

# Recognition of Divided States: Implication and Application of Concepts of “Multi-System Nations,” “Political Entities,” and “Intra-National Commonwealth”\*

YUNG WEI\*\*

The unification and division of various political systems in a divided nation has been a continuous and repetitive process in national and international politics. Issues surrounding the so-called “divided nations” or “divided states” pose special problems to political scientists in general and international jurists in particular. For political scientists, the divided nations create a unique problem in the development of more precise definitions and methods to analyze more effectively the process of transition and transformation of these types of nations as well as to identify more pragmatic formulas for their integration and unification.

Generally speaking, the problems facing the political scientists studying so-called “divided nations” can be found in two areas: first, the lack of precise and accurate concepts, which can be operationalized for the purpose of empirical research; and second, the need for the development of an institutional framework that can be applied to analyze and solve the problems of different parts of the divided nations that are already in the process of approaching rapprochement, yet are not ready for the acceptance of more formal structural arrangements such as confederations and federations.

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\*\*The author is currently a Distinguished Visiting Fellow at the Hoover Institution, Stanford University; Professor of Political Science, National Chiao-tung University; President, Vanguard Institute for Policy Studies; Council Member, Chinese Society for International Law; and President, Sino-American Cultural and Economic Council. He was a former President of the Chinese Association of Political Science, Chairman of the Research, Development, and Evaluation Commission, Executive Yuan (ROC Cabinet); and Member of the Legislative Yuan (Parliament) as well as Chairman of its Foreign Relations Committee.

As for the international jurists, their problems are more concrete and compelling. Among the questions confronting the decision-makers of various states and international lawyers are: How can a state or government recognize the various parts of a divided nation yet avoid getting involved in the "internal" debates of the divided nations over government legitimacy, sovereignty, and territorial claims? How can other countries handle the problem of representation of various parts of a divided nation in international organizations, particularly the United Nations? Above all, what kind of recognition should other states and governments extend to the various parts of a divided state? Should it be state recognition, government recognition, or other types of recognition that have not yet been fully developed in the codes and norms of conventional international law? The list of questions can be a fairly long one.

The purpose of this essay is to examine the problems of the divided nations from a comparative and interdisciplinary perspective. Emphasis is placed on: (1) clarifying the meaning of "divided nations" or "divided states;" (2) explaining the connotation of "multi-system nations;" (3) investigating the problems of the divided states under international law, particularly regarding international recognition and representation in international organizations; and finally, (4) proposing new concepts such as "territorial political entities," "non-territorial political entities," and "intra-national commonwealths" to the solution of the problems facing the different parts of divided nations.

## I. The Problem of the "Divided Nations" and the New Concept of "Multi-System Nations"

The division of China, Korea, Vietnam, and Germany into communist and non-communist political systems has been a major development since the end of World War II. The emergence of divided nations was not only a most unfortunate experience for the peoples of these nations, but also one of the major destabilizing factors in international politics. The Berlin Crisis, the Korean War, the Vietnam War, and the cross-Taiwan-Strait crisis all involved the divided nations and the major powers of the world. What are the prospects for reunification of divided nations? How can governments and peoples of divided nations work together toward the goal of inter-system reconciliation and national unification? What kind of concepts, legal norms, and institutional paradigms can we use to best analyze and deal with the problems relating to divided nations? These are but a few of the questions that have been raised frequently by political leaders and scholars of divided states.

Yet, comparative study of divided nations has been a late development in political science. A survey of literature on divided nations reveals two basic problems.<sup>1</sup> First, there is not a commonly accepted term or concept that is neutral and precise enough to serve as an effective instrument for empirical research on "divided nations." Second, there is a failure

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1. See KARL W. DEUTSCH, NATIONALISM AND SOCIAL COMMUNICATION (1953); AMITAI ETZIONI, POLITICAL UNIFICATION: A COMPARATIVE STUDY OF LEADERS AND FORCES (1965); GREGORY HENDERSON, DIVIDED NATIONS IN A DIVIDED WORLD (1974); JUAN DIEZ MEDRANO, DIVIDED NATIONS (1995); STUART A. SCHEINGOLD, THE LAW IN POLITICAL INTEGRATION (1971); BRUCE R. SILVERS, THE DIVIDED NATIONS (1966); JAUSHIEH JOSEPH WU, DIVIDED NATIONS: THE EXPERIENCE OF GERMANY, KOREA, AND CHINA (1995); Philip E. Jacob & Henry Teune, *The Integration Process: Guidelines for Analysis of the Bases of Political Community*, in THE INTEGRATION OF POLITICAL COMMUNITIES (Philip E. Jacob & James V. Toscano eds., 1964); Henry R. Nau, *From Integration to Interdependence: Gains, Losses, and Continuing Gaps*, 33 INT'L ORG. 119 (1979); and Joseph S. Nye, *Comparative Regional Integration: Concept and Measurement*, 22 INT'L ORG. 855 (1968).

in differentiating two separate types of division and unification processes, that is, those involving communist political systems and those not involving confrontation between communist and noncommunist systems.

