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Diplomacy and the mythology of the State

A study of Canada-Taiwan relations and the State
concept in anthropology

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Abstract

In this paper the author seeks to deconstruct the idea of the State concept as seen by Hobbes' Leviathan which he argues still permeates writings in both anthropology and political science. He does so by conducting an anthropology of diplomacy and looking at the complexity of the unofficial relations between Canada and the government on Taiwan. Stretching from very public legislation both in Canada's Parliament and courts, to much harder to quantify aspects such as lobbying and the importance of private interests, the gray space which constitutes the Canada-Taiwan relations becomes a clear example of the lack of understanding of the State concept as a centralized power and coordinated apparatus. Indeed it is the purpose of this paper to show that there are too many factions, factors and actors at play for the Leviathan metaphor to be viable in the modern era in which we live in. It is by widening our understanding of the concepts of sovereignty, audience and power as well as accounting for the social and cultural background of any country that we can begin to better understand what a State is and through what means it functions.

Table of contents:

Introduction	4
Chapter 1 : Historical Background	17
Chapter 2 : Issues of Mobility	29
Chapter 3 : Canadian Court Cases	35
The Maersk Dubai Incident (1996)	36
The Accident of Flight 006 (2003)	41
Chapter 4 : Taiwan Affairs Bill	49
Chapter 5 : TECO & diplomatic Relations	56
Conclusion	62
Bibliography	64

Introduction

Those who often travel internationally have certain expectations when moving between countries. A passport, a visa for an extended stay, an embassy to which one can turn if facing complications in a foreign country; these are all the markers of international travel between recognized States. While coordinating my own recent extended trip to Taiwan, the process was not this straightforward as the Canadian government officially holds no relations whatsoever with the Republic of China (ROC). Yet, there are offices that serve the role of embassies, the Taipei Economic and Cultural Offices in Canada (TECO) and the Canadian Trade Office in Taipei for the ROC (CTOT). The ROC accepts Canadian passports and Canada equally accepts ROC passports, demonstrating that both countries recognize the citizens of each other's lands. Finally, a visa is granted to Canadian citizens upon arrival in Taiwan without paperwork or much preparation needed to obtain it; making this essentially a visa-free travel experience. This system of relations is echoed in other countries, such as the United States and the United Kingdom, which also possess a 'quick entry program' that includes Taiwanese nationals (Lowther. 2016). In effect, what at first seemed quite complex quickly became as straightforward as travelling to any of the other regions mentioned above, leading me to question the importance of recognition of States for the establishment of direct relations, and the very question of the nature of the State itself.

This paper seeks to explain the nature of the relationship between Canada and the Republic of China and its workings in what could be called an anthropology of diplomacy. My goals are to shed light on the gray space in which this relation exists and, in so doing, help better understand the complexity of the concepts of State and sovereignty. It is my hope that this paper will serve

the purpose of shifting the focus of political anthropology away from the State concept as it is commonly understood and, as such, help better anthropology's contributions to the political domain as well as the study of diplomacy and international relations. It is said to be an anthropology of diplomacy because it not only deals with official State-to-State relations but also with the processes that animate these debates, and the equal and important relations taking place beyond the official and visible realm of politics.

Indeed, this relation between Canada and the ROC exists in a complicated space influenced by Canada's relations to the People's Republic of China (Sterling, 2016; Cole, 2016), but also by a myriad of other actors, factors, and factions which push and pull at its foundations at both ends. The objective will therefore be to discern these different facets and explain how they, and the many processes which animate them, form something quite different to what is generally defined as the State in anthropology and political science. This paper will demonstrate that the State cannot be akin to the single minded *Leviathan* which was depicted by Hobbes, and which is so often seen still in works of both anthropology and political science. Instead, I will seek to show that due to the complexity of its workings and the peculiar aspects of relations such as the one between Canada and the ROC, the State is closer to that of a *Chimera*: a beast of many heads and many wills – often contradictory, coexisting as one entity.

One of the most important subjects in political anthropology – and equally so in the adjacent fields of political science and international relations – has always been the State; this near mythical construct which divides our entire planet and organizes much of all relations between peoples and cultures. As I have said above, a certain characterization of the State is common practice in such fields, and carries a legalistic and State-centric vision of power, one

diffused or emanating from the image of a Sovereign. It is commonly defined by possessing a certain number of specific and necessary components – which are a population, a territory, a working system of government, an international juridical personality, sovereignty, and recognition by other States (Éthier 2010, p. 77).

The debate on the nature and existence of this construct in political anthropology is much more complex. Indeed, while a large history of the concept of the State takes after its Hobbesian past, it is also said that the State might simply be a philosophical construct devoid of any foothold in phenomenal reality. This current would see the concept of the State removed in favor of an organization of complex systems of relations as exemplified by the writings of Evans-Pritchard:

The State, in this sense, does not exist in the phenomenal world; it is a fiction of the philosophers. What does exist is an organization, *i.e.* a collection of individual human beings connected by a complex system of relations. Within that organization different individuals have different roles, and some are in possession of special power or authority, as chiefs or elders capable of giving commands which will be obeyed, as legislators or judges, and so on. There is no such thing as the power of the State; there are only, in reality, powers of individuals — kings, prime ministers, magistrates, policemen, party bosses, and voters. The political organization of a society is that aspect of the total organization which is concerned with the control and regulation of the use of physical force (Evans-Pritchard, 1950, p. xxiii)

In effect, the State becomes a human web of individuals wielding power through societal functions. The boundaries of the State and its limits become blurred as it passes from a clear construct into this collective of human relations. This vision of the State permits much more, leaving room for the explanation of internal phenomena and complex processes. It is after all, rarely as simple as it looks. The Republic of China on Taiwan, for example, possesses all the criteria defined by the political scientists – even if that is often forgotten – with many States and organisms recognizing it as Sovereign. However, its status in Canada is shadowed by past

policies and the constant diplomatic pressure brought to bear upon Canada by the People's Republic of China, as well as the complex processes and discussions which brought this particular gray space into being. And yet, it still entertains relations with Canada through other means than the traditional channels one comes to expect from international relations (see chapter two and five). It also obtains privileges and a conduct from Canada's part which should, in theory, be given by it only to recognized States (see chapter three). It is akin to any other State-to-State relationship, if only without the title and the usual protocol of normal diplomatic relations.

This special relationship therefore underlines an important notion about the concept of the State and its use of Sovereignty: Even though the ROC is not officially recognized as a State by Canada, it uses the same laws and benefits from the same privileges as any other State would. I believe a key to better understanding the complexity of the concepts of the State and Sovereignty stems from our study of cases which show a different relation of actors and audiences to displays of sovereignty. The gray space that is the relation between Canada and the Republic of China is one of those.

To exemplify this process through which the State can be so much more than a fixed concept – understood through a series of defined expressions of sovereignty over a people, a space, an imagined international arena, etc. – it is important to turn to examples that show which other expressions can exist, what forms they take, what actors are at play and what audiences are targeted. I chose to look into aspects that stem from what would be classically understood as State-to-State interactions: namely travel and judicial. These areas are traditionally considered to be the field of State actions and powers; a clear portrayal of the State's control of its population

and territory. In exemplifying within those the confusion of the nature of the State, I can argue that there exists more to the nature and recognition of sovereignty than the metaphor of the Leviathan permits.

To achieve this, I will begin by contextualizing the historical background of the island of Formosa and the evolution of the relation that the ROC has with Canada. The other chapters will focus on a few specific events and key aspects of the relation. Chapter two will seek to show factionalism and nationalism within the States at play by going over recent developments in the issuing of visas and the rebranding of passports. In a similar manner, chapters four and five will look into the creation and fostering of inter-parliamentary relations in between the two countries; and the products of these via the Canada-Taiwan Parliamentary Friendship Group and the Taiwan Affairs Bill.

The juridical cases of chapter three will pertain to two incidents which call upon a judging by Canadian courts of the legal status of the Republic of China and Taiwan – note that I did not say “on Taiwan” but “and” – which in both cases found those two entities to be States for the legal purposes of the trials. Of the cases I mentioned, the first deals with the Nova-Scotia Supreme court judgment of 1996, concerning a shipping vessel incident which involved the ROC both in the nationality of the parties accused, but also in the possession of the shipping vessel itself (*China (Republic) v. Romania*, Sup. Ct., 1996). The second one discusses the Québec Superior court judgement of 2003 concerning a man’s attempt to obtain compensation for damages to his person in a plane accident which took place on the runway in Taoyuan (*Parent v. Singapore Airlines Ltd.*, Sup. Ct., 2003).

As for the other events I wish to point to, they are largely based on transit and direct interactions between the two countries; namely visas and passports, the Taiwan Affairs Bill of 2005 – when a member of parliament proposed to officialise Canada’s special relations with Taiwan in a law (House Bill C-357, 38th, 2005) – and the TECO/CTOT relations which constitutes the basis for all government to government affairs overseas. For these, many of the documents and speeches used are found through Hansard, which keeps record of parliamentary debates and minutes for many of the Commonwealth countries.

All these examples will serve to show the complexity of the State and the myriad of factors which affect its relations with others and the very nature of those. Before delving into the subject matter at hand, however, I will propose a theoretical framework for the concepts and theories which are going to be used to analyse the items mentioned above.

The beginnings of political anthropology were intimately tied to finding the genesis of the State in human societies. Having already opened with the concept of the State, this is where I should begin here as well. The State is, as I mentioned, one of the most influential and debated topics of political anthropology. Its nature and definition have been written and rewritten in a myriad of different ways. Indeed, this interest in the State goes as far back as the Greeks with Aristotle and his idea of Man as a political animal, but continues on to this day with authors like Abélès (2014), Ferguson (1990), Scott (1998) or Trouillot (2001) who continue to explore its many definitions and intricacies. This concept of the State has been defined by Philip Abrams thusly:

The State [...] is not akin to the human ear. Nor is it even an object akin to human marriage. It is a third-order object, an ideological project. It is first and foremost an exercise in legitimation. [...] The State, in Sum, is a bid to elicit support for or tolerance of

the insupportable and intolerable by presenting them as something other than themselves, namely, legitimate, disinterested domination (Abrams, 1988, p. 76).

