMT leaders maintaining closer links to the mainland whereas leaders of the Democratic Progressive Party (DPP) are striving for a more moderate stance on Cross-Strait relations.

2. 2. 2 Taiwan’s Status quo

Today, Taiwan’s recognition on the global stage is significantly hampered by China’s influence. First of all, Taiwan has never formally declared its independence, primarily due to the PRC’s staunch opposition. Thus, with its sui generis position, participation in international organizations has become increasingly difficult. Taiwan has adopted unconventional approaches to foreign engagement, such as establishing non-official ‘Taipei Economic and Cultural Offices’ in states recognizing the PRC. These offices protect RoC passport holders, issue visas, and foster economic and cultural ties (Young, 2014, pp. 7-8). Taiwan has also joined international economic organizations under names that circumvent formal recognition issues, such as ‘Chinese Taipei’ in APEC and ‘Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu’ in the World Trade Organization (WTO) (Young, 2014, pp. 8-9). 45 intergovernmental organizations (IGOs) and their subsidiary bodies include Taiwan as a full member. Additionally, it has observer or other status in 28 other

IGOs and their affiliated organizations, such as the European Bank for Reconstruction and Development. In view of its strong capital market and strategic location in Asia, in 2021, the Central American Bank of Economic Integration opened its first new branch outside of Central America in Taiwan, further strengthening Taiwan's involvement in regional integration beyond the Indo-Pacific (Government Portal of the Republic of China (Taiwan), 2024).

Taiwan's recent president, Tsai Ing-wen from the DPP, emphasized maintaining the status quo during her presidency from 2016 until May 2024. Unlike her predecessor Chen Shui-bian, who leaned towards declaring Taiwan's de jure independence, Tsai advocated for continued cooperation with Beijing (Chen & Cohen, 2019, pp. 5-6). However, Tsai rejected the '1992 Consensus', 'Beijing's One-China principle', and the KMT's formulation of 'One China, Respective Interpretations' (Chen & Cohen, 2019, p. 14). Beijing maintains that the One-China concept is non-negotiable and essential for establishing diplomatic relations with other states (Chen & Cohen, 2019, p. 8). As things stand in the Taiwan Strait, neither side of the Strait has any authority over the other. A 1994 statement emphasized that relations between the two sides of the Taiwan Strait are neither purely domestic in nature nor those between two independent countries, a stance that remains relevant. In the international sphere, the two sides ought to coexist as distinct legal entities, each with jurisdiction over its own region (Mainland Affairs Council, 2017).

The Taiwanese themselves are divided on the topic of independence, status quo or unification. According to a survey by the Taiwan Public Opinion Foundation in 2023, 48.9% of Taiwanese people favor independence, 11.8% favor unification, and 26% like the status quo. The main concern is that Taiwan's capacity to preserve the status quo is heavily reliant on external factors. Particularly, the US maintaining its military hegemony in the region and the broader US-China geopolitical dynamics (Al Banna, 2024, p. 159). Sustaining the status

quo remains the most viable option for Taiwan in the near term as it seeks broader international engagement and recognition. However, with Lai Ching-te of the DPP taking office as the eighth president of the RoC on May 20, 2024, changes may be on the horizon. Lai, a strong proponent of hardline independence, has described himself as a “pragmatic worker for Taiwan independence”, suggesting that his presidency could potentially alter Taiwan’s approach (Sung, 2024).

2.3 Applying Theories of Recognition on Taiwan

When placing the theories of recognition on the case of Taiwan, scholars have yet again different approaches. Crawford (2009, pp. 219-220) concludes that since Taiwan has not officially declared its independence from China and is not acknowledged as a separate state from China, Taiwan is not a state. On the contrary, Roth (2009, p. 91) argues that opposite to Crawford’s objective view of statehood, statehood is determined by the implicit attitudes of the existing states. According to this view, Taiwan’s legal status would be indeterminate because as of February 2024, only 11 countries and the Vatican City/ Holy See recognize Taiwan as a sovereign state in the international community while the rest do not (World Population Review, 2024).