As for basic concepts, a host of terms including “the partitioned nations,” “the divided states,” “the divided nations,” and “two Chinas (Koreas, Germans)” have been used. All of these terms designate certain features of “divided nations,” yet none is accurate and broad enough to reflect and include all the cases. For example, the term “partitioned nations” cannot be used to refer to countries that were divided not through international intervention or by international agreements but through internal war, such as China after the end of World War II. The concept of “divided states” is broader than “partitioned nation,” yet many of the leaders and scholars of the so-called divided states are very reluctant to accept the word “state” in the concept because it implies a more permanent separation of a nation into two or more legal entities under international law. Similarly, most of the leaders and people in the “divided states” resent terms such as “two Chinas,” “two Koreas,” or “two Germans.” “Divided nations” is a term used most often by social scientists. But it also has the misleading connotation that there are two or more nations in a “divided” state—an idea that is unacceptable to most leaders and scholars of divided systems.

In order to avoid the shortcomings of the above-mentioned concepts, I propose that we substitute “multi-system nations” for “divided states” and “divided nation.” There are several advantages in using this new term. First, it clarifies the fact that the reality in a so-called divided nation is *not* the separation of one nation into two or more nations, but the emergence of more than one political system within *one* nation, either as a result of international arrangement or as the product of internal wars. Secondly and more significantly, the term “multi-system nation” reflects faithfully the true nature and cause of the division, that is, the confrontation and competition between noncommunist systems and communist systems in various countries. In other words, the division of the original nation was caused by the emergence of two different political, social, and economic systems in one nation.

The development of the concept of “multi-system nations” can be traced back to the formation of a “Comparative and Interdisciplinary Studies Section” (CISS) within the International Studies Association (ISA) in 1969. As one of the co-founders of this research section within ISA, I was particularly interested in the complex problems of political partitioning that leads to a host of problems including refugees, migration, minorities, and non-state-nations.<sup>2</sup> As the coordinator of a workshop on “Political Partitioning, Migration, Refugees and Non-State Nations” within the CISS that was supported by a grant from the National Endowment for the Humanities, I soon discovered that it is incorrect to call most of the partitioned nations “divided states.” Based upon the finding of this workshop, I decided to coin a new term, “multi-system nations” in 1975 to define more accurately the situation.

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2. The formation of a “Divided Nations Internet” in the Comparative and Interdisciplinary Studies Section of the International Studies Association in 1969 was a pioneering effort toward empirical study of divided systems and peoples. For some examples of the results of this intellectual endeavor, see Yung Wei, *Political Partitioning, Migration, Minorities, and Non-State Nations: Models, Propositions, and Intellectual Exchanges* (University Center for International Studies, University of Pittsburgh, CISS working paper no. 49, 1975) and *THE POLITICS OF DIVISION, PARTITION, AND UNIFICATION* (Ray E. Johnston ed., 1976).

The core of the new concept "multi-system nations" emphasizes that relations between different parts of a divided nation or people of different cultures are between different political systems within a *single* nation. These competing systems try to deny international status to the other side despite the fact that both sides meet almost all the criteria of an independent state. By advancing the new concept of "multi-system nations," I propose that we preserve the idea of "one nation" but face the reality of the co-existence of two or more mutually separated political systems within that nation.<sup>3</sup> The logical derivations from this concept would be: "one nation, two systems;" "one sovereignty, two jurisdictions;" and "one country, two international personalities."

## II. Development in the Divided Nations After the Introduction of the Concept of "Multi-System Nations"

Developments in various so-called divided states following the coinage of the concept of "multi-system nations" more or less have corresponded to the analysis and predictions of the theory of "multi-system nations."<sup>4</sup> The "common roof (*Dachtheorie*) theory" developed in Germany largely echoes the idea of "multi-system nations." By asserting the notion of one German nation, East Germany and West Germany managed to separate the issues of sovereignty and jurisdiction. Sovereignty belonged to the abstract German nation while jurisdictions were clearly delineated between the Federal Republic of Germany and the Democratic Republic of Germany. Consequently, both West and East Germany were able to be simultaneously recognized by other states as well as to join international organizations, including the United Nations, without violating the "one German Nation" principle.<sup>5</sup>

In the case of the two Koreas, the application of the multi-system nations theory has been more direct and encompassing.<sup>6</sup> Some officials and scholars, such as Professor Hak-

3. For further discussions by this author on the inception, development, and policy impact of the concept of multi-system nations, see Yung Wei, *The Unification and Division of Multi-System Nations: A Comparative Analysis of Basic Concepts, Issues, and Approaches*, Paper delivered at a Symposium on Functional Integration of Divided Nations, Seoul, Republic of Korea (Oct. 6-7, 1980), later published in *MULTI-SYSTEM NATIONS AND INTERNATIONAL LAW: THE INTERNATIONAL STATUS OF GERMANY, KOREA, AND CHINA* (Hungdah Chiu & Robert Downon eds., 1981). See also Yung Wei, *Conceptual Schemes for Multi-System Nations and Inter-System Developments*, Paper delivered at Panel on System Integration of Divided Nations, XVI World Congress, International Political Science Association (IPSA), Berlin (Aug. 21-25, 1994); Yung Wei, *From Integration to "Intra-National Commonwealth": Towards Peaceful Resolution of Problems Facing Divided States*, Paper delivered at the 18th IPSA World Congress, Quebec, Canada (Aug. 1-5, 2000); Yung Wei, *Multi-System Nations Revisited: Interaction Between Theories and Realities*, Paper delivered at the International Conference on Unification of Multi-System Nations, Taipei (Sept. 27-29, 1991); and Yung Wei, *Unification or Separation: Assessment of Relations Between the Two Chinese Political Systems Through the Concept of Multi-System Nations*, Paper delivered at the Conference on China's Constitutional Systems: Convergence or Divergence, Columbia University, New York (Apr. 29, 1994).