Abrams' vision of the State removes it from the realm of the physical, becoming an ideological project. It remains, however, a clearly defined entity moving in a particular direction. The redefinition of this concept, and the questioning of its existence, is exemplified by authors such as Geertz (2003), Evans-Pritchard (1950), Radcliffe-Brown (1955), Abélès (1990), and a large body of others who cry out for a new approach to this topic. Clifford Geertz made the need for the inclusion of new perspectives very clear in stating that:

For this to change [...], there must be, it seems to me, a shift away from looking at the State first and foremost as a Leviathan machine, a set-apart sphere of command and decision, to looking at it against the background of the sort of society in which it is embedded – the confusion that surrounds it, the confusion it confronts, the confusion it causes, the confusion it responds to (Geertz, 2003, p. 580)

That is why the definition given by Evans-Pritchard is retained here: by widening the understanding of the State concept it allows for cases, such as the one I am about to analyse, to be explained in more depth. Thus, the term political anthropology in this case becomes a bit of a misnomer – or simply limited by its own etymology (Augé and Colleyn, 2009, p. 48). Indeed we should seek to study and explain more than just the political: we should seek to cover also the social actors, the cultural assemblages and the societies which form this political web. We must look away from the Sovereign, and rather into smaller clearer indications of power and Sovereignty. Other theories, linked more to markets and global economy such as the work done by Appadurai on globalization (Appadurai, 2005, p. 9), or to a kind of organized violence produced and orchestrated on a mass scale by the State (Scott, 1998), are not the focus of this analysis. Their emphases on the concept of the State as a vessel for global mechanisms do not

help in understanding the State as an entity in and of itself, and rather focus on the State's relation to worldwide processes.

The other concept which goes hand in hand with that of the State is the idea of a nation. For this I will refer to the writings of Benedict Anderson and his book *Imagined Communities* (2006). In this book, a nation is seen as a horizontal construction, a product of history commanding a profound emotional legitimacy across a defined space, and shared amongst a particular group of people: an imagined community (Anderson, 2006, p. 6). This is particularly important when discussing a State like the ROC; not so much because of its incredibly complex internal political structure, which is akin to many other States, but because of the very specific dynamics of fractured national identities within it. Indeed, a nation does not necessarily have a State to call its own, and a State itself can be the home for several different nations and ideologies. The latter is the case of Taiwan and the ROC, which possesses both a Taiwanese nationalism – in the form of an imagined Taiwanese nation without a State to represent it – and two imagined Chinese nationalisms as represented by the ROC and the PRC. All of the nations and conceptualized ideologies mentioned above coexist in Taiwanese society and make clear this division between the concepts of State and nation.

This discussion of the nature of the State of course brings us to the notion of Sovereignty, an omnipresent point of discussion on the topic of the ROC and an indispensable theme which I must also cover in this paper. If the State is the prime focus of political anthropology, sovereignty comes in as a close second. This concept is heavily oriented towards struggles of power and defining the State – as well as its methods of governance in modern and current political anthropology. When looking, for example, at discourses produced by a State,

Sovereignty is embodied by processes of jurisdiction and control. As shown by such authors as Foucault (1976), Arendt (2007) and Agamben (1998), the State develops methods to control its citizens and does so in more and more personal ways, using techniques and methods associated with the idea of *biopolitics* and the concept of *bare life*:

To say that power took possession of life in the nineteenth century, or to say that power at least takes life under its care in the nineteenth century, is to say that it has, thanks to the play of technologies of discipline on the one hand and technologies of regulation on the other, succeeded in covering the whole surface that lies between the organic and the biological, between body and population. We are, then, in a power that has taken control of both the body and life or that has, if you like, taken control of life in general – with the body as one pole and the population as the other (Foucault, 1976, p.252-3)

In other words, biopolitics are the mechanisms with which authority manages basic human life as a physical form – a body – and as a reduced political life devoid of weight and excluded; or *bare life*. In this conception of the State, the state is not the object of study but rather the processes it makes use of to control citizens and populations. As such these are not concepts on which this paper shall focus but must of course be recognized as the influential forces that they are within anthropology. From these same authors comes, however, the understanding of power and knowledge as a diffused force that regulates all political aspects of society. This is of much use to this paper and to my analysis of the concept of sovereignty as it reduces the impact of single forces such as that of a sovereign and recognizes the further importance of multiple sources of power and authority in the imagined construction of a State.

In disciplines like political science, however, Sovereignty is – and has almost always been – defined in a manner similar to the political scientist Robert Lansing's definition at the turn of the XXth century: “[...] That Sovereignty shall be considered as a concept of law, that it is a legal creature functioning through law and is at the same time a source of law” (Lansing, 1914,

p. 62). This places the processes, and the object of Sovereignty itself, within a legal structure used and created by States. Sovereignty is therefore not only the sovereign power over his citizens but also the recognition by other sovereigns that one possesses this power. The State is said to make use of this as it is an:

Efficient power; the State implies also a Sovereign power, capable of organizing itself, excluding itself from all subordination. This Sovereignty affirms itself as much internally as it does internationally. In the permanent conflict in between all social forces, it is the State's role to serve as supreme arbiter [d'exercer l'arbitrage suprême], and its authority cannot be morally or materially dominated by any other, be they organisations of unions, religious communities, or political or professional groups (Donnedieu de Vabres, 1971, p. 7) [Our Translation]

This further implies that the State is an efficient machine, creating and making use of power in a directed manner to regulate itself and the citizens who make up its population. Furthermore, this would mean its power cannot be overruled and exists as the ultimate form of judgement and law. For our research, however, Sovereignty becomes less this omnipresent force emanating from the central figure of the Sovereign, and more the hundreds of means and ways through which a web of actors and audiences interact with power. Indeed, the idea of an efficient machine whose acts and laws cannot be overruled by any group or association fails to explain the many internal dynamics of any State. Such a construct is run by a multitude of actors, audiences and factions which all interact with law and power for their own goals and objectives. Thus, reducing the State to a single-willed efficient machine does not permit for the proper analyses of its many mechanism and processes, internal or international.

The second focus of this paper is that of international relations. In this field, the State continues as the main object of study, but no longer as an individual concept and rather as it interacts with States like it or other actors. This field of study has, however, had trouble mingling

with the anthropological discipline, remaining much more State-centric in its theory and methods. Therefore, this paper shall be more of an exploratory exercise in the making of an anthropology of international relations, than the field as it is commonly understood. I wish to bring very specific concepts to my use of international relations in this paper and amongst those is the concept of *audience* brought to light by Danilyn Rutherford in her 2012 anthropological work titled *Laughing at Leviathan*. With Rutherford, audience is simply: “[...] used in an extended sense as shorthand for the varied kinds of interlocutors that social actors identify with or react to as they go about the business of social life. Audiences consist of others who elicit a response, even as they draw one into their ranks” (Rutherford, 2012, p. 4).

This concept brings us to that of the ritual and the importance of representation in the political domain (Abélès, 1990, p. 117). Audiences are witnesses to displays and, as political activity is inherently symbolic, the representation of this political activity forms a grand theater where actors and audiences interact. This helps conceptualize sovereignty as created and in constant renewal through these theaters, but also acknowledge the possibility of its dissolution. Indeed, sovereignty under Hobbesian thought is one that is created through a contract for which the vows are eternal. But sovereignty can be lost, and vows can be rescinded. But sovereignty is also much more than just “State power that is centralized and concentrated in the military apparatus of the regime to ensure order and stability to safeguard the territorial integrity of the nation-state”, it is also through “other forms of State power like control, surveillance and regulations vis-à-vis markets, populations and external agencies” (Ong, 2000, p. 56). This approach is offered by Aiwah Ong with her concept of *graduated sovereignty*:

There are two aspects of graduated sovereignty: (a) the differential State treatment of segments of population in relation to market calculations, thus intensifying the

fragmentation of citizenship already pre-formed by social distinction of race, ethnicity, gender, class and region; (b) the State-transnational network whereby some aspects of State power and authority are taken up by foreign corporations located in special economic zones (Ong, 2000, p. 57)

It is through both the ideas of graduated sovereignty and *infrapolitics* – a term coined by James C. Scott – that we can begin to widen the understanding of what the State truly is (Scott, 1990, p. 183). He used this term as shorthand for an “unobtrusive realm of political struggle”, or more simply the daily forms that resistance takes from small actors in a political system. We shall retain from this the importance of the invisible part of the spectrum of the political, both of the private sphere as with Ong’s graduated sovereignty, and of other militant forms with Scott’s *infrapolitics*. This in turn paints a wider field than just a focused and centralized lens of power, and rather a diffused and gradated form of power which is more akin to what we are trying to show here. To Abélès’ grand theater of the political public sphere, we add here the private sphere as well as the interests of private individuals (in the legal sense). Sovereignty and power thus exist through more than just the official public domain, and should be analyzed as such.

Of course, Ong’s work brings us to the regional scene of Southeast Asia on which much has been written in anthropology since Clifford Geertz’s recounting of Balinese culture (Geertz, 1971). I have already mentioned Rutherford, whose noteworthy interpretations of audience and power are of much use for this paper (Rutherford, 2012), but there are other authors like Scott Simon who discusses native populations and the notion of Taiwanese identity (Simon, 2006).

Finally, the gray space that I am studying in this paper is entirely bound to the importance of language (Richland, 2013, p. 212). Thusly, legal texts and interpretations of law form the backbone of this paper, but it is also the use of a different language within this relationship between Canada and the Republic of China which requires analysis. Indeed, this relationship is

articulated through a language akin to that of any other, but never the same as that of traditional State-to-State relations. Plausible deniability and keeping room to maneuver are what could best describe the creative uses language serves in this complicated issue.

The many authors and concepts I have mentioned above serve to shift the focus away from the central-willed Leviathan State ideal and more towards the internal and external processes which animate such an assemblage within itself and in relation to others. This theoretical context, however, must also be set against the historical background of the region and – with such a complex political history – I feel that China and Taiwan need an introduction of their own. Thus, I will cover the bases of their recent history to cement the events which brought the two entities to their present situation and clarify a few points.

Chapter One: Historical Background

After the end of the Second World War and the capitulation of the Japanese in 1945, Taiwan should have been counted amongst the losing parties of the Axis, simply because it was part of Japan. Indeed, the sovereignty over Formosa had been ceded to Japan “in perpetuity” by the last Dynasty on China in 1895 as collateral payment for their loss of the Sino-Japanese war. When the Allies decided to give control of it to the young Republic of China in 1945 (which itself had come into existence only in 1911), it was the first time that the ROC took responsibility for the island. Japan had been the first State to ever control the entire island.

The choice of words here is important. In 1945 Formosa was an occupied territory whose status remained undetermined until 1952, and whose responsibility came under the rule of the Republic of China. It was not formally ceded to the Republic of China in the Treaty of San Francisco, and was placed in the bundle of lands and possessions to be sorted out at a later date (Hara, 2006, p. 62); Taiwan and its surrounding isles were in fact transferred to the ROC with the treaty of Taipei of 1952. Both of these treaties, namely the treaty of San Francisco and the treaty of Taipei, will be closely examined later in this chapter.