Based on the declaratory theory, state recognition is defined by explicit and voluntary actions such as establishing formal diplomatic relations, issuing certificates of recognition to internal courts or joining international organizations. Taiwan fulfills these criteria to its extent and has a defined territory, a permanent population and an effective government. Thus, under the objective theory, Taiwan qualifies for recognition. However, it has never formally declared its independence from mainland China. Crawford (2009, pp. 219-220) claims this means that Taiwan is not a separate state. The situation is more complex, particularly

regarding Taiwan's eligibility for self-determination, which will be examined in the next paragraph.

Self-determination, according to the UN GA, is the right of "all peoples freely to determine, without external interference, their political status" (Refworld, 1970). Since the end of the Cold War, self-determination has often been discussed in terms of nationalities within states, suggesting that modern interpretations support the Taiwanese people's right to democratic self-rule (Carolan, 2000, pp. 459-460). However, the PRC opposes this view, arguing that self-determination does not apply to Taiwanese independence as it would constitute secession from China. The PRC views Taiwan as a breakaway province that must eventually be reintegrated into the mainland. Based on this interpretation, if Taiwan declared independence, it would be seen as secession, and international law does not forbid a mother state from suppressing such a movement, providing China with a legal argument to use force. Additionally, the PRC's Anti-Secession Law of 2005 was established in order to support the potential use of force against any Taiwanese move towards formal independence (Young, 2014, p. 10). Still, the PRC's claim lacks a strong historical foundation, especially since Taiwan meets the criteria for statehood and is eligible for self-determination under international law when considered as a separate nation from China (Carolan, 2000, p. 450). Notwithstanding, Carolan (2000, p. 463) argues that Taiwan already exists as a *de facto* undeclared state with its own distinct international legal and political identity, making it impossible for Taiwan to secede from the PRC, as it has never been part of it in a meaningful legal sense. Additionally, the will of the Taiwanese people increasingly supports the notion of Taiwan being a separate country from the PRC. Under the principle of self-determination, Taiwan cannot be simply handed over to the PRC without the approval of the Taiwanese people themselves. Whether or not such a people existed in 1947, fifty-years of independent self-governance have solidified a unique Taiwanese identity (Carolan, 2000, p. 465).

In summary, Taiwan is unquestionably eligible for self-determination. Once its claim to independence is recognized, Taiwan can assert all the rights, benefits, obligations, and safeguards that come with statehood. Pressure, however, from the PRC and the aim of preserving the status quo contribute to Taiwan's reluctance to declare formal independence, and thus, not opting for a declaratory approach to statehood (Carolan, 2000, p. 466).

Moving on to the constitutive theory, which suggests that state recognition depends on the reciprocation of diplomatic relations from existing states, Taiwan's situation continues to be ambiguous. Although Lauterpacht (1944, p. 385) argued that members of the international community have an obligation to recognize as states those entities that meet the legal standards for statehood, statehood is created only by the fulfillment of this obligation (Roth, 2009, p. 108). Consequently, Taiwan's recognition is subject to the political calculations of other states. Supporters of the PRC argue that an entity without legal standing as a sovereign state cannot be anything but a part of China, and thus, question the internationalization of Cross-Strait relations and the Taiwan question (Roth, 2009, p. 95). Conversely, Taiwan enjoys a wide range of rights, duties, privileges and immunities granted by existing states, indicating inconsistencies in international stances towards Taiwan and the RoC (Roth, 2009, p. 96). Most states, however, adopt a policy of constructive ambiguity towards Taiwan, as the PRC refuses to engage with any government that formally acknowledges Taiwan (Carolan, 2000, pp. 457-458). Despite reluctance to normalize relations with the RoC, states do not deem Taiwan's de facto independence unlawful, nor do they, for instance, condemn Taiwan's defensive military support from the US and other states (Roth, 2009, p. 100). Thus, in addition to the small number of states that formally recognize it, Taipei maintains semi-official or substantive informal relations with other states, avoiding direct diplomatic ties to sidestep confrontations with PRC sovereignty claims (Roth, 2009, pp. 110, 114). For the constitutive theory, the key question is whether states accept that Taiwan has the rights,

obligations, powers and immunities for which statehood is prerequisite and thus, grant the entity statehood status (Roth, 2009, pp. 109-110). This question is still unanswered, as some states do recognize it, some maintain informal diplomatic relations with it and others abstain entirely from the question. Therefore, according to the constitutive theory, Taiwan's legal status remains uncertain and subject to change (Roth, 2009, p. 122).