4. For an example of American international lawyers taking note of the concept of "multi-system nation," see GERHARD VON GLAHN, *LAW AMONG NATIONS: AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW* 64 (7th ed., 1996).

5. See Joyce Marie Mushaben, *A Search for Identity: The German Question in Atlantic Alliance Relations*, 40 *WORLD POL.* 395 (1988); and Gottfried-Karl Kindermann, *The Unification of Germany's Multi-System Nations: The Evolution of West Germany's Strategies*, Paper delivered at International Conference on the Unification of Multi-System Nations co-sponsored by Vanguard Foundation and American Enterprise Institution, Taipei, Republic of China (Sept. 27-29, 1991).

6. See John H. Herz, *Korea and Germany as Divided Nations: The Systemic Impact*, *ASIAN SURV.* 957 (1975).

joon Kim, former special assistant to the President, openly described Korea as a multi-system nation.<sup>7</sup> The December 1991 Communiqué between the representatives of North and South Korea almost completely adopted the concept of multi-system nations and clearly defined the situation in the Korean peninsula as two political systems co-existing in one Korean Nation. As a result, relations between the two Korean political systems are not international relations, but special relations to be regulated by specific agreements between the North and South. Today both North and South Korea are members of the United Nations and enjoy dual recognition in many capitals around the world.<sup>8</sup>

As for the Chinese situation, leaders of the People's Republic of China (PRC) put forth the notion of "one country, two systems" some time around 1983, shortly after the concept of multi-system nations gained international recognition and caused debates in Taiwan. Despite repeated denials by the Beijing authorities, many scholars are of the opinion that before 1983, PRC leaders already were aware of the concept and its implication to cross-strait relations and to the diplomatic efforts of the Republic of China (ROC). Thus they have borrowed the idea but have skillfully adjusted the content of "multi-system nations" to suit their own political framework and purposes, that is, the two *systems* in the "One Country, Two System" scheme were merely socio-economic institutions without international personalities. Unquestionably, Beijing had both Hong Kong and Taiwan in mind when it put forth the "one country, two systems" scheme.

In regard to the ROC, the inner circle of the ROC government basically concurred with the concept of "multi-system nations" and actually called high-level meetings to discuss the implications of the concept to the cross-strait situation as well as possible positive usage of the concept.<sup>9</sup> Enthusiastic and generally positive responses also came from the academic community in Taiwan. Only a few senior members of the Legislative Yuan (Parliament) voiced different opinions. Whatever the initial responses, the fact has been that since 1981, the official policy of the ROC government towards the cross-Taiwan-Strait relations as well as toward international participation has steadily moved closer to the idea of "multi-system nations."

The Guideline for National Unification, for instance, advocates the concept of "One China" but allows the co-existence of two "political entities" within one China. The White Paper on Cross-Strait Relations released by the Mainland Affairs Council went further to formally declare that "One China" is a "historical, geographic, and cultural Chinese nation."<sup>10</sup> Within this nation, the two Chinese political entities are not foreign countries to each other; their relations are that of inter-system relations within one nation, which is to be regulated by agreements signed by both sides of the Taiwan Strait. In their relations with other countries, however, both the ROC and the PRC are full-fledged international personalities. Hence, the idea "One China, Two Entities" embedded in the Guideline for National Unification corresponds completely to the ideas of "multi-system nations" as de-

7. Hakjoon Kim, *Korean Reunification: A Seoul Perspective on the Korean National Community Unification Formula as Seen Through the Various Concepts on the Unification on Multi-System Nations*, Paper presented at International Conference on the Unification on Multi-System Nations, Taipei (Sept. 27-29, 1991).

8. See Hong Nack Kim, *The "Two Koreas" Enter into the United Nations and the Implications for Inter-Korean Relations*, *KOREA AND WORLD AFFAIRS* 397 (Fall 1991).

9. For an insider's account of the deliberation process within the ROC government regarding the possible application of the concept of multi-system nations, see Yung Wei, *Two Koreas and Multi-System Nations*, *HISTORY MONTHLY* (Sept. 2000).

10. *TAIPEI MAINLAND AFFAIRS COUNCIL, POLICY PAPER ON CROSS-TAIWAN-STRAIT RELATIONS* 30 (July 1994).

fined by official ROC government policy. Responding to interpellation from members of the Legislative Yuan, various officials of the ROC government openly acknowledged in 1993 that the idea of "One China, Two Entities" in the Guideline for National Unification indeed had borrowed the idea of "multi-system nations."<sup>11</sup>

It must be pointed out, however, that the release by former President Lee Teng-hui of the thesis "special state-to-state relations" referring to the cross-Taiwan-Strait situation was a blunt rejection of the "One China" concept and the Guideline of National Unification and was a serious setback in cross-Strait relations. Fortunately, after Chen Shui-bian assumed the office of the presidency of the ROC, more moderate and restrained positions have been taken by the ROC government. Nevertheless, the reluctance of the new ROC government to openly acknowledge "One China" policy and the lack of desire of the PRC to give the ROC more international space has led to the current deadlock in cross-Strait relations.