The act of transition from the Japanese to the Chinese government was a matter of deposing the defeated Japanese government through a few declarations but the actual transference of power, which required the sending of military personnel and officials from the mainland and the removal of the Japanese forces on the islands, rapidly caused issues (Morris, 2015, p. 4). It was not only military and administrative personnel, however, but also a complicated process which led to hundreds of people of all walks of life being stuck on one side or the other.

The forces sent by the Republic were soldiers left over from a bloody fight against the Japanese and an ongoing tenuous civil war; as such their arrival on Taiwan was not entirely smooth. The new government was also suspicious of anyone having been too involved during the time the Japanese had control of the island, which amounted to a considerable number of people. This led to a difficult beginning of the young republic's control of the island (Lin and Keating, 2000, p. 61). This unstable situation culminated in the incident of the twenty-seventh of February 1947, also known as the *2-28 Incident*. What started as an altercation between members of the police force and a street vendor resulted in the death of a bystander and quickly led to civil uprisings. On the twenty-eighth, a large crowd gathered demanding justice and was fired upon by the authorities. This in turn caused a larger outcry around Formosa, which was equally met by suppressive measures from the State until protests were eventually quelled in the month that followed (Lin and Keating, 2000, p. 62-63).

When, in 1949, the Chinese Communist Party took control of most of China and declared the founding of the People's Republic of China, the ROC government was forced to flee (Spence 1990, p. 512). In disarray and chased by the communist forces, a considerable amount of military and government personnel, of the now supposedly deposed Republic of China, began its own long march South to what would become, and still is, its refuge on Taiwan. This was equally about the time that martial law was implemented in the territories controlled by the ROC which came about following the 228 Incident in 1947.

For China, the foundation of the PRC marked the last great dynastical shift until present times. For the island of Formosa however, 1949 was the beginning of a period of complex relations between governments and populations which is still very much at issue to this day.

Indeed, the newly arrived Mainlanders brought, into what was never more than a remote island province, the remainder of the State's government and martial law. Since then, the municipal, provincial, and national governments have had to share the confines of this island space. This demanded a drastic reorganization of the local government at a time when most, if not all, of the sections and branches were transitioning from their recent Japanese ownership.

The influx of population this event produced also created divides between the citizens of Taiwan. Indeed the population can be divided between the more recent immigrants, whom we have just discussed and who were brought in by the civil war and who accounted for 13 percent of the total population in 1989 (estimated between 900,000 to over two million people); those who had immigrated following the original colonization (the Hakka and Holo population groups accounting for 73 and 12 percent respectively); and finally, the natives (also known as Aborigines) of the island who predate both groups by a considerable amount and accounted for almost 2 percent in the same 1989 study (Corcuff, 2002, p. 163). This is important not only because it shows the superimposed layers of history that the island of Formosa is composed of, but also because it gives a glimpse of the complexity of the societal fabric which covers Taiwan to this day.

After the dust settled, and the world waited to see which China would take over the other, the events of the Korean War precipitated the intervention of the United States. They assured that any move made on the remaining lands controlled by the Republic of China would incur retaliatory military action from their country. At that moment the status quo was born; both Chinas faced off for a long diplomatic war, and it can be argued that it continues to this day.

Before going any further it is important here to pause in order to cover the two treaties ratified in the early fifties: the treaty of San Francisco of 1951, and the treaty of Taipei of 1952. These two documents have an undeniable responsibility in the ambiguity of the political status and recognition of the Republic of China internationally to this day.

In 1951, the Allied forces signed the Treaty of San Francisco with Japan; ending the War officially and resolving the status of many war possessions and old colonies in Asia. Absent from this treaty are either the Republic of China (on Taiwan) or the People's Republic of China (on the mainland). In this document, Japan agrees to surrender a large range of claimed territories, from Korea to the Paracel islands as well as any possessions on Antarctica. Formosa is found amongst these as well as the Penghu islands (or Pescadores). In the treaty, Japan renounces all rights, titles and claims to these possessions but no authority is listed as recipient for them, except for Korea which is granted independence (*Treaty of Peace With Japan*, 1952, reg. no. 1832, p. 48-50):

- (a) Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.
- (b) Japan renounces all right, title and claim to Formosa and the Pescadores.
- (c) Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of September 5, 1905.
- (d) Japan renounces all right, title and claim in connection with the League of Nations Mandate System, and accepts the action of the United Nations Security Council of April 2, 1947, extending the trusteeship system to the Pacific Islands formerly under mandate to Japan.
- (e) Japan renounces all claim to any right or title to or interest in connection with any part of the Antarctic area, whether deriving from the activities of Japanese nationals or otherwise.
- (f) Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands.

The treaty further states in article 4, however, that the control and administration of these territories falls onto the responsibility of Japan to be resolved with the recipient authorities for each territory mentioned (*Treaty of Peace With Japan*, 1952, reg. no. 1832, p. 50-52):

(a) Subject to the provisions of paragraph (V) of this Article, the disposition of property of Japan and of its nationals in the areas referred to in Article 2, and their claims, including debts, against the authorities presently administering such areas and the residents (including juridical persons) thereof, and the disposition in Japan of property of such authorities and residents, and of claims, including; debts, of such authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities. The property of any of the Allied Powers or its nationals in the areas referred to in Article 2 shall, in so far as this has not already been done, be returned by the administering authority in the condition in which it now exists. (The term nationals whenever used in the present Treaty includes juridical persons.)

The following year the Treaty of Taipei between the Republic of China and Japan was signed on the twenty-eighth of April 1952. This reiterated the points made by the prior agreement of San Francisco and established the same clauses between the Republic of China and Japan. Once again Japan signed away all rights and claims to Formosa and the islands surrounding it, but did not formally and explicitly affirm the sovereignty of the Republic of China over that space. There were, however, notes and memos exchanged by the two governments around, and to supplement, this treaty. In these memos, the then president of the ROC asks his Japanese counterpart to clarify the status of all territories controlled at present and in future by the ROC: All of the ROC's possessions fall under the same terms as the ones described in the two treaties. This is further covered with mentions of specific regions like Manchuria, but does not express a direct ownership of the lands of Formosa and its surroundings apart from the fact that the treaty was signed by these two parties and listed no other authority as recipient (*Treaty of Peace*, 1952, reg. no. 1858). There is, however, clear mention that all

property within the surrendered territories now come under the jurisdiction of the ROC and that all people living on Taiwan, and its surrounding isles, become citizens of the ROC.

These two documents appeased the majority of the aggrieved parties of the Second World War (not including the new Communist China), ushered in a new age of peace, and also set the scene for the following Cold War between the two new superpowers of the United States and the Soviet Union. What these two documents did not settle, however, was the question of either Chinas' sovereignty over Japanese relinquished territories in the region. The treaties made no mention of processes to transfer officially the lands in question, even if they were currently under the jurisdiction and control of both of the Chinese occupying forces. Furthermore no clear texts came to clarify the history of the possessions and establish which treaty or laws trumped the other (see appendix documents for both treaties).

The treaty of Taipei clearly states that all agreements or treaties between the two countries (the ROC and Japan) prior to 1941 are considered null and void. This would cover the treaty of *Shimonoseki* which surrendered Formosa to the Japanese in 1895, but the Republic of China did not exist at the time and no mention is made of it in the treaties. It must also be mentioned that this treaty of Taipei was signed only a few hours before the treaty of San Francisco came into effect through a power play engineered by the United States (Lin, 2008, p 158). These were indeed the first steps to the containment of the Soviet Union – and communist China – on the Pacific front. Having sealed the ROC/PRC status-quo and retaining a military presence on Japan, the United States prepared to repel the communists from Korea and keep a military presence throughout the region. This power play was forced on Japan by the United States in the hope that it would help preserve the ROC and justify further US military presence in Taiwan.

I feel it is understood that the situation surrounding these two treaties is complex enough as it is. What pertains to our case is that the Treaty of Taipei forced Japan to abrogate all former agreements and rights to the lands controlled by the ROC on Taiwan and in the Pescadores. It established the existence of Chinese nationals on Taiwan and surrendered possessions and assets to the ROC. In doing these things Japan granted the ROC both *de facto* and *de jure* sovereignty over the lands that the Republic of China controlled at the time, namely Formosa and the Penghu islands. This can be further shown by the UN's acceptance of this treaty and the fact that, at the time, the ROC was on the UN Security Council. However, even with the Republic of China now staunchly in the Western bloc and with the support of the United States, the diplomatic war between the two China's did not go in favor of the ROC. The exiled State's positions (or lack thereof) on the situation of their civil war and the changing geopolitics of the world led to Western countries slowly recognizing the People's Republic of China as China, to the detriment of the other, and establishing as well as halting relations in accordance with this new stance.

Following the treaties and the initial establishment of the status quo by the United States, the following decades were plagued by a series of military shelling and bombings up until the 1970s which took place on the islands near Xiamen. The shelling soon took the form of a mutual, yet informal, arrangement in between the two countries, where one would shell on even numbered dates and the other on the odd numbered ones. The shells were also, towards the later stages, replaced with ones containing propaganda leaflets. This arrangement continued on until the United States normalized its diplomatic relations with the PRC in the late 1970s. During that time, the ROC remained on the Security Council of the United Nations, voiced its concerns for the region, and exercised its decisional right to vote on hundreds of resolutions.

In 1961, Mr. Brooks, then representative of Canadian delegation at the United Nations, spoke at the sixteenth session of the General Assembly on the question of the representation of the People's Republic of China at the UN. In his speech he listed Canada's positions of the matter of the ROC/PRC recognition issue which had been debated since the early 1950s. The positions that he enumerated are very much still the ones held by Canada to this day; namely that the PRC has a right to representation at the UN but that the people of Formosa also hold that right and equally have a right to self determination (Brooks, 1961, December 8). It has always been Canada's stance that any and all of these issues should be resolved peacefully and without force of any kind regardless of whether the affair was an internal or international matter. Although recognition eventually started to shift later in that decade, Canada has maintained these positions throughout.

In 1966, Paul Martin Senior on a trip to Banff said the following statement, as is seen in the *Canadian Yearbook of International Law*, Volume VI:

We consider that the isolation of Communist China from a large part of normal international relations is dangerous. We are prepared to accept the reality of the victory in mainland China in 1949 ... We consider, however, that the effective political independence of Taiwan is a political reality too (Martin, 1966)

This was a clear indication of things to come. Indeed, Canada was about to begin negotiations with the PRC, abstain on the vote to admit the PRC into the United Nations in 1969, in a move contrary to its previous nay votes, and was hinting at the monumental change which was to take place in the next year.

