

Proposal of Study

PARTICIPATION IN ISOLATION: TAIWAN'S RATIFICATION OF THE HUMAN RIGHTS COVENANTS AND ITS DOMESTIC CONSEQUENCES

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1. Introduction and hypothesis

Why do nations obey international human rights law? Particularly, why do they commit to human rights treaties? What are the effects of these treaties? And what are the mechanisms through which these treaties can maximize a nation's compliance with international human rights law?

This dissertation aims to add to the scholarly literature concerning these fundamental compliance questions by examining the recent ratification of the two principal international human rights covenants, i.e., the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), by the Republic of China (Taiwan or the ROC) and subsequent efforts to implement them. It also seeks to analyze the implications of Taiwan's case study for some of the most relevant theories of compliance with international law, including Professor Harold Koh's "transnational legal process" and the socialization processes elucidated by Professors Ryan Goodman and Derek Jinks.

My research will specifically deal with the following questions: Why did Taiwan finally ratify the two covenants forty-two years after signing them? How have the covenants influenced the practices of relevant actors there? What may improve Taiwan's actual practice in accordance with the two covenants? How do we assess relevant compliance theories based on Taiwan's case study?

My hypothesis is that Taiwan's unique problem -- its long isolation from the international human rights regime -- may prove to be a significant obstacle to its effective internalization of international human rights norms. Applying the above-mentioned theories to Taiwan's situation, isolation denies it access to international mechanisms, resources and stimuli, such as those that derive from the official treaty reporting process and reduces the chances for other states to interact with and influence Taiwan. Such international interaction often provides platforms and leverage for concerned groups of citizens to mobilize public awareness and political will at home, especially in a democratic or partially democratic polity. It also provides incentives for the state, academia, the legal profession and NGOs to develop local expertise and technical capacity for implementing human rights treaties.

However, Taiwan may be able to compensate to some extent by using both old and innovative strategies to expand unofficial international interaction and cooperation, such as with foreign NGOs and scholarly and journalistic experts. Local groups, and

even the Taiwan government, may be able to attract informal international human rights expertise and advanced training to help develop local talent and technical capacity to carry out international human rights law.

In addressing this hypothesis, I will use the conceptual frameworks developed by Koh and by Goodman and Jinks to explain the domestic relationships as well as the global influences in Taiwan's case, and evaluate these theories based on what we learn from Taiwan's experience.

Professor Harold Koh's "transnational legal process" offers a comprehensive explanation of why nations obey international law and a blueprint for maximizing compliance. It describes the theory and practice of how public and private actors - nation-states, international organizations, multinational enterprises, non-governmental organizations, and private individuals - interact in a variety of public and private, domestic and international, fora to make, interpret, enforce, and ultimately, internalize rules of transnational law.¹ Applying this theory to the field of human rights, Koh argues that the best strategy to improve a state's practice may be a vertical process, whereby the norms created by international society infiltrate into domestic society via transnational actors' interactions, law-declaring fora's interpretations and, eventually,

¹ Harold Hongju Koh, *The 1994 Roscoe Pound Lecture: Transnational Legal Process*, 75 Neb. L. Rev. 181, 183-184 (1996).

the state's internalization of the norms.² If applied to the context of Taiwan, this theory suggests that Taiwan's isolation, which denies it exposure to international actors, international law-declaring fora and transnational networks, will inevitably hamper the efforts of local implementers to achieve full internalization unless other substitute methods can invigorate such process.

While the transnational legal process centers more on domestic relationships, Professors Ryan Goodman and Derek Jinks work from the perspective of the international community and identify three distinct international social mechanisms for influencing a state's behavior in the human rights field³ – coercion (coercing states/individuals to comply with regime rules), persuasion (persuading states/individuals of the validity and legitimacy of human rights law) and acculturation (promoting the general process by which domestic actors adopt the beliefs and

² Harold Hongju Koh, *How Is International Human Rights Law Enforced?*, 74 Ind. L.J. 1397, 1406 (1999). More empirical studies have shown how international norms may infiltrate into domestic society. For example, Professor Beth Simmons's recent empirical research concludes that human rights treaties can be influential in improving a state's actual practice under particular institutional and political conditions. She examines how international treaties change domestic politics in ways that make improvements in practice more likely, and identifies three ways of doing so: altering the national agenda, leveraging litigation, and empowering political mobilization. BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009).

³ Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 Duke L.J. 621, 626 (2004).

behavioral patterns of the surrounding international culture).⁴ A state's receptivity to different mechanisms may vary based on the level of the state's participation in the international community, its world status, national agenda, and domestic rule of law progress.⁵ Thus, I will examine whether and how these social mechanisms work in Taiwan's context and how various factors, such as Taiwan's isolation, its transition to democracy, and China's military threat, affect the socialization process in Taiwan's ratification decision and implementation.⁶

⁴ In particular, acculturation is often conflated with persuasion. The touchstone of acculturation is that identification with a reference group generates varying degrees of cognitive and social pressures - real or imagined - to conform to human rights standards, while the touchstone of persuasion is that states internalize human rights norms following an active assessment of the justifications for these norms. *Id.* at 626, 679.

⁵ See Harold Hongju Koh, *How to Influence the States: Internalization through Socialization*, 54 *Duke L.J.* 975, 980 (2005) (“[Goodman and Jinks] could study the success of their theory of state socialization along a spectrum of states: from North Korea, to Libya, to China, to Turkey, to the post-September 11 United States. Each of these countries presents a differing level of community participation and a differing degree of issue linkage, in some cases contractual, in other cases community-based. Instead of treating all nation-states as standing at a comparable stage of national evolution, the Goodman-Jinks model should distinguish among different national agendas for global legitimation through human rights compliance.”).

⁶ For example, as a marginalized country facing China's military threat, Taiwan's democratic government has great interest in showing its determination to safeguard human rights and being identified in the same group with other liberal states. Thus, both coercion and acculturation may have a greater role in the context of Taiwan. Moreover, due to its traumatic historical experience of human rights abuses from 1945 to 1987 and its recent strides toward rule of law, Taiwan should be an easy audience for persuasion of human rights values. Yet, on the other hand, its isolated status may also have adverse effects on these mechanisms. Non-participation in the international human rights community has the potential to undermine the effects of persuasion because it reduces the platforms for exchanges between domestic actors and international actors. It may also diminish the effects of acculturation because Taiwan is not embedded in the world legal order and may thus feel less pressure to conform to international

Moreover, these theories call for more scholars to investigate in context whether, why and under what conditions international human rights law improves a state's practice. For example, Professor Koh himself called for further studies on expanding the role of transnational actors, exploring the available fora for norm-enunciation and elaboration, and designing the best strategies for internalization.⁷ Professors Goodman and Jinks also pointed out that their theoretical claims about a state's socialization need empirical studies to illustrate more concretely how states are socialized, i.e., which relevant individuals within states are socialized, in what ways, and under what conditions.⁸ My research is a response to this plea.

If Taiwan fails to internalize the two covenants, my research will identify the factors that contribute to the defeat and may be able to confirm the importance of international interactions under these models. Alternatively, if Taiwan's efforts turn out

norms.

⁷ Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 Yale L.J. 2599, 2656-57 (1997); *See also* Emilie M. Hafner-Burton, *Recent Books on International Law: Mobilizing for Human Rights: International Law in Domestic Politics*, 104 A.J.I.L. 538, 541 (2010) (book review) (reviewing Beth Simmons' research and suggesting that the next step for scholars in this area is to unpack the details of when and how treaties change domestic politics by setting elite agendas, prompting litigation and stimulating mass political mobilization).

⁸ Ryan Goodman and Derek Jinks, *International Law and State Socialization: Conceptual, Empirical, and Normative Challenges*, 54 Duke LJ 983, 984 (2005); *See also* Harold Hongju Koh, *Internalization Through Socialization*, 54 Duke L J 975, 979 (2005) (suggesting that the acculturation theory proposed by Goodman and Jinks be tested as part of an emerging wave of empirical scholarship in international law and international relations); Jose E. Alvarez, *Do States Socialize?*, 54 Duke L.J. 961, 962 (2005) (stating that socialization as a theory of compliance needs case studies to provide context and further nuance).

to be fruitful, my research will reevaluate the significance or insignificance of international interactions and other factors.