### III. International Personalities and the Problems of Recognition: Outdated Classification and Code with Varied Application

Despite gradual dissemination of the idea of "multi-system nations" and tacit acceptance by the international community of the practice of multiple recognition and dual representation of divided nations, the problem of the international status of the multi-system nation is far from being resolved. In addition, certain political systems within the divided nation, such as the ROC in Taiwan, still face serious problems of diplomatic recognition. Other political systems that were caught in the process of partitioning in the former Soviet Union and Yugoslavia faced similar problems at one point or another. All of these should be the concern of international lawyers.

An examination of the current content of conventional international law leads to the discovery that the current types of international personalities provided by conventional international law are simply grossly out of date so far as the recognition of the various political systems that are actually in existence in the international community is concerned. A review of the major treatises on international law or laws of nations reveal three major categories of international personalities: states, belligerents, and insurgents.<sup>12</sup> Here one finds that the opinion of international jurists deem that "[a] state proper is in existence when a people is settled in a country under its own sovereign government."<sup>13</sup> As for insurgents and belligerents, these are the terms used to refer to the parties in the internal conflict of a state that have reached a certain degree of continuity as well as to the situation wherein the contending party has already reached a certain proportion in terms of territorial occupation. If the party is in the initial stage of its organized efforts in contending the central authority and the impact is of limited nature, then it may be recognized as an "insurgent."

11. See, e.g., *Bulletin of the Legislative Yuan*, 294 (Apr. 7, 1993); and *Bulletin of the Legislative Yuan*, 369-70 (Dec. 15, 1993). For an official view of the ROC's position on the issue of national reunification, see Lien Chan, *A Pragmatic Strategy for China's Peaceful Reunification*, 14 *AM. ASIAN REV.* 97 (1996).

12. See JAMES LESTER BRIERLY, *THE LAW OF NATIONS—AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* Ch. IV (5th ed. 1955); PHILIP C. JESSUP, *A MODERN LAW OF NATIONS: AN INTRODUCTION* Ch. III (1948); *THE LAW OF NATIONS, CASES, DOCUMENTS, AND NOTES* 99 (Herbert W. Briggs ed., 2d ed., 1953); LASSA OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* Ch. I (8th ed. 1955).

13. OPPENHEIM, *supra* note 12, at 118.

If, however, the contending party has "attained sufficient stature"<sup>14</sup> and the conflict becomes of a sustained nature, then that party can be recognized as a "belligerent." In the opinion of one of the leading international jurists, "the principal consequence of recognition of insurgency is to protect the insurgent from having their warlike activities, especially on the high seas, from being regarded as lawless acts of violence which, in the absence of recognition, might subject them to treatment as pirates."<sup>15</sup>

If such a considerate and generous criterion can be applied to the recognition of the divided nation, then almost all of the political systems in any of the multi-system nations could all have been considered "international personalities" and attained recognition by other states. Other than states, belligerents, and insurgents, conventional international law also recognizes several other exotic "international personalities," including the Holy See (Vatican City) and the Sovereign Military Order of the Knights of Malta.<sup>16</sup> The reasons provided by international jurists to treat these two entities as subjects of international law are not based upon general criteria of statehood but on convention and customary practice.

A basic problem regarding the identification of subjects of international law, as well as in granting recognition to various types of international personalities, lies in the fact that the current principles of extending diplomatic recognition were developed from the experience of western European states before the nineteenth century. At that time, transition of a nation from unification to division, or vice versa, usually was rather rapid. As a result, the pioneers of conventional international law simply failed to foresee the continuous existence of parallel political systems within the original nation or state for an extended period of time, which happened in China, Germany, and Korea after World War II.

As pointed out previously in this article, in the minds of the founding fathers of international law, besides the *state*, which naturally was assumed to exist for quite some time, the other two types of international personalities under conventional international law, the *belligerents* and *insurgents*, simply were not assumed to last for any length of time. Thus, recognizing these two categories of "international personalities" was meant purely for the matter of convenience, and not for any long-term purposes. Consequently, international law, as it exists today, is grossly inadequate in dealing with the international status of multi-system nations, particularly in the case of China.

Arguments have been made to make the non-recognized part of a divided nation an "entity *sui generis*."<sup>17</sup> Notwithstanding the archaic nature of its nomenclature, "entity *sui generis*" carries a rather blurred and uncertain connotation so far as the legal status of an unrecognized political system of a multi-system nation is concerned. It should be noted that although the political systems within a divided nation may be somewhat less than a full-fledged state or government, they are definitely of a higher legal stature than those of belligerents and insurgents.

The major problem facing the international jurists has been that not only have there not been sufficient and up-to-date categories of "international personalities" for other states to choose in regard to recognition, but also that big nations often use recognition or non-

14. JESSUP, *supra* note 12, at 53.

15. *Id.*

16. See VON GLAHN, *supra* note 4, at 59-60.

17. LOUIS HENKIN ET AL., INTERNATIONAL LAW: CASES AND MATERIALS (2d ed. Supp. 1987); see also Philip Yang, Taiwan's Legal Status: Going Beyond the Unification-Division Dichotomy, Paper delivered at the CSIS Seminar on Cross-Strait Relations at the Turn of the Century (Sept. 21-23, 1999).

recognition as a political instrument to achieve goals in the name of national interest. Hence, the U.S. government refused to recognize both the Soviet Union and Mainland China decades after their establishment. On the contrary, the United States recognized the state of Israel within an hour of its declaration on May 14, 1948. At that time, no assurance could be ascertained as to the survivability of the newly established state.<sup>18</sup>

By the same token, it has been chiefly due to the firm support of the United States that the ROC, the Republic of Korea (South Korea), and the Federal Republic of Germany (West Germany) were able to prevent and deny recognition to Mainland China, North Korea, and East Germany before the 1970s. After the 1970s, especially after the end of the Vietnam War, the non-communist parts of the divided nations started facing diminishing support from the United States against recognizing the Communist parts of the divided nations and were forced to make practical adjustments. West Germany was the first to make such adjustment. South Korea soon followed. Unfortunately, in the case of the ROC, it has become a primary example of being a victim to non-recognition as a result of the increasing influence and stature of the PRC in the international community.