On October 13, 1970, Canada officially established diplomatic relations with the PRC with a joint Statement; this was done in tandem with the loss of recognition of the ROC. This marked the beginning of Canada's one China policy and was due to the demands of the PRC which

specified that China would not hold relations with countries that also recognized the ROC – there could be only one official Chinese government. This statement was issued after a lengthy period of negotiations between the two governments and its precise wording is what created the current situation of Canada’s relations to the ROC. In this statement it is said that Canada recognizes the PRC “as the sole legal government of China”, that the “Chinese government affirms that Taiwan is an integral part of its territory” and that “the Canadian government takes note of that claim.” It was also said that the two States would not intervene in the internal affairs of the other. In addition, shortly after this statement was published, embassies and ambassadors were exchanged as of the start of 1971.

This clear and concise joint statement had the purpose of permitting Canada to continue to deal with one China and one Taiwan rather than two Chinas by neither “endorsing nor challenging” the PRC’s claim to Taiwan, as Mitchell Sharp, then Secretary of State for External Affairs, explained to parliament. It is therefore within the framework of this statement that all relations and decisions concerning the ROC have been possible. Canada’s very specific terms when discussing the nature of Taiwan in relation to the PRC are based largely on the gray space they leave undefined. Indeed, Canada only “takes note” of the PRC’s claim to Taiwan, leaving other possibilities equally acceptable for the Canadian government so long as those do not clash with the other parts of this statement. This policy was arguably the first of its kind and formed the prototype for what would become “the One China Policy” which would later define many international bilateral agreements to come.

This attrition of recognition by major powers culminated in 1971 with the Republic of China being removed from the United Nations under the General Assembly Resolution 2758,

followed by the entrance of the People's Republic not only as a member State, but also as a member of the Security Council. The circumstances of this shift, and the process and argumentative logic for its execution, are once more a point of extreme contention for all parties involved. Indeed the charter of the United Nations is quite clear on the issue of expulsion of its members but not so on the type of vote which is necessary for its realisation. Expulsion from the United Nations is covered in article 6 of its charter and states that: “a member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council” (*United Nations Charter of Principles*, 1945). Resolution 2758 was voted in the general assembly, and the proposed change by the United States to the resolution – which would have allowed for both the PRC and the ROC to stay on as members – was rejected. The delegation of the ROC made the case that this should be voted with a two-thirds majority and that the manner in which this resolution was being resolved was against the charter. The fact that both the People's Republic and the ROC have equally claimed each other's territory as an integral part of their respective whole is also problematic. Because of the ROC's diminished nature when compared to the established PRC, it was branded a usurper who was preventing what had become the official China – the PRC – from seating at the UN as a State should.

It is interesting to note that Canada voted for the expulsion of the ROC from the United Nations contrarily to the United States' vote against (*United Nations General Assembly*, 1971, Resolution 2758). Canada had, one year prior to this momentous shift, normalized relations with the PRC following a series of negotiations that had taken place since 1968 under the Trudeau Senior administration. This period of the history of the ROC is marked by a series of changes and efforts made to renew ties with countries around the globe and expand on its diminished

external relations. Shortly after this, and the death of Chiang Kai-Shek in 1975, large internal changes were made in Taiwan.

In 1987, after more than 40 years, the martial law was lifted in Taiwan. This marked both a turning point for the Republic of China as well as the start of a series of accelerated developments in both politics and the construction of an internationally recognized Taiwanese identity. Indeed, shortly after, in 1991, The State's nominated president Lee Teng-hui declared the end of the civil war era policies of the re-conquest of the mainland. Then, in 1996, the Republic conducted democratic elections and directly elected a president for the first time since the *Kuomintang* (the Chinese Nationalist Party) came to power on the mainland at the start of the XXth century.

1996 was also the year of one of the two major events which will be the focus of this paper. A case which was brought to court in Nova Scotia on the issue of a large shipping vessel from the ROC whose crew, on their way to Halifax, had allegedly sent adrift on the high seas a few Romanian stowaways who had hidden themselves aboard (*China (Republic) v. Romania*, Sup. Ct., 1996). The details of the case and of the judgement and its implications for our topic will be thoroughly covered in a further chapter. The second court case happened in 2003 in Quebec, and was the result of a dispute in between a man and an airline company, namely Singapore Airlines Ltd., over damages (*Parent v. Singapore Airlines Ltd.*, Sup. Ct., 2003). In both cases it was demanded of the courts to decide if the Republic of China and Taiwan could be considered as States, and for both the courts considered them as such.

Since the lifting of martial law in Taiwan, the two Chinas have had semi-official indirect, as well as direct, relations through various domains such as finance and industry, political

participation to organizations and meetings, etc. Much of the Republic of China's trade has been going directly to the Mainland for quite some time, and citizens have been able to visit their families from both sides of the Strait since 1987. On November 7th 2015, the leaders of the ROC and the PRC – Xi Jinping from the PRC and Ma Ying-Jeou from the ROC – even met with a historic handshake (Abdoolcarim 2015). This was the first time that the leaders of the two countries met since 1949, but not the first time their respective political parties had met in person on the mainland as, in 2005, the leaders of the *Kuomintang* and the Chinese Communist Party had met following the enactment of the anti-secession law of the same year (Xing Zhigang and Song Wenwei. 2005).

The People's Republic of China has also been open about having Taiwan rejoin the mainland in a manner similar to that of Hong Kong (PRC State Council, 1993), but many question their right of claim to an island which they never had control or effective jurisdiction over. For that matter, some question the right of the Republic of China's claim on Taiwan saying the status of the island remains undetermined since the end of the Second World War (Chen and Reisman, 1972, p. 613). Amongst all this history, and the question of who ultimately possesses sovereignty, has lived and still lives an ideal: that of an independent Taiwanese nation. Indeed, that question of independence has not only been an integral part of Taiwan's history, but also of its present politics and of its future.

Chapter Two: Issues of Mobility

A good window into the inner workings of a State is in its foreign affairs. Our two States in question, Canada and the ROC, officially hold no direct relations but still accept each other's passports and official documentation. This point of interest also leads to another; the internal dynamics of these States through the political input of various parties and associations, as well as through important questions of State identity and nationalism. In this chapter, I will attempt to paint the current practical reality of the Canada-ROC relationship as it exists through the movement of people and government personnel. This will touch on important aspects of a State's sovereignty through documents such as the passport and the use of visas; but equally this will allow for a discussion of nationalism and regionalism as understood for the PRC and ROC.

Since Canada and the ROC ended diplomatic ties in 1970, the norms of mobility for civilians and government personnel traveling to and from Taiwan have changed on a few occasions. These norms of mobility are heavily influenced by both parties' relation to a third player: the People's Republic of China. In this case, Canada and the ROC are very careful of how the PRC perceives their activities and the terms that are used to define those. They are also equally influenced by the internal complex series of political parties and movements which push and pull on the boundaries of this very particular relationship. But how then can two entities, who hold no direct diplomatic relations, articulate a functioning system of norms and regulations for travel like with any other countries and what would such a system look like?

Indeed, the reality of travel between Canada and the ROC is quite amicable and simple. Regardless of this lack of direct relations, people can move freely from one country to the other, and visas and other forms of permits are easily obtainable with a few documents. The situation is

a little different for officials and government personnel, however, as high ranking members of government from the ROC have historically often been refused entry in Canada – even simply for transiting to another country – as Canada attempts to avoid creating the public impression that there exists official State-to-State relations (Duncan, 2005, May 16th). But, apart from this fact, the system functions like it would for two fully-fledged States with official relations. This relation, however, is articulated within the space left by the mutual agreement that Canada has with the PRC; but more than that, the relation functions as it does because of the careful wording and the creativity of the channels used.

Thus, although a visa-free stay is granted for most ROC citizens upon arrival in Canada, for this to happen they must first show in their passport a special identification number taken from the National Identity Card issued by the ROC. This number proves the citizen has indeed the right to live in Taiwan as this card is only given to those who have household registration within the jurisdiction of Formosa and its nearby islands (a different number is issued to foreigners and individuals not residing in the regions mentioned as can be seen on the official website of the National Immigration Agency of the ROC). A passport without this information requires added documentation to obtain and validate visas to Canada.

The reason why Canada demands that citizens provide this special ID number is partly because of the complexity of the ROC's national identity – or identities. The national conception is divided between the regional nationalism that views Taiwan, and being Taiwanese, as a means to assert itself internationally (Yeh, 2016) – and in so doing free itself of a large part of the complex problems it has with the PRC; and the cultural and historical nationalism of the ROC which sees all territories occupied by the PRC as citizens of its land – an idealised vision of a

'Greater China' (Callahan, 2004, p. 5). This of course makes the necessity for this identity card a little clearer, it is only citizens of Taiwan that can have this identity card as it requires household registration in the region. There are in fact two kinds of passports issued by the ROC, ones for citizens of Taiwan and the nearby ROC controlled territories possessing this ID number mentioned above, and another type of passport issued to others who live elsewhere and are devoid of this Taiwanese-only documentation. In practice, the reality of immigration to and from Taiwan, for Mainland Chinese nationals for example, is subjected to particularly stringent State regulations for fear of too large an influx of asylum seeking individuals; and is so even for those who are married to ROC nationals already (Friedman, 2015, p. 2-3). It is therefore much harder to obtain the ROC passport with the added household registration than it is to apply to the passport devoid of it, which in fact serves a very niche function and is applicable only to a small group of ROC overseas Chinese nationals. This naturally brings me to discuss the ROC passports themselves as they clearly exemplify the national complexity of the State they represent.

The importance of documents such as the passport and the visa are paramount to the concept of sovereignty and the field of international relations. Indeed, "the passport and the visa are institutional devices that link the State to individuals, behind which State sovereignty and individual citizenship are signified, respectively" (Wang, 2004, p. 354). The passport therefore clearly embodies State sovereignty and thus, the bearer of this document recognizes the State's control over him, the territory which it claims to, as well as his own belonging to that construct. The visa adds to this by allowing other States to monitor and control the citizens who wish to enter their space and construct, and binding them to agree to its laws. In fact, in this case the status is requested by the foreign citizen (Salter, 2006, p. 168). But a visa is no guarantee of

entry; it is simply the first and necessary step to recognition and acceptance by the agents of the border which are the sovereign actors and gatekeepers (Salter, 2006, p. 175).

This system of mobility – and of restrictions to mobility – is both important in its concepts but also in its elaboration. As such, a State that refuses entry to an individual is common place, but if it were to systematically refuse entry to individuals from a specific country, it would create an international problem which can discredit either or both nations (Wang, 2004, p. 356).

The simple fact that the passport of the ROC still says Republic of China and only specifies as a subtitle the region of Taiwan portrays a situation that upon first glance might not look like much, but in fact represents a very complex political issue both locally for the ROC and internationally as well. The changing of the cover of the passport in the early 2000s was engineered by the party in power, the Democratic Progressive Party (DPP), as a move to change terminologies long used to identify the Republic of China. Not only were the people holding these passports often confused for citizens of the PRC (Wang, 2004, p. 361), but having the title of Taiwan thusly placed on the cover also makes the passport closer in look to those of Hong-Kong. Finally, it is also a means to establish the island internationally as an entity of its own; a slight push towards an ideal vision of a Republic of Taiwan. Indeed, the importance of the diverging national visions within the ROC is unavoidable if one seeks to understand the dynamics of that State and therefore its relation to others; but equally, it is through the work of other States – namely the PRC and the United States – that these complications are made to endure (Wang, 2004, p. 366).