2.4 Sovereignty and Taiwan

In his classic definition from 1956, Morgenthau characterized sovereignty as the absolute power to enact and enforce laws within a specific territory. According to this perspective, sovereignty is binary: a state is either sovereign or not (Adler-Nissen, 2012, p. 180). Similarly, Hinsley (1986, p. 26) described sovereignty as “the idea that a final and absolute authority exists” and that “there is a final and absolute political authority in the political community”. James (1986, p. 40) referred to sovereignty as constitutional independence, meaning power derived from a state's constitution. These ‘Westphalian ideals’ of state sovereignty contrast sharply with contemporary views and practices. Such definitions fail to account for variations or qualitative shifts in the concept of sovereignty and thus, there is a need to look beyond them (Biersteker, 2013, p. 260).

Sovereignty is socially constructed and upheld through a variety of sociopolitical actions. The traditional binary framing of sovereignty overlooks its inherent complexity. Loh and Heiskanen (2020, p. 285) propose a conception of sovereignty based on three discrete domains: the domestic, the international and a transitional area. Drawing on Weber's interpretation of sovereignty, they argue for a liminal space between internal and external sovereignty. Weber (1994, p. 127) defines sovereignty as a set of behaviors that grant an entity specific rights and obligations. The tangible prerequisites of sovereignty, such as final power over a territory and international independence, are not essential for a state to be

considered sovereign. Instead, indicators like the capacity to emulate the basis of sovereign authority through its people and achieving diplomatic recognition or UN membership become crucial. Loh and Heiskanen's (2020, p. 289) third domain of sovereignty practices lies at the intersection of domestic and international aspects. They identify categories such as marginal liminality, hybrid liminality, interstitial liminality and external liminality. Taiwan and other contested states fall into the category of marginal liminality. These entities copy current sovereignty behaviors with the goal of eventually becoming full members of the international system. Marginal liminality represents a form of "incomplete" sovereignty, where actors attempt but cannot fully replicate established procedures. Due to their controversial status, these entities remain on the periphery of the international order (Loh & Heiskanen, 2020, p. 291). Taiwan, for instance, refers to itself as the 'Republic of China', exercises de facto domestic sovereignty over its territory and population, and maintains institutions typical of a sovereign state. However, it has a declining number of recognizing states and lacks UN membership. For Taiwan and contested states, asserting sovereignty is an existential matter rather than merely a demonstration of power (Loh & Heiskanen, 2020, p. 291). The thesis will proceed based on this approach to sovereignty by Loh and Heiskanen.

3. Methodology

This thesis employs a qualitative research method based on doctrinal analysis, which encompasses the comprehensive analysis of legal documents formulated between Taiwan and other political entities. The thesis adopts an analytical approach, incorporating descriptive elements likewise. The primary objective is to answer the research question *What do Taiwan's trade agreements say about its sovereignty as a sui generis state in the international system?*. The research will involve a detailed analysis of Taiwan's trade agreements with other states and political entities, which will be supplemented by the thorough analysis of secondary

sources issued on the topic. The thesis will analyze these key documents building on the above summarized relevant literature. The analysis will then be followed by a discussion of the findings, highlighting how Taiwan's trade agreements reflect its sovereignty and *sui generis* position. The study will also address broader implications and offer recommendations for further research.

4. Analysis

To answer the research question *What do Taiwan's trade agreements say about its sovereignty as a sui generis state in the international system?*, this analysis will consider all trade agreements that have taken effect since its accession to the WTO in 2002 (World Trade Organization, 2024). The examination will focus on the denomination of the signing parties, the preambulatory clauses of the documents and any additional sections relevant to answering the research question. Beyond a detailed analysis of the trade agreements themselves, supplementary literature will provide a comprehensive understanding of the dynamics of Taiwan's trade agreements. For clarity and depth, the research paper categorizes Taiwan's trade agreements into three groups: first, its Free Trade Agreements in Latin America and the Caribbean, second, the Economic Cooperation Framework Agreements with mainland China and third, its Economic Cooperation Agreements with other partners. This categorization will facilitate a fitting structure of analysis, allowing for a more systematic and organized overlook of how Taiwan's trade agreements reflect and impact its sovereignty.