#### IV. Sovereignty, Jurisdiction, and the Recognition of Multi-System Nations

It must be pointed out that the categorization of the international personalities into merely states, belligerents, and insurgents by the pioneers of international law was not as naive as it seemed, for they assumed that the belligerents and insurgents were supposed to exist only for a short period of time. Hence, recognition of these "subjects" of international law was only to avoid the legal vacuum to which the existing states and governments might be exposed. It was anticipated that a successful insurgent would quickly become a formidable belligerent, and a succeeding as well as expanding belligerent would soon become a legitimate government or a new state. In either case, there would not be any serious problem of granting international recognition.<sup>19</sup>

It seldom occurred to these international jurists that they might be compelled to deal with a situation where there could be six categories of situations that international law must deal with, of which conventional international law offered a ready solution only for the first three; these could include: (1) single recognition of a unified nation (state); (2) dual recognition of a legitimate government challenged by a forceful belligerent; (3) dual recognition of a legitimate government challenged by an emerging insurgent group; (4) non-recognition of an existing but not yet considered legitimate state or government; (5) non-recognition of a multi-system nation; and (6) non-recognition of an insurgent group considered too destabilizing for the international community to recognize.

Other than the failure in perceiving the full range of the problem of international recognition under different situations, another problem hindering international recognition of a multi-system nation has been the idea of state sovereignty. As a key concept of a nation state, sovereignty is defined as the supreme power enjoyed by a state to have absolute and indivisible authority to rule at home and to be the sole representative to exercise state power abroad; the former is often called internal sovereignty, and the latter external sovereignty.<sup>20</sup>

18. See VON GLAHN, *supra* note 4, at 68–70.

19. See, e.g., OPPENHEIM, *supra* note 12, at 121–46.

20. See, e.g., JESSUP, *supra* note 12, at 40–42; BRIERLY, *supra* note 12, at 46–50; and OPPENHEIM, *supra* note 12, at 116–20.



Table 1: Relation Between the Situation in a Nation (State) and the Issue of Recognition			
Situation in a Nation (State)			
International Recognition	Unified nation (state) with a single government	Almost equally competing political systems	One legitimate government challenged by an insurgent group
Yes	Single recognition of a unified nation (state)	One legitimate recognized government with another recognized belligerent	One legitimate recognized government with another recognized insurgent group
No	Pariah state (South Africa before the 1980s)	Nonrecognized multi-system nation	A recognized government with a nonrecognized insurgent group (PLO before the 1970s, Muslim rebels in the Philippines)

Conceived by Yung Wei, drawn by Lynn Wei.

The idea of a supreme, indivisible, and nonshareable sovereignty has been challenged both by actual practice in internal and international situations as well as by scholarly opinion among political scientists and international lawyers.<sup>21</sup> The fact is that even the most powerful state in the world has to yield its sovereignty in a variety of cases including the operation of international organizations, implementation of world health as well as environmental regulations, operation of foreign legations, and the activities of transnational organizations as well as multinational companies. International intervention into the internal affairs of a state in the name of humanitarian concerns is another controversial yet often practiced intrusion and infringement of the so-called sovereignty of a state.

Whether the sovereignty of a state is supreme or not is not the primary concern of our discussion here. What does concern us here is the idea of indivisibility of the sovereignty of a state that has been used time and again to deny recognition to some of the political systems of a divided nation.

Concomitant to the idea of sovereignty is the concept of jurisdiction. While sovereignty is defined in more abstract terms, jurisdiction is customarily defined in a much more concrete fashion. Generally speaking, jurisdiction is related to three central ideas: "governing authority," "territories of effective control," and "the people" to whom political as well as legal power is exercised.<sup>22</sup> If one can accept the idea that sovereignty can be shared by different *de facto* political systems within a formally united nation or state, then whenever

21. See, e.g., SOHAIL H. HASHMIN, *STATE SOVEREIGNTY: CHANGE AND PERSISTENCE IN INTERNATIONAL RELATIONS* (1977); STEPHEN D. KRASNER, *SOVEREIGNTY, ORGANIZED HYPOCRISY* (1999); RODA MUSHKAT, *ONE COUNTRY, TWO INTERNATIONAL LEGAL PERSONALITIES: THE CASE OF HONG KONG* (1997); WILLIAM L. TUNG, *INTERNATIONAL LAW IN AN ORGANIZING WORLD* (1968); and Rosalyn Higgins, *Integrations of Authority and Control: Trends in the Literature of International Law and International Relations*, in W. MICHAEL RERSMAN & BURNS H. WESTON, *TOWARD WORLD ORDER AND HUMAN DIGNITY, ESSAYS IN HONOR OF MYRES S. McDOUGAL* 79-97 (1976).