The same internal dynamics apply overseas: in 2010 Canada issued a visa waiver for Taiwanese residents for a stay of up to six months. This decision was proposed and implemented

under a Conservative government; a party which has through history had a more favorable approach to Canada's relation to Taiwan than the Liberal party – who were responsible for the change in diplomatic relations in 1970. That decision of changing the visa situation for Taiwan – but not for the PRC – was approved by the Prime-Minister's cabinet and announced officially by the Immigration Minister Jason Kenney on November 22, 2010. In 2011, as part of an informal mutual agreement between Canada and the ROC, which was based on the principle of reciprocity, the ROC equally established a visa waiver extending the stay of Canadian passport holders for ninety days over the previous thirty.

These events are interesting because they break the norm when it comes to how Canada generally interacts with the ROC and the PRC. Indeed, it is very rare that actions and policies are enacted in Canada that favor the ROC over the PRC, as it is seen to be detrimental to the relations Canada entertains with the latter. This visa policy was done not only in a joint plan by both the ROC and Canada, but was also done without the involvement of the PRC altogether. Everything in the relations between Canada and the ROC is generally enacted with enough creativity that plausible deniability is always possible for Canada: the embassies bear another name but serve the same functions, people and goods can transit freely but high ranking government officials are more restrained, all mentions of the ROC government by Canada are referred to as the ministry of so-and-so *on Taiwan*, etc. In this case the favored party is clear, and no effort to cover this fact was attempted.

All these examples point to the same thing: a State cannot be reduced to a simple construction functioning logically with a particular intent. At any given time a faction within it can, on its own, shift both law and ideology for its own purposes, and in fact often does so. The

structure of the relation between the ROC and Canada, at least when it comes to mobility, is largely one controlled and determined by the shadow of the PRC; but other factors exist like that of nationalism and factionalism. These in turn point to the confusion that was mentioned earlier by Geertz. Terminology like that, for example, of 'Greater China' used equally by the PRC, the ROC or the United States all mean very different things and show the depth of the complexity of the region and its politics (Callahan, 2004, p. 5-6). The societies that make use of terms like this one are saying something very different in each case; for the ROC it becomes a nationalist vision of a controlled space no longer belonging to them, while for the PRC it can equally represent a political statement but rather on the ownership of Taiwan by the Mainland. Nationalism, regionalism and factionalism are key to understanding issues of sovereignty and the various factors and actors at play in a State – and its relations to others – and it is through these that they can be defined.

A State is so much more than a lumbering machine; it is a flurry of wills, of struggles of power and ideology, in hundreds of smaller battles that rage on everyday fought by social actors in a grand theater. This naturally brings us to discuss the juridical aspect of this relationship, embodied here by the two Canadian court cases. Indeed, there is rarely a clearer picture of the game between actor and audience than in the theatrics of justice in law; save perhaps for the deliberations on the parliament floor, but those will come after.

Chapter Three: Canadian Court Cases

Writing on political anthropology without analyzing the rituals, symbolism and theatricality of the political domain would be almost unthinkable (Abélès, 1990, p. 118). Thus, it is both necessary and relevant to include such displays as that of parliament and the courts system in my analysis of the relationship between Canada and the Republic of China.

Two provincial Canadian Superior Court judgements – The Nova-Scotia and the Québec Superior Courts – fall squarely into the gray space that is the complex Canada-Taiwan relationship. These two cases are here explained to show the tangible and very real existence of that relationship, but also the many layers which make it up. Indeed, the decisions of the judges, and the rulings that came from it, have recognized both the Republic of China *and* Taiwan as States under Canadian law for those two very specific cases. This not only shows that a State can still exist and be recognized as such, by those who supposedly do not have any direct interactions with it, but also that international relations and the nature of the State do not correlate to the solid entity which is presented by the idea of a Leviathan. Sovereignty, power and the State are gradual and complex; they cannot be reduced to a single entity.

It is in the theater of the courts that we can witness certain of these displays and processes at work. In this very peculiar and ritualistic arena, a judge, certain actors, and an audience interact with each other in a heavily ritualised manner. The audience is as much the crowd that may be present as anyone taking part in these events. Indeed, the Judge is the audience when others deliberate, and in much the same way the latter become audience when the judge rules. As Rutherford makes clear: “Audiences consist of others who elicit a response, even as they draw one into their ranks” (Rutherford, 2012, p. 4).

These interactions in between these different parties will lead to a decision, taken by the judge, which will recognize in specific actors certain rights. For us, it is not only the result of this process for which we must account in our analysis, but also the means with which this decision was reached and the materials which helped choose it. As such, we shall look into not only the repercussions of those decisions but also the reasoning of the judges who took them.

The Maersk-Dubai incident of 1996:

In March of the year 1996, a shipping vessel flying the flag of the Republic of China, operating for the shipping company Maersk, was stormed by officers of the Canadian Royal Mounted Police (RCMP). They arrested the Taiwanese crew on charges of first degree murder.

It was alleged that while on its long charter trip, Romanian stowaways had been found by the officers of the ship and forced off on makeshift rafts, dooming them to certain death on the high seas. These allegations were made by a group of Filipino crewmembers and one stowaway who had been found by the aforementioned group and kept hidden for the rest of the voyage. These men jumped ship upon arriving in the Canadian port and reported their officer's actions to the authorities. According to these same allegations, it was said that three Romanian nationals had lost their lives in that trip, in this particular manner, and that the reasons for these crimes were to avoid paying the fine attributed for bringing illegal stowaways on Canadian soil – which is listed at approximately five thousand dollars US a head. The rebuttal from the operating company, Yang Ming Lines, was that this was a ploy by the Filipino crewmembers over wage disputes that had not gone in their favor, and was therefore a complete fabrication.

Several parties went to court over this matter: the arrested Taiwanese sailors, the Filipino crewmembers, Yang Ming Lines who operated the vessel under the Maersk group, the alleged

victims' families, the Romanian government, and the Republic of China itself who demanded a representative as an invested third party. The People's Republic also got involved claiming that because Taiwan was an integral part of China, Beijing had jurisdiction over the case and accused (Chen, 1998, p. 238).

The matter was simple at first, establish the charges, search for evidence, and extradite the findings and criminals to Romania to be serviced by the Romanian justice system for the murder of the Romanian nationals. Things took a turn when the ROC questioned the legality of the extradition plans to Romania for both the Taiwanese crew and the items found from the search of the vessel (*China (Republic) v. Romania*, Sup. Ct., 1996). Under the convention provided by the United Nations on the law of the Sea (UNCLOS), a ship flying the flag of a specific state becomes that state's responsibility on the high seas as well as for any legal or criminal matter. This was raised by the representative of the Republic of China who clearly made the point that this affair therefore fell under the jurisdiction of their justice system since the ship flew under the ROC's flag. The articles of the convention in question were article 92 and 97 which claim that "Ships shall sail under the flag of one state only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas" and of course that "no arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag state" (*High Seas Convention*, 1962, reg. no. 6465). The items seized in the search of the vessel having been already sent out to Romania, an appeal was made to have them brought back so they may be sent with the crew to the ROC (*Canada (Attorney General) v. China (Republic)*, C.A., 1996). The judge dismissed it, saying that to pause this case further to wait for items to return would only detract from the justice that needed to be served; that they would determine the

extradition hearing first and, after that, return all necessary items to whomever wanted them at that time. This decision was questioned a second time by the ROC who argued that if the items were sent away to Romania and the detainees were extradited to the ROC these aforementioned items might be lost or simply ignored and not sent back. The Nova-Scotia Court of Appeals simply stood by the judge's original decision.

In brief, the extradition hearing to Romania did not pull through, leaving ROC authorities to escort the detainees out of the country and do the same with the items obtained from the search (*Romania (State) v. Cheng*, Sup. Ct., 1997). Indeed, the situation now left the Canadian government in a legal limbo where they no longer had rights to hold the passports of the accused, because jurisdiction now fell onto the ROC, but had no extradition treaty with that country. In the end it was under the maxim of *aut dedere aut judicare* (either extradite or prosecute), a binding principle of public international law, that the extradition was indeed carried through as the suspects could not be prosecuted in Canada. Some of the crew members were acquitted because of poorly cohesive testimonials and recanted allegations, and the rest were indeed escorted to the Republic of China under police supervision. This was later contested by the State of Romania which appealed the decisions and even demanded they be branded as fugitives, but the Canadian Court of Appeals did not accept these demands (*Romania (State) v. Cheng*, C.A., 1997).

The whole affair is in itself fascinating and played out like what one would expect from an episode of a dramatized series on Law and Order. It was even the inspiration for a novel by Robert Hough called – with a small lacking in originality – *The Stowaway*, which was published in 2004. Unfortunately for us – however much this particular case might be fascinating, this

research is not one on the veracity of the accusations of murder which I have just recounted, or even in the evidence which was shown in respect to these said accusations. In fact, for the purposes of this research, legally speaking none of the facts of this case bears any importance to our topic except for one: The ship's flag.

Indeed the question of who had sovereignty over the vessel, and therefore over its crew, was a question resolved by the judge of the supreme court of Nova-Scotia using conventions and laws that were put in place by the United Nations. Furthermore, the simple fact that Canada recognizes the flag of the Republic of China and allows for ships bearing it to use its ports is testament to its recognition as a State. The ruling of the courts in favor of the ROC demanded that a special determination be made for it; one that clarified the gray space left by the non-existent official Canadian government's stance on the nature of the ROC State. This stance had been in place since the normalization of the relations with the PRC in 1970.

It was not a clear statement on the nature of the ROC which was given by the judge, but rather the decision was based on a simple question: is Romania's extradition demand founded? And in that instance, regardless of the political ramification and complexity of the situation, the judge interpreted international law and the Extradition Act and determined that because of the ROC's claim to the vessel Romania's demand could not be accepted. It was through this refusal of Romania's right to punish – a right which was then left to the party which had contested that claim – that Sovereignty could be recognized to the ROC. Indeed these decisions are based on two things: the right for Romania to punish and judge the accused, and the recognition of the ROC as a State by the Canadian courts. It is because the right to punish rests with the ROC – and not with Romania – that it is recognized as a State, for only an entity such as that of a State can

claim to the *de jure* power, or natural right, of punishment (Locke, 1984, p.176; Simmons, 1992, p.124).