4.1 Free Trade Agreements in Latin America and the Caribbean

Since its accession to the WTO, Taiwan has signed four Free Trade Agreements (FTAs). These agreements were made with Panama, Guatemala, Nicaragua and a joint Trilateral Agreement with El Salvador and Honduras. Today, only the Taiwan-Guatemala

FTA remains the same as when signed, as the other states have cut diplomatic ties with Taiwan since. Although Panama, Nicaragua, El Salvador and Honduras initially recognized Taiwan as a sovereign state, they have gradually shifted their stance, established diplomatic ties with the PRC, and have recognized the PRC as the sole government of China throughout the years (World Population Review, 2024). For this section, the countries that have once recognized Taiwan, established a FTA, and have then altered their position, will all be treated together in the discussion which will be followed by a touch upon the Taiwan-Guatemala FTA.

Taiwan's FTAs with Panama, Nicaragua, El Salvador and Honduras were all concluded between 2003 and 2007, during a period when more than 20 states recognized Taiwan as a sovereign state, including those it signed FTAs with (World Population Review, 2024). These agreements were signed by the governments of the respective partner states and Taiwan - officially referred to as the *Republic of China (Taiwan)*. The specific terminology used to identify the signatory parties is crucial, as it directly pertains to the recognition or non-recognition of the state and its government. The recognition of the RoC by these countries was evident not only through these agreements but also through their diplomatic offices in the country and through their official statements restating their recognition of Taiwan. Nevertheless, on June 13, 2017, Panama formally ended diplomatic ties with Taiwan and established new relations with the PRC. Following this shift, Panama unilaterally declared that all agreements between the two entities, including the 2003 FTA, would no longer hold legal force as of the date their diplomatic relations were severed. This decision was justified by the One-China policy, which allows recognition of only one government, either the RoC or the PRC (Wu & Liao, 2020, p. 2). Nicaragua followed Panama's example by issuing a joint communiqué with the PRC in 2021 declaring their formal relationship with the RoC as concluded (Rogers, 2022, p. 6). Similarly, the FTA between El Salvador,

Honduras and Taiwan disintegrated after El Salvador cut diplomatic ties with Taiwan in 2018, and Honduras in 2023 (World Population Review, 2024).

To better understand the circumstances of countries in Latin America and the Caribbean (LAC) shifting their recognition of the RoC to the PRC, it is important to delve into the context these decisions are made in. China's immense growth both economically and politically has shifted the power arrangements in the international arena, shifting the long US led global order to a more bipolar, or at least multipolar, international system giving China much leeway to steer dynamics to its own benefit. This also plays out in the Taiwan versus China recognition scene. China's vast economy, driven by manufacturing and a large population, creates a high demand for natural resources, which LAC countries can supply (Rogers, 2022, p. 11). China also exports goods and services to the region, boosting its economy and soft power. China's investments, particularly through the Belt and Road Initiative (BRI), offer significant benefits to Panama and Nicaragua, who then view China as a more advantageous partner compared to Taiwan (Rogers, 2022, p. 17).

Moreover, in today's multipolar world, smaller governments find it challenging to have an impact next to powerful states like the US and China. However, the China-Taiwan recognition dispute offers an opportunity for these smaller states of LAC to have a voice in the international arena. Strategically located near the US and rich in natural resources, these countries are of significant interest to both China and the US (Rogers, 2022, p. 1). Still, Fornes and Mendez (2018, pp. 57-58) hint that the decision for these small states to form diplomatic relations or any sort of agreement lies in the hands of the more powerful states at the end of the day. While LAC countries have sought diplomatic relations with China, decisions have been delayed before to avoid triggering a diplomatic crisis by stripping Taipei of its international recognition as Beijing has argued (Fornes & Mendez, 2018, pp. 57-58).