2. Contribution of this research

This research should produce a nuanced understanding of the context, processes and challenges of Taiwan's internalization of human rights treaties. It should also identify new options for maximizing the positive effects of these treaties in Taiwan and perhaps elsewhere as well. Moreover, Taiwan's experience should allow us to observe the problems that domestic actors encounter in the absence of international interactions and thus confirm or reevaluate the roles and importance of such interactions under relevant theories of international law.

Taiwan's case study should also be of interest because of the island's transition, since the mid-1980s, from an authoritarian regime to a vibrant democracy. Some empirical studies have found that the "mobilization effects" of human rights treaties are more likely to play out in partially democratic, transitional countries than elsewhere.⁹ This seems particularly true in Taiwan's polarized politics, where the two main political parties bitterly compete with each other to demonstrate their superior

⁹ BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 153 (2009).

adherence to human rights values. Moreover, facing a grave military threat from China, Taiwan has a great interest in showing the world that it is a liberal democracy worthy of international support. Thus, Taiwan offers scholars a distinctive opportunity to understand in detail how the domestic actors of an isolated, threatened, new democracy work actively to adopt international human rights law. Because Taiwan's implementation of human rights treaties has not even been explored in Chinese, not to mention English literature, this case study should fill a gap in scholarship in the international human rights field, which has thus far ignored Taiwan and its relevance to other countries' compliance.

Indeed, despite Taiwan's unique circumstances, strategies employed by Taiwan's domestic players may also serve as a helpful reference for other young democracies and for culturally similar but authoritarian governments. China, in particular, shares Taiwan's history, culture, language and the past of a Leninist party-state dictatorship. Taiwan has transitioned to a democracy while China, despite its remarkable economic and social progress since 1979, has continued to be governed by an authoritarian regime that is deeply influenced by the past. Although Taiwan and China differ in their political system, size, and power, Taiwan's legal progress is still highly relevant and important to China's ongoing reforms as both sides have much in common in their legal system and legal culture and have rapidly increased exchanges in every aspect,

including law, since the reconciliation process was launched in 2008.¹⁰ As China ratified the ICESCR in 2001 and continues to review its laws and regulations to assess whether and when to ratify the ICCPR¹¹, which it signed in 1998, research on how transnational legal process and socialization theory influence Taiwan's ratification of these two covenants and improves human rights practice should serve as an especially valuable reference for China.

3. Statement of the problem

This section will explain the problems that prompted me to look into Taiwan's case study.

In 1967, the ROC's then authoritarian government was among the first signers of the ICCPR and the ICESCR. Yet in 1971, before its ratification of either document, the ROC was excluded from the global human rights regime after the UN General

¹⁰ See generally Jerome A. Cohen, Keynote Speech, *in* Taiwan in Comparative Perspective, Vol. 3, December 2010 (forthcoming 2011) (on file with author) ("Understanding the problems of, progress toward and prospects for achieving justice on the island is also important to foreign policy-makers and opinion-molders, as well as scholars, outside Taiwan who know its political and economic significance. To be sure, China, which hopes eventually to reincorporate the island, has the most to learn from it in the interim, especially since the People's Republic confronts an even greater, more complex challenge than Taiwan in meeting popular demands for justice.").

¹¹ National Human Rights Action Plan of China (2009-2010) (promulgated by the Information Office of the State Council of the People's Republic of China, April 13, 2009), available at http://www.china.org.cn/archive/2009-04/13/content_17595407_26.htm.

Assembly passed Resolution 2758, withdrawing recognition of the ROC as the legitimate representative of the state of China in the UN.¹² In 2009, however, the ROC's now democratic government ratified both major covenants. Not surprisingly, the ratification was refused by the depositary, the UN Secretary-General, because the "People's Republic of China is recognized as the sole legitimate representative of China."¹³ To avoid any doubts about the binding domestic effects of these two covenants, the ROC legislature rapidly passed an implementation law to incorporate them into domestic laws.¹⁴ The implementation law requires all of Taiwan's laws and regulations to be brought in line with the two covenants by December 2011. Thus, Taiwan presents a new, if unique, example of a state's ratification of human rights treaties and the process of implementing them.