22. See OPPENHEIM, *supra* note 12, at 293-302; BRIERLY, *supra* note 12, at 109, 112, 150, 168, and 180; TUNG, *supra* note 21, at 32, 124, and 126.

and wherever a political system exercises effective control of a territory and is the ruling authority of a group of people, it constitutes the legitimate ground for *de facto* international recognition of that system. Here one finds two crucial preconditions for resolving the problems of recognition of the multi-system nations: first, separation of the ideas of sovereignty and jurisdiction; and second, sharing of an abstract of common sovereignty by different parts of a divided nation having *de facto* jurisdiction in their occupied territories. One may go even further by asserting that sovereignty belongs to the original nation or state while concrete jurisdictions under that shared sovereignty are shared by the various political systems with temporarily delineated jurisdictions that in turn provide the foundation for international recognition.

**V. Solving the Problem of “One Nation, Two Realities”:  
An Agenda for Action among the International Jurists**

Having examined the concepts of sovereignty, jurisdiction, and the problems facing divided nations or multi-system nations in connection with recognition under international law, we may now move on to a more concrete and systematic examination of the various problems confronting multi-system nations.

Here, one finds the overlapping claims of both sovereignty and jurisdiction by various parts of different divided states have been a major drawback for them to gain international recognition. They have been trying to win recognition from other governments and states, not only as the government of the territories they actually control but also as the government of the territories that they do not control. As a result, international recognition of the different parts of a divided nation often evolves into a “zero-sum” game wherein other states and governments often become the victims of having to make difficult choices among various parts of a divided nation.

In short, what has been confronting the multi-system nations can be found in the contradiction regarding the preferred ideal state of affairs on the one hand and the political situation in reality on the other. Thus, one finds that while more often than not the leaders and people of divided nations prefer to believe that there is “one nation,” “one state,” “one sovereignty,” and “one people,” there are actually “two political systems” co-existing in one nation, “two governments” within one state, “two jurisdictions” within one sovereignty, and consequently, the need to have “dual representation” for the unfortunate people who hap-

Table 2: Nation, State, Sovereignty, and International Representation Ideals and Realities in Regard to Multi-System Nations				
	Nation	State	Sovereignty	International Representation
Ideals	One Nation	One State	One Sovereignty	One People
Realities and Adjustments	Two political systems (two separately governed regions)	Two governments	Two jurisdictions	Two representations (dual recognition and membership in international organizations)

Conceived by Yung Wei, drawn by Lynn Wei.

pen to live on different sides of the original nation or state. Indeed, as an American scholar so aptly dubbed it, this situation was an “organized hypocrisy” and calls for “alternative structures.”<sup>23</sup>

In order to resolve the discrepancies between the normative preferences and the objective realities, a new chapter, or at least a section, should be added to the text of international law, that is, the recognition and representation of “divided nations” or “multi-system nations.” The paramount principle in dealing with this subject matter should be the respect for human rights and the effective handling of political realities. To sum up, the new principles of international law should include:

- International law should be a stabilizing, not a destabilizing, factor in international relations.
- International law should not be used as an instrument to deprive the rights of the unfortunate individuals who happen to live in an unrecognized “multi-system nation”; to be recognized is a part of human rights.
- Recognition and representation of the various parts of a “multi-system nation” or a “divided nation” should not be a zero-sum game, that is, other states should not be forced to recognize only *one* of the systems in a divided nation and accept its claim over *all* the territories of a nation, including those that it does not control.
- Recognition of the different political systems within a multi-system nation does not have to be done with the separation of the sovereignty of the original nation or state. It can be done on the basis of *de facto* separate jurisdictions.
- Other states should recognize *all* systems in a multi-system nation without recognizing their claims beyond the territories under effective control yet without denying those claims either.
- All other states should not take a position on the question of unification of a multi-system nation, neither forcing nor preventing the unification of the different parts of a divided nation into one single state.
- The principle of multiple recognitions of multi-system nations should also extend to multiple representations of the different parties of multi-system nations in the United Nations, at least in specialized agencies.

Along with the advancement of the above principles, another new section should be added to the law of nations. This section should be devoted to the introduction of a new international personality, that is, political entities. By political entities, we mean any *de facto* ruling authority that actually commands the loyalty of certain people and is willing and able to fulfill international objections. There could be two types of political entities. The first one is “territorial political entities,” meaning the existence of political authorities not only with a group of people and effective administration but also with a clearly delineated territory under its control. All of the political systems in multi-system nations today are qualified in this category.

Other political entities may be called “nonterritorial political entities.” These are the entities having an authority as well as a group of people showing allegiance to that authority yet do not have a territory under their effective control. Before the 1980s, the PLO qualified for this category. Recognition of this type of political entity, however, must be done with

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23. KRASNER, *supra* note 21.

great caution, for it may involve conflict with an existing state wherein there is serious territorial dispute.

The status of political entities should be lower than states and governments, but higher than belligerents in international law. They should be able to accept at least *de facto* recognition by other government and states, to establish a representation office in foreign capitals, and become members, or at least observers, to international organizations.

To be sure, the above mentioned are merely rudimentary suggestions. Along with their gradual acceptance, more specific rules must be further developed in regard to the actual functioning of the "multi-system nations" or "political entities," which may include a host of practical areas in regard to the operation of a political-legal authority. Among them are territorial jurisdiction, extraterritoriality, jurisdiction over personal matters, diplomatic operation and immunity, participation in international organizations, international cooperation in the prevention of cross-national crimes, separation of international relations and intersystem relations between different political systems (entities) within a multi-system nation, the power and process of extradition, the maintenance of a military force and the related intersystem, and international obligations.