Taiwan, despite the PRC's aggressive diplomacy leading many LAC nations to switch their recognition from Taiwan to China, continues to maintain strong ties with its diplomatic allies in the region (Rogers, 2022, pp. 11-12). Its interest in LAC countries is primarily motivated by its need for international support in its quest for independence, and thus, with limited economic returns, continues to invest heavily in its regional allies.

Moving on to the primary question regarding Taiwan's revoked FTAs is how such retractions from formal agreements play out in the international system, especially when accompanied by the derecognition of a state. As FTAs operate within the international system, the rules regulating them fall under the framework of international law. Consequently, the issue of the unilateral termination of a FTA must be viewed through the lens of international law. Article 63 of the Vienna Convention on the Law of Treaties ([VCLT], United Nations, 1969) states that the termination of diplomatic relations does not affect the parties' treaty obligations. However, one could argue that if the termination of diplomatic relations results from a state's derecognition, the treaty would become void due to the loss of international legal personality. Taiwan, however, does not consider its statehood contingent upon recognition by the countries that have unilaterally chosen to revoke it (Wu & Liao, 2020, p. 2). Taiwan contends that treaties can only be terminated according to their provisions and asserts that the FTAs with Panama, Nicaragua, El Salvador and Honduras remain in force, as they are also depicted on the WTO's official website. This stance is further supported by Taiwan's status as a distinct customs territory within the WTO framework and its potential classification as "another subject of international law" under Article 3 of the VCLT, thereby ensuring that its legal personality remains intact (United Nations, 1969).

Now, turning to the only FTA still recognized by both the signatories, the Taiwan-Guatemala FTA. This agreement highlights Guatemala's long-standing support for

Taiwan's sovereignty, a stance it maintains to this day. However, China's growing prominence in global trade now presents Guatemala with the enticing possibility of benefitting from a FTA with China, which would grant it preferential access to the Chinese market (Delgado, 2011, p. 1). However, Guatemala's strong support for Taiwan has historically led to hostility with China, as China refuses to establish diplomatic ties with any state that recognizes Taiwan. Guatemala has consistently reaffirmed its support for Taiwan but it has also expressed intentions to strengthen commercial ties with China, driven by inviting economic interests (Delgado, 2011, pp. 15-16). The absence of diplomatic relations between Guatemala and China creates significant challenges for their bilateral trade. Particularly, dispute resolution can become prohibitively costly and hinder effective trade relations, thus, incentivizing Guatemala to follow the footsteps of the states that have unilaterally ended their FTAs with Taiwan and revoked their recognition (Delgado, 2011, p. 14). This dual stance is a source of concern for Taiwan as its recognition in the region is rapidly decreasing despite previously predominant support. China's approach to trade negotiations, exemplified by its demands on the LAC states, typically requires states to sever diplomatic links with Taiwan and establish formal relations with the PRC. In conclusion, Guatemala's economic and diplomatic relations are at a crossroads, influenced by its loyalty to Taiwan and the potential economic benefits of engaging with China (Delgado, 2011, pp. 16-17).

4. 2 Cross-Strait Economic Cooperation Framework Agreement

An important development in the economic ties of Taiwan and China is the signing of the Cross-Straits Economic Cooperation Framework Agreement (ECFA), concluded between the Association for Relations Across the Taiwan Straits (ARATS) - representing China - and the Straits Exchange Foundation (SEF) - representing Taiwan. Despite political tensions

between the PRC and the RoC, the creation of the 2010 ECFA marked a significant milestone as both sides pledged to lower trade barriers and to strengthen their economic ties while upholding the One-China principle.