However, Taiwan offers a unique case study because of its isolation from the international human rights system. Although the ROC actively participated in drafting

¹² G.A. Res. 2758, 26 GAOR, Supp. No. 29, at 2, U.N. Doc. A/8429 (1971).

¹³ Jenny W. Hsu and Shih Hsiu-chuan, *MOFA confirms UN snubbed covenants*, Taipei Times, November 21, 2009, available at <http://www.taipetimes.com/News/front/print/2009/11/21/2003459039> (last visited January 6, 2011).

¹⁴ 公民與政治權利國際公約及經濟社會文化權利國際公約施行法 [Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights] (promulgated by Legislative Yuan, April 22, 2009, effective December 10, 2009), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=I0020028>.

the Universal Declaration of Human Rights, and signed the ICCPR, the ICESCR and a few other human rights treaties before 1971¹⁵, its interaction with UN human rights mechanisms was subsequently shut off. This put Taiwan in a difficult position: although it is hungry for international recognition, for the past four decades it has largely been excluded from the global human rights system centered in and around the United Nations. This has deprived Taiwan of the international interactions that normally accompany a state's adoption of international human rights law and the potential positive effects of such interactions.

Isolation may account for another distinguishing characteristics of Taiwan's ratification, one that it probably shares with certain other regimes. Its ratification is generally considered to have been an impetuous top-down decision taken with little preparation. There was hardly any public debate over whether to ratify or the possible impact of the ratification. The government did not conduct a comprehensive review of the domestic legal system before ratification, and it attached no reservation or other "understanding" to the covenants.

¹⁵ 我國參加國際人權暨人道公約或宣言一覽表 [List of the international treaties ratified or acceded to by Taiwan], Ministry of Foreign Affairs, <http://www.mofa.gov.tw/webapp/lp.asp?ctNode=1538&CtUnit=95&BaseDSD=59&mp=1> (last visited January 8, 2011).

The lack of discussion preceding this important decision may be attributed to several factors. First, human rights values may now be so widely accepted in Taiwan that the ratification decision was taken for granted. Second, ratification honored one of the new president's election campaign pledges. Third, the government is eager to demonstrate its respect for human rights and to be "connected to the international standards" (yu guoji jiegui¹⁶). Fourth, since Taiwan's ratification was not going to be accepted by the UN, there is little risk of Taiwan being accused of "violating international law" for failure to properly implement the treaties. Fifth, Taiwan has not had much experience in ratifying human rights treaties and has developed little human rights scholarship, so there was not much expertise available to focus on the treaties.

In any event, these circumstances suggest two potential problems: (1) a possible disconnect between the ratification decision and local demands and (2) insufficient technical capacities to implement the covenants. As many other countries face similar challenges, it is worth investigating how Taiwan deals with these challenges when trying to move from ratification to practice.

¹⁶ This phrase is often used in Taiwan government's announcements that it is going to follow international standards.

4. Taiwan's ratification and initial implementation of the covenants

This section will summarize Taiwan's actual ratification process and implementation efforts to date. This will provide essential background for the hypothesis of this research and shed some light on the challenges that have already confronted the local actors.

4.1. The background to ratification

As stated above, before its expulsion from the UN in 1971, the Republic of China was an active participant in the United Nations human rights regime. After that, Taiwan did not attempt to participate in the UN human rights regime until 2000, when the main opposition party, the Democratic Progressive Party (DPP), for the first time won the presidential election.

By then, Taiwan had come a long way from the time when Generalissimo Chiang Kai-shek of the Nationalist Party (KMT) took over the island from Japan in 1945 and then moved his party-state dictatorship there in 1949. The 1949 martial law was lifted in 1987, as blossoming social movements brought various groups to the street to demand all kinds of rights. Consumers, housing advocates, workers, farmers, women, students, and other political activists increasingly left their mark. The 1990s witnessed continuing social ferment, gradual opening of the society, and the beginning of judicial reforms initiated by legal professionals themselves.