The legal implications of such a decision can be traced to specific court instances which led the judge to take this position, as the judge himself describes in his decision (*Romania (State) v. Cheng*, Sup. Ct., 1997). But in this case, what is exemplified is a clear representation of the process which I alluded to at the start of this paper. The power of the State is one wielded by officials and persons of authority at different times in different scenes of life (Fortes and Evans-Pritchard, 1950, p. xxiii). In this instance it was a judge in a court of law and in the presence of an audience. But the scene itself contained much more than that simple judgement. The judge responded to an intervention from the delegation of the ROC – composed of a prosecutor and a policeman from that country – who claimed that the ROC had sovereignty over the matters of this case based on laws which regulate all international matters.

The concepts of power and sovereignty bounce from one person to the next in the face of an also ever-changing audience. The judge, the accuser, the representative, all claiming to wield power and have right to what is at stake: the right to punish – and therefore the recognition of being a State for the ROC. This paints a scene more akin to that description by Geertz of an everlasting battlefield where sovereignty becomes a quest for a visible advantage (Geertz, 2003, p. 580) within an arena where symbols and ritual shape the scene (Abélès, 1990, p. 117). The judge ruled against the Romanian claim, recognizing the sovereignty of the ROC, because of a body of law that was larger than him; a body of law which happened to declare the ROC a State, regardless of the political situation and Canada's – or the ROC's – relation to the PRC.

Furthermore, every appeal after the judge's ruling was made in favor of keeping with his original decision. This simply shows that this was not a single anomaly, as other judges found this decision to be within the law as they understood it. Individuals make the State; their decisions in scenes like the one described above equally remake it on a daily basis. This case on its own shows an interesting paradox in the relation between Canada and the ROC, but the second case will make the entire affair quite notably more complicated.

The 2003 accident of Flight 006:

Our second case happened as the result of the events of October 2000, when a plane from Singapore Airlines Limited (SAL) crashed on the runway of Taipei International airport (previously known as the Chiang Kai-Shek International Airport until 2006) upon takeoff. The Boeing 747 numbered Flight 006 was a passenger flight destined for Los Angeles. It contained one hundred and fifty-nine passengers, the vast majority of which were citizens of the United States and the Republic of China; except for a few other nationalities including one Canadian. On that day the typhoon *Xangsane*, a category two, was passing through the Taiwanese's Eastern coastline. It had taken a drastic turn northward on an almost ninety degree angle from its passage over the Philippines and had strengthened its wind speeds up to one hundred kilometers per hour before hitting Taiwan from the South of the island, heading in the direction of southern Japan. Visibility at the airport was therefore understandably limited, not only because the flight was departing at eleven hours at night, but also because of the battering rains and strong winds which hammered the planes continuously. In this part of the world storms of this caliber are, however, a common occurrence – there were at least seventeen typhoons in the year 2000 alone (Rockett,

Saunders, Hamilton, 2001, p. 1) – and transports, roads and other activities often continue on unabated.

This was the case in this instance as well, but the plane lined up for takeoff on a runway which had been closed for repairs, having taken a wrong turn while taxiing out of the gate. The airport was not equipped with ground radar capable of monitoring plane movements on the runways and, as such, was not able to correct the pilots' error prior to them beginning takeoff. The plane accelerated and collided at high speeds with construction equipment, large barriers, and other obstacles that were obstructing the runway. This shattered the plane's fuselage, forcing it back onto the ground, and caused the fully-fueled wings of the aircraft to explode, leading to the death of seventy-nine of the passengers and four of the crew members.

This incident was amongst the deadliest plane accidents that took place on Taiwanese soil and later involved several lawsuits from a variety of different parties. One of these was filed by one of its passengers and his company, François Parent of Specnor Tecnic Corporation, a Canadian citizen and Quebec resident, who decided to sue the airline (SAL) for damages resulting from that crash. The lawsuit was brought up in 2003 and very much like in our first case, what started as an open-and-shut affair quickly became quite complex.

Mr. Parent sued the SAL for damages sustained to his person from a crash in a plane owned by their company and which had been at all times under the control of their employees. SAL, however, argued that responsibility in this case fell unto the managing authorities of the airport – the Civil Aeronautics Administration (CAA) – who failed to prevent this type of accident from taking place (Parent v. Singapore Airlines Ltd., Sup. Ct., 2003). The CAA is a branch of the Ministry of Transports and Communications of the Republic of China. This

deference of blame was brought to the superior court by the CAA who argued that such a claim would violate sections from Canada's State's Immunity Act. Enacted in 1985, this law clearly states that a foreign State, or more explicitly "any government of the foreign State or of any political subdivision of the foreign State, including any of its departments, and any agency of the foreign State" is "immune from the jurisdiction of any court in Canada".

SAL argued that in order to be eligible for this immunity, the CAA should have been given a certificate by Canada's Ministry of Foreign Affairs and presented this document to court. The CAA was not given this certificate as the nature of the ROC as a sovereign State is not recognized officially by the Canadian government. The Liberal government was afraid at the time of offending the People's Republic of China if they even appeared to recognize Taiwan as a State. The CAA instead submitted the letter of rejection by the Canadian Minister of Foreign Affairs to the courts as evidence to its claims that the situation surrounding its status was more complex than a simple yes and no question.

The courts ruled that the certificate was not a necessary but rather an admissible form of proof of the status of Foreign State. This left the court with having to judge on the matter of Taiwan and recognize upon it or not the rights given by the State's Immunity Act. The court had therefore to decide whether or not Taiwan was a Foreign State for the purposes of this act. Once again, the Canadian justice system had to ponder over the case of the ROC and Taiwan not based on the country's official stance, but rather by creating a separate ruling.

The ruling came down to the interpretation of the Foreign State Act as well as public international law. The judge ruled that Taiwan's status of State was determined by a short list of distinct criteria: a defined territory, a permanent population, the presence of an effective

government and the capacity to enter in relations with other States. To this list was added a fifth: a State must be recognized by other States. The judge however decided that this final criterion was not necessary to prove a State to be a State: “recognition of one State by another does not *create* the State, the existence of a State is a question of *fact*” (my italics) (Parent v. Singapore Airlines Ltd., Sup. Ct., 2003). He found that Taiwan possessed all four original necessary components and was therefore, according to international law, a State. In fact, the judge made use of a political statement, cited above, made by Paul Martin Senior in 1968 (father of the 21st Prime Minister of Canada of the same name), then Secretary of State for External Affairs, which expressed that Canada understood Taiwan’s status as politically independent of the mainland.

Again this decision was made in the court of law by a judge, in a situation much like the first where the dynamics of audience and power bounced from one party to another. But in this particular instance it was the right to be punished which none of the accused wanted to possess. Indeed the judge had to hear SAL defer blame onto another larger party, which then claimed that a body of law larger than it rendered it immune. This time the judge also interpreted the status of *Taiwan* as that of a State, and not the Republic of China, conferring a layer of redundancy to both of these rulings but also calling into question the nature of recognition in the first place.

Indeed, if both Taiwan and the ROC can have their statehood recognized through these judgements by different referents within the State of Canada, and even in the face of an official policy which takes no stance on the matter because of political repercussions, then the nature of the State is much more malleable than many would care to admit. The two were recognized equal rights in name and function by different judges under different claims: one for the right to punish and one the right of immunity. Both are found to be States even though officially Canada

does not recognize them as such. But Canada, as personified by these judges in these displays of sovereignty, and witnessed by these audiences (namely, a crowd, a judge and certain key actors) ruled otherwise. Canada in that sense, found that Taiwan and the Republic of China were States and equal in rights and claims to itself. This not only shows that the political ramifications of recognition are unnecessary to exist as a State and to entertain relations on equal footing, but that the nature of the State itself is left to the interpretations of the individual who wields power and has the authority to name who is sovereign in a specific context.

There is something to be said as to why both Taiwan and the ROC were recognized as sovereign, and it has to do with Canada's positions on the issue of the region. Indeed Canada has held a particular stance on the cross-Strait relations since the early 1960s and has not deviated from that (Brooks, 1961). Recognizing, in the second court instance, Taiwan as a State was also a means to avoid having Canada directly recognize the Republic of China as a sovereign State and give it State rights within Canadian law. This would have meant extending the recognition of *de jure* sovereignty to the ROC through the Foreign State Immunity Act. This was not the issue in the first case, which dealt with the ROC's possession of a shipping vessel in international waters and in a foreign port. In the first instance, Canada simply had to recognize that the ship belonged to the ROC because it flew its flag and was run by a Taiwanese company; it was a clear recognition of the ROC's *sui generis* status, but not of a direct branch of its public system. It must be said that the ROC's heavy reliance and dynamic use of international law in these legal battles testifies its importance, for them, in establishing a basis for recognized sovereignty (Hsieh, 2015, p. 122). The second case directly dealt with a part of the State administration – namely a department of one of its ministries – and could not have been interpreted as anything else than a recognition by Canada of the ROC's sovereign rights over its lands and its citizens. It

should also be mentioned that the second case was heard in Québec, a province which also possesses a nationalist conception searching for expanded recognition on the world stage. The difference of audience is important to understand the decisions given by the judges. Because of its long history of nationalist ideology, Québec is different to Nova-Scotia, and as such, it is natural that this change in audience would produce a different outcome than the one obtained prior.

This brings us to discuss the timing difference in between the two decisions. While the first case happened when the *Kuomintang* was still in power in Taiwan, during the Québec case it was a different nationalist government which held power in Taipei. This is important because it emphasizes the reasoning behind the chosen recognized title of Taiwan in the second instance versus the first. Indeed, there were other factors at play than the logistics of the case itself, and it was the manner in which the ROC made use of international law as well as the audience represented here by Québec which led to this shift of a recognized Taiwan.

Canada and the Republic of China on Taiwan hold a special relationship, one that doesn't seem to fall into the categories one would expect from international diplomatic relations. Although they hold no direct official relations with each other and Canada was clear in saying there can only be one China in this world, we are shown here that Canadian courts have recognized the Republic of China and Taiwan as States for the purposes of their decisions. It is also clear that the recognition of this status was not a mistake of interpretation as two judges found the two separate entities in the same rights as their own State.

Understanding what is at play here from a Hobbesian conception of the State would give but a simple interpretation of the facts under legal and political terms. From within this concept,

it is clear that this affair grants, in theory, the recognition that the ROC is a proper State. But this doesn't account for why the State (in this instance Canada), this ever-lumbering machine whose Sovereign figure dictates Sovereignty and order, is here left behind by one of its members – namely a judge – in its own courts. The Leviathan as it is classically understood cannot account for this individual interpretation by its own juridical arm. Indeed, there always has to be a common will to the construct, a display of sovereign power leading towards an ideal result.