Contextualizing the ECFA's formulation helps to understand its goals and the consequences it has on the signatories and other East Asian nations in the region. According to Chiang (2011, p. 681), the ECFA between Taiwan and mainland China advances China's long-term political goals in addition to strengthening its economic ties across the Taiwan Strait. The ECFA offers considerably different short- and long-term benefits. By removing trade and tariff barriers, the deal gives Taiwan greater access to the Chinese market and, in the short run, significant economic benefits. These immediate economic advantages boost Taiwan's economy and encourage Taipei to work more closely with Beijing on economic cooperation (Chiang, 2011, pp. 682-683). However, the ECFA's long-term effects show how China strategically uses economic integration to achieve its political objectives. The agreement encourages economic dependency, which advances China's goal of uniting with Taiwan. Taiwan's growing economic integration with China is making it more difficult for it to maintain its political and economic independence, highlighting the risks of asymmetric dependency. Initially, Taiwan's investments were essential to China's export-driven economic growth, but over time, this has made Taiwan's reliance on trade with China grow. This dependency complicates Taiwan's economic independence and weakens its bargaining position. The ECFA further entrenches this economic reliance, making it difficult for Taiwan to break its economic ties with the mainland (Chiang, 2011, p. 695). This growing economic dependence is a crucial element of China's "embedded reunification" strategy, a larger plan to incorporate Taiwan into China's political sphere through economic means (Chiang, 2011, pp. 690-691).

The ECFA also has significant implications for regional dynamics. By positioning Taiwan within a “China-centered” regionalization process, the agreement enhances China’s influence in the regional political economy. This shift challenges the US presence in East Asia, as China’s growing economic ties with Asian economies increase its regional dominance (Chiang, 2011, pp. 692-693). Moreover, the ECFA creates a sense of insecurity for other regional economies, particularly Japan and South Korea, whose exports overlap with Taiwan’s and are disadvantaged by the agreement. For China, having other options for trading partners further secures its regional position. In the event of a disagreement with Taiwan, China can shift its import sources to other countries, increasing uncertainty around Taiwan’s export market (Chiang, 2011, p. 694). This dynamic underscores the precarious nature of Taiwan’s economic relationship with China.

To conclude, the ECFA exemplifies the complex interplay between economic benefits and political objectives. Although Taiwan benefits economically in the short term, it becomes more economically reliant on China as a result of the ECFA and thus, emphasizes Taiwan’s susceptibility to Beijing’s larger political aspirations. The agreement illustrates China’s strategic use of economic integration to further its political goals, highlighting the delicate balance Taiwan must navigate in its relationship with China and the broader international community.

4. 3 Economic Cooperation Agreements

Since 2013, Taiwan has signed six Economic Cooperation Agreements (ECAs) under different denominations. Four of these are with countries that officially recognize Taiwan as a sovereign state and the RoC as its government. Besides this, Taiwan has signed ECAs with Singapore and New Zealand, both of which do not have official diplomatic relations with the RoC and recognize the government of the PRC as China’s regime. These latter two ECAs

with Singapore and New Zealand create an especially unique category for analysis. The key difference between the two types of ECAs - those with recognizing states and those with non-recognizing states - is the designation of Taiwan as a signatory. The ECAs with Singapore and New Zealand are signed under the name “Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu” (TPKM), while the agreements with states that recognize Taiwan are signed with the “Republic of China (Taipei)”, similar to the formulation used in the FTAs (WTO OMC, 2024).

Both the Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Partnership (ASTEP) and the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Partnership (ANZTEC) accentuate the importance of timing and favorable conditions in establishing agreements for Taiwan. The ASTEP is a comprehensive trade pact addressing trade liberalization, trade in goods and services, dispute resolution, economic cooperation, and adherence to WTO rules on investment, e-commerce, and competition. Despite its strengthening diplomatic ties with the PRC, Singapore has sustained its long-standing amicable relations with Taiwan and continues their military cooperation, demonstrating a balanced diplomatic approach (Yeh & Chen, 2017, p. 29-31). The ASTEP in this case, reflects a nuanced relationship where improved Cross-Strait relations between the PRC and Taiwan could lead to reduced PRC pressure on Taiwan’s allies, allowing Taiwan to engage more freely in bilateral commercial discussions. The ECFA is seen as a significant step toward the formulation of this agreement with Singapore. This suggests that the PRC might allow such engagements if Taiwan and the third party adhere to the infamous One-China policy (Yeh & Chen, 2017, pp. 33-34). Next, the ANZTEC offers a comparative lens, demonstrating that such economic partnerships can be influenced by the broader geopolitical climate, particularly US-China relations. Yeh and Chen (2017, p. 39) contend

that during periods of tension in US-China relations, Taiwan can maneuver more easily without significant repercussions from either the PRC or the US, given the prevailing geopolitical context, and this is what mainly led to the possibility of the signing of Taiwan's ECAs in 2013.