In making suggestions on the recognition of multi-system nations, this author is well aware of the basic conservative attitude among the international jurists in advancing changes in the existing codes of conventional international law. Yet as Rosalyn Higgins, one of the leading international jurists and a former vice president of the American Society of International Law, so aptly pointed out, "rules do not change themselves."<sup>24</sup>

International law has its own inbuilt methods for change (treaty revision, progressive development through the International Law Commission, codification, custom). These methods, however, are slow. Hence, to rely merely on accumulated past decision (rules), where their text has changed and their content is unclear, is to encourage contempt among international relations scholars.<sup>25</sup>

Other leading international law scholars, including Hans Kelsen, Morton Kaplan, and Harold D. Lasswell, seem to share similar views.<sup>26</sup> It is based upon the spirit that laws must respond to changing human conditions and that international jurists should be able to develop rules that can contribute to the solution of real human problems that the above suggestions of mine are made.

## VI. "Intra-national Commonwealth": A Future-Oriented Concept to Unification of the Multi-System Nations

To facilitate rapprochement between different parts of a multi-system nation before eventual unification, further institutional development is needed. Responding to this need, this author has advanced the idea of "Intra-National Commonwealth." This new concept preserves the notion of "One China" on the one hand, yet allows both sides of the Taiwan Strait to gain international recognition without violating the principle and goal of eventual national reunification on the other.

24. See Higgins, *supra* note 21, at 79-94.

25. *Id.* at 83.

26. See, e.g., MORTON A. KAPLAN, *THE POLITICAL FOUNDATION OF INTERNATIONAL LAW* (1961); HANS KELSEN, *GENERAL THEORY OF LAW AND STATE* (1961); and Harold D. Lasswell, *Introduction, in RERSMAN, supra* note 21, at xiii-xviii.

By most estimates, the current division between the two Chinese political systems probably will last well into the twenty-first century.<sup>27</sup> As for the Korean Peninsula, relations between the two Korean political systems entered into contractual arrangements as early as 1972 and gradually evolved into full mutual understanding of the co-existence of two Koreas in December 1991. Also in 1991, the two Korean political systems became members of the United Nations. Both Koreas are now recognized by major countries of the world and maintain embassies simultaneously in many capitals. Thus, the Korean situation is a typical example of a full-blown "multi-system nation."

Yet despite the success of the two Koreas in resolving their problems on U.N. memberships and international recognition without violating the one Korean nation concept, actual trade and other types of interactions between the North and South have been almost negligible. For instance, the meeting of South and North Koreans from 1989 through 1994 totaled only 1,111 cases involving only 3,958 persons.<sup>28</sup> South Korea's exports to North Korea have achieved some growth in recent years, yet still amounted to only U.S.\$64.44 million in 1995, which represented only a tiny fraction of South Korea's total exports.<sup>29</sup>

The meeting of the leaders of South Korea and North Korea in Pyongyang in June 2000 set a new stage for reconciliation between the two Koreas. With North Korea needing economic aid from the South and with South Korea searching for more independent foreign policy, there is indeed more room for cautioned optimism toward more peaceful development in the Korean peninsula. As of this writing, the reunion of separated families between South Korea and North Korea has already begun. On August 16, 2000, one hundred families reunited with their separated members in Seoul. More reunions are in the planning process.<sup>30</sup>

Hence, it may be concluded that while the Koreas have more or less resolved their issue of recognition and representation and have become a "multi-system nation," they are far from being linkage communities to each other. The two Chinese political systems on the other hand are increasingly becoming linkage communities but are still far from becoming a "multi-system nation."

If the experience of German reunification is any guide, then the Chinese and Koreans have concrete lessons to learn. Both nations must understand that gradual socio-economic integration is an indispensable pre-condition to eventual political unification. While the ROC must find ways to resolve their political and legal entanglements with the PRC on

27. For further discussion on the increasing interactions between the Chinese political systems, see Yung Wei, *Toward a New Framework of External Relations for the ROC in the 21st Century: Between Oceanic and Continental Strategies*, in YUNG WEI, TU-PO BREAKTHROUGH, CREATING A FUTURE OF BROAD PERSPECTIVE 319 (1995). For a broader discussion on the interplay of internal and external factors in cross-Taiwan-Strait relations, see Yung Wei, *Democratization, Unification, and Elite Conflict*, in THE CHINESE AND THEIR FUTURE: BEIJING, TAIPEI AND HONG KONG (Zhi-ling Lin & Thomas W. Robinson eds., 1994). See also RALPH N. CLOUGH, COOPERATION OR CONFLICT IN THE TAIWAN STRAIT 108 (1999). For a projection of Taiwan's future into the twenty-first century, see Yung Wei, *The Interplay Between Taiwan's Internal and External Environments to 2020: A Contingency Analysis*, in DEVELOPMENT IN TAIWAN TO 2020: IMPLICATIONS FOR CROSS-STRAIT RELATIONS AND U.S. POLICY 3 (Karen M. Sutter et al. eds., 1996).

28. See Werner Pfennig, *Steps Towards Normalization: A Comparative Look at Divided Nations*, in GERMANY AND KOREA CESSIONS IN UNIFICATION 39 (Myoung-Kyu Kang & He Mut Wagner eds., 1995).

29. For a most interesting and comprehensive analysis of the North-South economic interaction, see Murooka Tetsus, *Economic Exchanges between South and North Koreas Since the South Korean Activation Measure*, 4 NEW ASIA 22 (1997).