But this would be forgetting the role of the bureaucracy of any modern State in the forging of its policies, be they domestic or foreign, and what political scientists refer to as the international juridical personality. Weber described bureaucracy as “technically the most highly developed power instrument in the hands of its controller” (Weber 2006, p. 63), and although this again supposes that even such a complex machine as the bureaucracy needs a Sovereign, it also shows that there is power in the representatives and officials themselves.

In this day and age the State cannot be reduced to the sum of its parts; it is too complex for that. Its direction, as opposed to a central will, is represented in a myriad of scenes of daily life from within and outside its sovereign borders: scenes such as the ones I have just shown. It is clear that the judges of these cases were more than instrumental in the recognition of Statehood and therefore the granting of power and authority in those two cases – be it the power to judge citizens or the right to immunity. This action, which would classically be only possible of the Sovereign, demonstrates that such a concept does not exist. Indeed, it is the web of social actors which create the international relations of Canada and Taiwan. They are here exemplified to demonstrate this concept of confusion which Geertz referred to (Geertz 2003, p. 580): The

relation between Canada and the Republic of China on Taiwan is not simple, it is not traditional and it cannot be understood simply in legal terms.

This relationship lives through the confusion of its inception and the confusion of its ramifications. Attempts to render it clearer politically and legally have been made, but as I shall demonstrate, these did not manage to lessen the inherent complex nature of this relation.

Chapter Four: Taiwan Affairs Bill

If there are judgements and rulings which clarify the question of status for the Republic of China in the courts, there are also other events which show different sides to this relationship. One of these is the Taiwan Affairs Bill of 2005. This bill is a good example of de-centralized State power and factionalism because of how and by whom it was brought forward. There are indeed other layers to State power and sovereignty than that of the imagined centralized will of a political and military apparatus. There exist individual actors and other forces at play in States, which can affect and alter decisions, but which also demonstrate the depth and complexity of the State itself. These forces supplement the very theatrical arenas of the public political sphere, and in our case this can be seen through the motivations of individuals such as the one we are about to discuss further in this chapter. Much like the courts of the previous chapter, Parliament is another very important and ritualised public political arena. Its actors double up as an audience and divide themselves up in political families and factions even within their own various parties (Abélès, 1990, p. 152-153), but there exists also individuals with their own motivations and goals.

In 2005, Jim Abbott, a conservative Member of Parliament (MP) from British Columbia proposed a private member's bill (brought forward by one member and not his party) at the thirty-eighth parliamentary session of the House of Commons. This bill, named C-357 or the "Taiwan Affairs Act", was proposed with the intent to "preserve and promote extensive, close and friendly commercial, cultural and other relations between the people of Canada and the people of Taiwan, as well as those of the People's Republic of China and all other peoples of the Asia-Pacific region" (H.C. C-357, 38th, 2005).

The bill was also set to bind Taiwan and its government to the laws of foreign States in Canadian courts. Furthermore, these court decisions could not then be dismissed because of the lack of direct diplomatic relations in between the two countries. It also established that Canada and Taiwan could sign agreements together, regardless of this lack of direct relations, and that these agreements were then bound to the laws of international treaties in Canada.

It went further, stating that Canada should “consider any effort to determine the future of Taiwan by other than peaceful means, or by boycotts or embargoes, a threat to the peace and security of the Asia-Pacific region and of grave concern to Canada; and support the peaceful evolution and development of democratic political institutions in the Asia-Pacific region.” This section, as well as the preamble to the bill, served as a means to reiterate what was said by government officials after the switch in recognition from the Republic of China to the People’s Republic in October of 1970. Indeed, a joint communiqué was written, by the Trudeau Senior administration, which clearly indicated that China was governed by the sole authority of the government of the People’s Republic of China, and that Canada *took note* of the fact that the PRC claimed Taiwan was an as integral part of China (as seen on ca.china-embassy.org). This is found word-for-word in the preamble of the bill (H.C. C-357, 38th, 2005) and shows again that Canada does not agree with China’s position, but does not want this disagreement to get in the way of a constructive relationship. The mention of Taiwan throughout this bill serves as shorthand for the island of Formosa, and nearby islands, which fall under the jurisdiction and sovereignty of the Republic of China. Although the government itself is never directly named, the bill does refer to the government *residing on Taiwan* and is a way of circumventing the territorial issues that naming the ROC directly would bring up. Indeed, had they recognized the ROC directly it would have meant recognizing two governments on China and go against the

joint communiqué of 1970; but this was also done at a time when Taiwan was trying to establish itself as its own identity separate from the ROC.

Last but not least, Bill C-357 stated that Canada will support the addition of Taiwan to such organizations as the World Health Organization (WHO), strive for the disarmament of the region of the Taiwan Strait, discontinue the practice of the refusal of visas to Taiwanese government officials (an issue rendered moot by Jason Kenney's, then Foreign Affairs minister, decision in 2010), and permit the Taiwanese government to call their offices in Canada those of the Taiwan Representative Office. Taiwan had previously joined the World Trade Organization (WTO) in 2002, after lengthy negotiations on duties and customs and the opening up of the telecommunications, banking and insurance markets to other members of the organization (WTO, 2001). This bill came therefore at a time when Taiwan was being considered as a strong candidate to technical organizations such as the WHO.

Mr. Abbott had been named the associate critic of foreign affairs Asia Pacific by the Conservative Party of Canada. He had previously asked that Taiwan be added to the WHO as an observer in 2003 following the SARS outbreak in Asia. He had also demanded the redefinition of Canadian foreign affairs in relation to the PRC/Taiwan situation which he qualified as a "timid stance" (Abbott, 2005). This bill was therefore a continuation of his efforts to have Canada's position on Taiwan clarified and it better represented on the world stage. It was, at the time, supported by several members of Parliament from all political parties in the House – the Liberal Party, the Conservative Party, the New Democratic Party, the Bloc Québécois, etc. – who took turns to speak in favor of the project on two separate occasions.

During these debates it was said that Taiwan's involvement on the world stage should be supported if it attempts to adhere to "technical organizations" such as the World Trade Organization, World Health Organization or even the International Civil Aviation Organization (ICAO), rather than political ones which were more complicated and delicate (Siksay, 2005, May 16). It was also said that this bill was simply a remodeled version of the United States of America's Taiwan Relations Act, already enacted in 1979 and still in place to this day, which was made to preserve relations with both parties (PRC/ROC). They added that being simply cloned from this piece of American legislation, it would carry little to no risk whatsoever (Clavet, 2005, May 16). This project was also said to be a good means of aligning Canadian and USA interests in China and Taiwan. It was equally cited many times that Canada and Taiwan hold a special partnership which enabled them to develop good relations, through trade and educational exchanges, and which this bill would only serve to cement further. Finally, all throughout these speeches, a heavy discourse of human rights was also at play, with the emphasis on help for Taiwan in the case of health issues outbreaks, and again in its involvement in the WHO.

The opposition to the bill, represented by the Liberal Party of Canada, was also heard in these speeches and can be summarized with "the old Chinese proverb which says that even the wisest official cannot judge a family dispute" (Anderson, 2005). Indeed, some argued that the situation as it is today allows for more flexibility than the bill would, and meddling in what is to them an internal Chinese affair seems too much of a risky stance. This line of reasoning is mostly tied to the relations Canada entertains with the PRC and the risks involved by going forward with a redefinition of Canada's recognition of status with the ROC. It was also mentioned that this grants a lot to Taiwan but not much from Taiwan is granted to Canada, and that pressing issues

like that of the beef export trade dispute between Canada and Taiwan would not be addressed by this bill. Throughout the opposition speeches by parliamentarians and special guests there is a constant referral to the risk of retaliation by the PRC and the misguided nature of Americanizing Canadian foreign policy (Lipman 2005). In effect, the opponents to the bill preferred non-action, rather than altering Canada's stance on the Taiwan-China issue.

This series of readings and deliberations also demanded the opinions of expert witnesses from both sides of the debate. A few professors (Prof. André Laliberté and Prof. Andrew Cohen), and a member of the chamber of commerce (Mr. Michael Murphy) were invited to speak on the issue. The speeches and answers to questions given by the two professors were more in favor of the acceptance of this bill with the caveat of a few tweaks as to the clear labelling of Canada's position on the status quo in its specific objectives, its scope, and in the clear absence of recognition of the State on Taiwan (Laliberté, 2005). The invitee from the chamber of commerce, however, was for his part worried of the negative impacts of such a policy decision on the trade and commerce with the PRC and his arguments and answers fell clearly within those articulated by the opposition to the bill (Murphy, 2005).

As I and others have shown, however, this bill is "simply a concrete recognition of Taiwan's democratization" (Simon, 2005). The enacting of this bill would not automatically "grant Taiwan *de jure* sovereignty" by Canada, but would simply be an admittance of the political reality of the region and its history both old and recent (Cohen, 2005). Indeed, Taiwan was a very different place in 1970; the country was still under martial law and the political openness was nowhere near what it is now. Equally, the United States' change in legislation in

1979 did not lead to any drastic changes in the region, and adding Canada's recognition to this would not be proposing anything other than the reality of the geopolitics of the area.

Although this bill was far from adventurous and, for the most part, remained very soft in its demands, it was not passed by the House. It went through two separate readings and was debated for a set length of time but never concluded on. In fact, the item was placed at the bottom of the agenda and, before it was reached for further deliberations and a vote Parliament was dissolved, allowing for this bill to neither be passed nor voted against.

The objectives of the bill were simple, to clarify Canada's bilateral situation with the ROC and Taiwan, and cement all further dealings and agreements in a legal and binding text of law. It also sought to boost Canada's recognition of these entities by granting them precise privileges which they do not officially possess. However, this bill was set in the context of relations between the PRC, the ROC and Canada – and the recognition of that status quo – but did not take into account the importance of internal debates within the ROC itself. There is indeed within the ROC a very deep schism of ideology over the current situation of Taiwan and its place within a 'Greater China' (Callahan 2004, p. 5-6). Be it that of its inclusion in the PRC, or the overall claimed space of the ROC, or even yet as an independent country, Taiwan is not of one voice when it comes to recognition and the wording that this process takes. Indeed, within Taiwan resides several conceptions of nationalism and imagined identities which share the public and private sphere.

It was said that this bill, by bypassing these debates and issues, could have been seen as granting more leeway to the independence movements on the island and placed Canada in a situation where it seemed to lean more with that camp in particular (Laliberté, 2005). Although

this could have been the case specifically because of one of the articles in particular, article 9(d) on the change of name for the TECO offices in Canada, the majority of the bill was well received by the different parties and factions in the ROC (Simon, 2005).