The signing of the ASTEP and the ANZTEC was the first time that states with diplomatic ties to the PRC have successfully used the customs territory arrangement, which is seen as a major diplomatic success for Taiwan, especially among Southeast Asian nations, enhancing its potential for economic development and reintegration into the global community. Although, for instance, commerce with New Zealand ranks as Taiwan's 40th largest export destination, Taiwan's strategic importance to New Zealand surpasses its economic importance (Young, 2014, p. 13). These agreements pave the way for further bilateral trade deals, particularly under Taiwan's New Southbound Policy, which aims to grow Taiwan's economic existence in the Southeast Asian market (Jing, 2023, p. 23). The success of these agreements provide Taiwan with the opportunity to negotiate economic deals with states that maintain diplomatic ties with the PRC without negatively impacting relations between those states and the PRC or across the Taiwan Strait (Young, 2014, p. 6). According to Young (2014, pp. 6-7), three factors have enabled this process: the adoption of the WTO nomenclature TPKM as this then avoids any issues regarding sovereignty, the signing of the ECFA and improved Cross-Strait relations, and the increasing number of states with advanced relations and economic agreements with the PRC. It must also be added why Singapore and New Zealand are leading this new direction for Taiwan's regional integration. Because they both depend on their external trading partners, they are in favor of China's, East Asia's and the Pacific Rim's economies being included into the changing economic landscape. Thus, they have FTAs with China, actively support bilateral trade agreements as a first step toward open regionalism, and are strong proponents of an open regional trading

order (Young, 2014, p. 17). Overall, these agreements are a positive step for Taiwan, demonstrating that with a practical approach, Taiwan can participate in regional integration. They also indicate the emergence of a Cross-Strait cooperation, though the success of the matter will largely depend on the future course of relations between the two sides and will require more Cross-Strait dialogue for greater clarity (Young, 2014, p. 21).

Now, focusing briefly on the ECAs involving Taiwan and states that recognize its sovereignty. The RoC has entered into ECAs with Paraguay, Eswatini, the Marshall Islands and Belize. These states all recognize Taiwan as the sole government of China and do not maintain any diplomatic relations with the PRC. While these agreements do not provide substantial economic benefits to the Taiwanese economy, their recognition of Taiwan as a sovereign state and the ability to enter into such international agreements further enhance Taiwan's international presence and legitimacy.

5. Conclusion

5.1 Research Question and Main Findings

This thesis sought to answer the research question *What do Taiwan's trade agreements say about its sovereignty as a sui generis state in the international system?*. To address this, the paper analyzed the various trade agreements that Taiwan has signed since its WTO accession in 2002. These agreements illustrate a diverse set of economic cooperation between Taiwan and the respective signatories. For clarity and systematic analysis, the thesis has grouped these trade agreements into three categories. In this section each category is examined individually to draw specific conclusions, followed by a comprehensive discussion on the overall implications for Taiwan's sovereignty as reflected through its trade agreements.

Taiwan's FTAs have demonstrated how vulnerable Taiwan's position really is. The shifts in diplomatic recognition from Taiwan to the PRC among LAC countries are heavily

influenced by China's economic rise and strategic investments, such as the BRI. This context highlights the broader geopolitical dynamics, where smaller states are influenced by the economic powerhouses of China and the US. Taiwan's FTAs reflect its strategic efforts to secure international support and maintain its sovereignty within this competitive environment. Next, Taiwan's insistence on the legal validity of its FTAs, despite derecognition, demonstrates its imperative resilience and commitment to maintaining its international presence. Even though political recognition fluctuates, Taiwan maintains its status as a sui generis state with a separate and acknowledged economic identity by continuing to adhere to these agreements and participating in the WTO framework. Taiwan's pursuit of international legitimacy is reflected in and facilitated by economic agreements, as demonstrated by the examination of its FTAs, and paints a complicated image of sovereignty. These FTAs illustrate Taiwan's position as a sui generis state that handles the challenges of limited diplomatic recognition while asserting its sovereignty through both legal and economic frameworks.