30. See *After 50 Years, Reunions Bring Joy to Koreans*, N.Y. TIMES, Aug. 16, 2000, at 1.

Table 3: The Separation and the Projects of Unification of China and Korea: A Comparative Paradigm* made by Yung Wei, Nov. 15, 1997		
	Chinese Case	Korean Case
Nature and Origin of Separation	Prolonged internecine warfare.	International and intersystem military conflicts and negotiation.
Original Position on National Reunification	Before the 1980s, complete rejection of the legitimacy of the opposing system; unification through replacement.	Before 1973, complete rejection of the legitimacy of the opposing system; unification through replacement.
Revised Position on National Reunification	After the 1980s, <i>de facto</i> acceptance of the opposing regime, peaceful unification in stages for the ROC; PRC prefers peaceful unification but use of force not ruled out.	After the 1980s, gradual acceptance of each other's existence, leading to formal agreement on co-existence in December 1991; conditional acceptance of the idea of confederation by North Korea and South Korea in July 2000.
Position toward International Recognition	The ROC tolerates dual recognition since the late 1980s; the PRC opposes all kinds of dual recognition.	Dual and separate recognition, but still adhere to one Korean nation and community notion.
Attitude toward International Organizations	The ROC is for dual memberships in international organizations; the PRC is against it.	Dual and separate memberships for all international organizations, including the United Nations.
Actual Interaction Through Trade, Cultural Exchanges, and Tourism	Extensive exchange of goods, people, and ideas occurred, with the ROC somewhat on the defensive side.	Minimal trade and cross-border contacts; reunion of families in the North and South started in August 2000.
Prospect of Peaceful Transition and Unification	Uncertain; acute crisis has subsided but the renewal of para-military confrontation is possible if peaceful exchanges fail.	Uncertain; large-scale military confrontation still possible; ROK side seems to have the upper hand in long-term peaceful reunification.

\*This table was first published in Yung Wei, "Multi-System Nations", "Linkage Communities" and "Intra-National Commonwealth": General Concepts on the Unification of Divided States and Their Application to the Chinese as Well as Korean Cases," 4 *NEW ASIA* (Winter 1997), revised and updated by the author on August 15, 2000.

the mainland, the two Koreas must enhance their trade, cultural, and people-to-people interchange so that gradual concrete and mutually beneficial socio-economic integration may be achieved before political unification.

Furthermore, the German experience of reunification also has taught us a lesson that even the absorption of a less free socialist society and economy into a democratic system with free enterprise can still be rather difficult and sometimes even painful for people in both systems. Hence, it may serve the interest of the competing Chinese as well as Korean systems to focus first on the building of an "intra-national commonwealth" before moving on to complete political unification.

The idea of an "intra-national commonwealth" derives its notion from the British Commonwealth, which is a union of loosely linked sovereign states that were former colonies within the British Empire. The adjective "intra-national" was added to highlight the nature of the relationship between different parts of a divided state as differentiated from that among members of the British Commonwealth.

The reason I put forth the idea of “intra-national commonwealth” instead of federation or confederation is because the latter two concepts have legal and institutional prerequisites too concrete to be realized under the political realities of the existing multi-system nations. The concept of “federation” requires a formal merger of the different parts of a multi-system nation into a single unitary state. The idea of “confederation,” on the other hand, rests on the formal and mutual acceptance of separate sovereignties between different parts of a divided state. Both are not possible in either the Chinese or Korean case. Hence, a loose union between the two parts of a divided state that does not touch upon the issue of separated sovereignties and preserves the notion of “one nation” probably is the only feasible instrument for gradual linkage that may move toward functional integration.

By preserving separate autonomous economic-political systems within a loose framework of a commonwealth with the same cultural and ethnic roots, the Chinese and Koreans may avoid the agonizing process of socio-economic political adjustments that are still confronting the German people ten years after reunification on the one hand, while enhancing practical interaction between the two sides on the other.<sup>31</sup>

Other than avoiding the thorny issue of sovereignty, another reason that I employ the concept of intra-national commonwealth is owing to the historical precedents in both Chinese and Korean history. During the long history of both China and Korea, the two countries have gone through many different stages of unification and division. Yet despite the co-existence of more than one political system within one China and one Korea, there had never been serious attempts to permanently divide the nation. Furthermore, rather detailed rules of conduct regarding the relationship among different political systems existed during the period of division. Since the two Koreas have more or less acquiesced to a confederation model, it is up to the Chinese on the two sides of the Taiwan Strait to develop something close to an “intra-national commonwealth” to handle future relations between the two political systems. A “Chinese intra-national commonwealth” may be what is really needed here.<sup>32</sup>

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31. For a forward-looking, yet down-to-earth analysis of, as well as suggestions to, the idea of linking Mainland China and Taiwan into a loose confederation with shared sovereignty, see LINDA CHAO & RAMON MYERS, *THE DIVIDED CHINA PROBLEMS: CONFLICT AVOIDANCE AND RESOLUTION*, at 48–52 (Essay in Public Policy No. 101, Hoover Institution on War, Revolution, and Peace, Stanford University, 2000).

32. See, e.g., Yung Wei, *Why Not Consider an “Intra-National Chinese Commonwealth” as a Solution to Cross-Taiwan-Strait Problem?*, CHINA TIMES, July 11, 2000, at 14.