This whole affair only serves to show that efforts to clarify this overly complex and yet perfectly functional gray space between Canada and the Republic of China on Taiwan have been attempted through official government channels; but it would seem the confusion which surrounds this special partnership and embodies its very legal foundations is here to stay. This is a good example of the importance of other factors and forces in the matters of sovereignty and the State as characterized by the private interests of individuals and businesses rather than that of the public sphere. This is not to say that the attempts, which I have just described, were not founded on some existing relationship. Although this bill was set to cement existing policies and relations between Canada and Taiwan there has always been direct relations between the two countries, however careful and discreet they may be, operating in the shadow of the PRC. Indeed, Canada's parliament and the legislators of the ROC have had a long history together; a history defined out of Canada's "one China policy".

Chapter Five: TECO and the Diplomatic Relations

To the official and very public deliberations of the judicial system and parliament or the senate floor there is also, as I have tried to show, other layers which are important to take into account when discussing the State. The bill proposed by Jim Abbott in 2005, although it was brought forward by him alone, still remains within the visible spectrum of the political domain.

The other ends of the spectrum cannot be easily quantified or measured as they take place at all times in various forms and through a myriad of different actors and audiences. This widened field represents aspects and actions which are generally not looked onto as part of the visible political domain – such as those not voiced in the open, or meetings and associations of people not made public. They become part of the political realm as described by this notion of infrapolitics. This is the politics of resistance according to Scott, but in our case mostly the politics of backrooms and lobbying. The graduated sovereignty that Ong painted, to make use of a wider view of the many processes which make up this important concept (Ong, 2000, p. 57), is reflected in this understanding of a spectrum of visible and invisible light which Abélès hinted at in his book *Penser au-delà de l'État* (2014). Actors of this system are indeed the elector, the judge, the politician and the policeman (Evans-Pritchard, 1950, p. xxiii), but also the activist, the lobbyist, the philanthropist, the businessman and indeed anyone who wields power even for an instant.

It must also be said that if the court rulings and the independent efforts of certain parliamentarians represent indirect relations between the two countries and help define the nature of the status of the Republic of China in the eyes of Canada, there are also direct relations that exist. These are through specific offices and bureaus which serve the role of embassies and a

means to effectively communicate and plan mutual agreements and other very normal State-to-State actions. Understanding these offices and their role is important if one is to truly fathom the depth of the concept and the physical reality of the State. Indeed, it is in conjunction with all of the other aspects we have seen that this more classical approach to State relations (embassies and treaties) takes on a different form. In this chapter we will look into both the private and less visible aspects of the relationship as exemplified by such groups as the Canada-Taiwan Parliamentary Friendship Group but equally at concrete and very visible bureaus directed and used by government personnel; the two extremes of the spectrum.

As early as 1975, the government of the ROC established offices in Canada as part of its attempts to redeem the status of recognition which had been lost by the statement of 1970 between Canada and the PRC. These offices were named the Far East Trade Services Offices (FETSO) and were placed in a few major cities, namely Ottawa, Vancouver and Toronto. They, along with another office of a more official nature called the General Chamber of Commerce of the Republic of China (GCCRC), were all closed in 1994 with the establishment of the TECO which replaced them. The early FETSO were not a clear mutual attempt at retaining diplomatic ties between the two countries, and rather were more of a means for the ROC to continue to have a presence within Canada after 1970 (Hulme, 2010, p. 6). The General Chamber of Commerce established in 1980 was, however, clearly attached to the ROC's government and its creation was in fact an "act of the government of Canada" pointing to a change in the politics of that time (Hulme, 2010, p. 6).

The road to the establishment of TECO, and its role in the bilateral relationship of Canada and the ROC, is paved by another key aspect of this partnership: the Canada-Taiwan

Parliamentary Friendship Group of 1982. Indeed, in conjunction with the efforts of the ROC with FETSO in the late 1970s, other forms of contact were established to redeem or salvage the change in diplomatic ties. Thus, the ROC made use of a private lobby firm called Robert T. Smylie and Co. Ltd. to approach and speak for the ROC's cause to members of the Canadian parliament. These MPs were contacted by the ROC indirectly through this firm and offered all-expenses paid trips to Taiwan. This initiative yielded its first results in 1974 with the first delegation of MPs on Taiwanese soil since the breaking of ties in 1970. These efforts were followed by the rebranding of the public relations firm as the Canada-Taiwan Trade Council (CTTC). In total, more than twenty delegates made trips to the ROC in this manner until the change in provider was done (Hulme, 2010, p. 8). This new CTTC did not last very long, however, and was closed just a few years later due to financial issues.

At that time, the Liberals which had held power in the Canadian government and had been the administration responsible for the switch in recognition, lost control of the House to another party: the Progressive Conservatives. This short lived minority allowed for several changes in the bilateral relation between the ROC and Canada. The first of these was the aforementioned Chamber of Commerce, which was established by mandate of Canada and gave legitimacy to the ROC's plight in the eyes of other MPs. This office, combined with the indirect solicitation and the FETSO all led to the creation of the Canada Taiwan Parliamentary Friendship Group in 1982 (which I will refer to as the Friendship Group from this point on forward).

This group took up pretty much where the private firm left off and organized trips to Taiwan for delegation of MPs from a variety of parties. The objective was to foster a good relationship between the government of the ROC and the Canadian parliamentarians and, in so

doing, create a drive to redeem the bilateral relationship. After 1979, and the passing in the United States of the Taiwan Relations Act, it became an objective of the ROC to mimic this in Canada and clarify this non-sovereign relationship within the boundaries of the One-China policy (Hulme, 2010, p. 11). Several attempts were made to create a space for a Canadian trade office to be put in place in Taiwan. It was finally achieved in 1986 after the Canadian Foreign Affairs checked with the PRC to make sure that this did not hinder their bilateral relations and established the Canadian Trade Office in Taipei (Hulme, 2010, p. 14).

More recently, the Friendship Group was responsible for a push to make Taiwan a part of most technical international organizations such as the World Health Organization in the early 2000s; and later indirectly with such things like the Taiwan Affairs Act of 2005, which it endorsed wholeheartedly and explains its large base for support in the House upon its first and second readings.

The developments in the history of the mutual relationship of Canada and the ROC are, as I have shown, best described by the terms of *Graduated Sovereignty* and of a much less militant-focused version of *infrapolitics* (Scott, 1990, p. 183). Indeed, a constant stream of efforts and resources are being poured into the Canadian political system in order to cement and build proactive relations between the two governments in spite of the overarching recognition issue. This process is not only a form of resistance against the third player involved –China – but also a means for groups within those states to assert their own agendas: such as the various nationalist visions involved, or economic and private interests, etc. Indeed, with the PRC holding the widely recognized and accepted title of China and its importance on the diminished status of the ROC in

all its dealings, any actions taken by the ROC through international law, like the court cases we have shown above, become acts of resistance to retain and regain a recognized status.

The aspects of infrapolitics here take on a different note too because of the lack of official and traditionally understood relations between the two States in question. All of their interactions are indeed done through a language that is engineered to appear different to the norms used in these situations. This means that because of the channels, as well as the inventive diplomatic and political language that is used, most of the political aspects that make up this relation are ones that could fit the description of infrapolitics: a State of resistance. Simply put, were the processes – that are in place now, and grant even direct relations between the two countries – to be changed to the normative language used by any and all States in their relations, the status-quo would be impossible. It is only because everything from embassies to agreements, to even the careful wording of court proceedings gives no hint at the normative nature of the entire spectrum we have described that the entire affair remains balanced and has done so for so long.

Still, it must be said that dividing the political domain in between the official or surface politics and that of infrapolitics is, however, limiting the conception to a binary format. The reality is more akin to what Abélès tried to show with his book: a spectrum too fine to be categorized in sections and subsections, but rather a domain resting on a space where variety and the meeting of tensions for non-coherent actions and representations creates politics as a whole. There are infrapolitics, yes, but they are part of the greater confusion which makes up this most unavoidable part of life. Foucault saw this when he claimed power was diffuse and not a resource that could be quantified. The domain of politics, much like what I am trying to point to with the concept of the State itself, is one rooted in the relation of the parties at play but should

always be looked at “against the background of the sort of society in which it is embedded”(Geertz, 2003, p. 580).

The domains which make up this idea of the State are paradoxically clear examples of the confusion Geertz and Abélès referred to. The State cannot be summarized in a simpler manner than the complex domains which make it up. Factionalism and the imagined social construction of nationalism, paired with this political space which we have just described, are the main components to this gray space in international relations. Canada and the ROC articulate their relations through and within these domains, exemplifying the nature of the State concept as we wish to show it: a beautifully complex series of tensions, conflicts, displays and representations of sovereignty and power through social actors of both public and private spheres.

Conclusion

In this paper I have tried to show that the State concept can no longer be understood through the prism of Hobbes' Leviathan. From the many facets which make it up, such as its actors who wield power in societal functions on a daily basis, to the factions which divide it in a myriad of different ways, the State is much too complex to be a one-willed being led by the figure of a Sovereign. All of the elements which compose it can be dissected into smaller and smaller parts all possessing individual wills and acting as Sovereigns in a web of power and representations of sovereignty. It is through this anthropology of diplomacy, a study of both the processes of relations between States and the internal dynamics which fuel these, that the discrepancies can be seen between a normative system, like the one described by political science or political anthropology, and the physical reality of the State concept.

This is very clearly exemplified by such cases as that of the Republic of China and more specifically through its relations with Canada. This gray space permits all the functions and components of a normal State to State relation while avoiding all of the traditional terminology and processes that such disciplines, as I have mentioned above, make use of. I have aimed to show this through a wide range of different aspects of these relations; from the movement of goods and people and the norms that these demand, to the public sphere of the courts and parliament, as well as through the private sphere of lobbying and personal interests. All of these have shown that the State is in essence a collection of wills and goals, unbound and decided in thousands of scenes of daily life both visible publically as well as hidden behind closed doors.

It is through the redefinition of sovereignty as a complex spectrum varying both in its physical visibility to the average citizen as well as in its degree of resistance to a set value that

the State translates actors into power. Thus, a State's international relations are measured not only through internal factionalism, private interests and nationalist conceptions of the States in question, but also through their relations with other States and their own internal structures. It is through the varying audiences of both these microcosms and macrocosms that the State exists, albeit devoid of this anthropomorphizing title of Leviathan.

Perhaps now, we can begin as anthropologists to forgo the idea that the State concept is a universal construct based on one species of mythical creature and rather look to identify the societal background against which it is set. This would allow for not only a more in-depth understanding of internal and external factors in any study, but also pave the way for a better anthropology of international relations as a whole. It was the goal of this paper to show a different approach to the study of States and diplomacy and to give a basis for a shift from the current methods and concepts still in use in our fields. This anthropology of diplomacy is an example of a method which shows how important these conceptual nuances can be in complicated cases such as the one I have shown here.

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