Furthermore, Taiwan's link between political sovereignty and economic cooperation is best illustrated by the ECFA with mainland China. Although Taiwan benefits economically in the short term from the ECFA, it also exposes China's long-term political plan to use economic integration as a means to further its reunification ambitions. As Taiwan becomes more economically intertwined with China, its internal sovereignty becomes increasingly challenged. The economic dependency weakens Taiwan's bargaining position, making it difficult for Taiwan to resist political pressure from Beijing. This dependency highlights Taiwan's status as a sui generis state, having to decide between economic cooperation and maintaining its distinct political identity, while China poses a constant threat to its sovereignty, intimidating more and more with the use of force (Al Jazeera, 2024).

Lastly, Taiwan's ECAs demonstrate its fluid nature as a sui generis state the most. These ECAs were broadly categorized into those signed with countries that recognize Taiwan as a sovereign state and those that do not. The agreements with countries that recognize Taiwan - Paraguay, Eswatini, the Marshall Islands and Belize - are signed under the "Republic of China (Taipei)" designation. In contrast, the ECAs with Singapore and New Zealand are signed under the "Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu", emphasizing Taiwan's flexibility in diplomatic nomenclature to engage in international trade, despite differing levels of official recognition. The ASTEP and the ANZTEC reflect Taiwan's ability to establish substantial economic partnerships even with states that do not officially recognize its sovereignty. The use of the "Separate Customs Territory" designation allows Taiwan to adhere to the One-China policy while still participating in international trade as a distinct entity from mainland China. These agreements enhance Taiwan's economic development and integration in the international arena, showcasing its capacity to maintain international partnerships despite its political challenges.

Bringing it all together, Taiwan's trade agreements reveal a layered picture of its sovereignty, portraying it as an entity with truly sui generis qualities. Taiwan's trade agreements have given attention to its strategic use of economic diplomacy to secure international support and maintain its distinct identity, despite limited diplomatic recognition and the absence of UN membership. Its flexibility in diplomatic nomenclature and its commitment to the legal validity of its FTAs show its resilience and innovative approach to international engagement. However, the ECFA with mainland China and the unilateral revocation of some of its FTAs from partner states, exemplify the challenges Taiwan faces, as economic benefits come with increased dependency and its recognition with great instability. Occupying a space of marginal liminality, Taiwan exercises de facto sovereignty while

continually striving for greater international legitimacy. Ultimately, these trade agreements reflect its sui generis position, balancing economic opportunities with persistent political pressure from China, thereby underscoring its uncertainty and need for flexibility as a sui generis state in the international system.

5.2 Limitations and Recommendations for Further Research

When attempting to generalize the findings of this research to other sui generis entities, several challenges arise. Taiwan holds a unique position among the sui generis states within the international system. As the global leader in chip production and one of the top 20 economies by GDP, it has a highly skilled workforce and a well-established institutional framework, making it an attractive location for regional and international trade and investment (Global Finance, 2024). Additionally, Taiwan is recognized as one of East Asia's most advanced democracies, alongside Japan and South Korea (Kironka, 2024, p. 184). In contrast, many sui generis states do not have as leading democratic forms of government as Taiwan does, which can hinder their ability to establish new official diplomatic relations, especially with democratic states (Takuto, 2023). Moreover, Taiwan's advantageous economic position further set it apart from other "similar" entities. Therefore, applying Taiwan's approaches to enhance international engagement to other sui generis entities is difficult.

Consequently, a suggestion for further research includes a similar examination of other sui generis states and their ability to engage in both official and non-official diplomatic relations through trade agreements, comparing their experiences to Taiwan's. In addition to this, it is recommended to look beyond the establishment of trade agreements to address Taiwan's sovereignty question, as these agreements may not fully capture the scope of sovereignty issues it faces.

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