In 2000, after Taiwan experienced the first change of presidential power from the KMT to the DPP, the new DPP president, Chen Shui-bian, announced that Taiwan will abide by international human rights law and requested the legislature to approve the ratification of the two covenants.¹⁷ However, his ratification efforts did not succeed because the two parties could not agree on the right to self-determination, and the KMT retained control of the legislature.¹⁸

By the time the KMT regained the presidency in 2008, the island had made further human rights progress. People now generally enjoy a wide range of political rights and civil liberties. Courts are considered independent, despite sporadic corruption scandals. Taiwan's constitutional court, the Council of Grand Justices, has played an indispensable role in advancing critical reforms on human rights and the

¹⁷ Inaugural address of President Chen Shui-bian, May 20, 2000, available at http://news.bbc.co.uk/2/hi/world/monitoring/media_reports/756549.stm (last visited December 20, 2010) ("Besides, we are also willing to promise a more active contribution in safeguarding international human rights. The Republic of China cannot and will not remain outside global human rights trends. We will abide by the Universal Declaration of Human Rights, the International Convention for Civil and Political Rights, and the Vienna Declaration and Program of Action. We will bring the Republic of China back into the international human rights system. The new government will request the Legislative Yuan to pass and ratify the International Bill of Rights as a domestic law of Taiwan, so that it will formally become the "Taiwan Bill of Rights."").

¹⁸ *Taiwan must implement U.N. rights covenants*, Taiwan News, April 2, 2009, available at <http://www.allvoices.com/s/event-2878261/aHR0cDovL2RhaWx5LnRhaXdhbm5ld3MuY29tLnR3L2V0bi9uZXdzX2NvbnRlbnQucGhwP2lkPTkwOTE1MCZhbXA7bGFuZz1lbmdfbmV3cyZhbXA7Y2F0ZV9pbWc9NDYuanBnJmFtcDjYXRlX3Jzcz1uZXdzX0VkaXRvcmlhbA=> (last visited January 8, 2011).

rule of law since the 1990s. Lawyers now enjoy hard-won autonomy and are able to defend their clients robustly. Civil society has been able to act freely and is often critical of the government. The transition from authoritarian to democratic government had largely been made.

On the international stage, however, Taiwan-related developments have been less optimistic. Taiwan has not been able to participate in international organizations or treaty regimes, with a few modest exceptions, the most significant of which is the WTO. Yet, to gain WTO entry, it had to apply as a customs territory, not as a state. As to the international human rights treaty system, the door has remained completely closed.

4.2. Ratification and efforts to implement the covenants

After Taiwan went through a second successful change of presidential power in the 2008 election, this time from the DPP back to the KMT, in April 2009, President Ma Ying-jeou honored his presidential campaign pledge by mobilizing the KMT-controlled legislature to approve the long-awaited ratification of the two covenants. It also adopted the Implementation Law¹⁹, which stipulates that “Human rights protection provisions in the two covenants have domestic legal status.” That

¹⁹ Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, *supra* note 14.

Law requires that “all laws, regulations, directions and administrative measures incompatible with the two covenants should be amended within two years after the Law enters into force,” which implies that the legal status of the two covenants is superior to that of other domestic laws. The Law also requires that the international legislative purposes underlying the covenants and the interpretations made by the treaty bodies be referred to when the two covenants are applied. This mandates that domestic law-declaring fora follow the international law-declaring fora in their interpretations. The Implementation Law came into effect on December 10, 2009.

The government agency in charge of implementation is the Ministry of Justice, which is mainly responsible for coordinating proposed amendments to the laws and regulations, compiling human rights training materials, organizing training sessions for government officials, and conducting research projects and other activities.²⁰ All of the laws and regulations that are incompatible with the two covenants are expected to be revised by the deadline of December 2011.²¹ Moreover, the Ministry published educational materials and conducted training for officials in 2010.

²⁰ 總統裁示 [President Ma Ying-Jeou’s instructions], February 11, 2009 and April 24, 2009, published in 兩公約總論講義 [Training material on the two Covenants], Ministry of Justice (on file with author).

²¹ In December 2009, the Ministry listed a wide range of 219 laws and regulations that may be incompatible with the two covenants. Some new laws have been enacted, such as the

The Implementation Law also requires that a domestic reporting system be established along lines similar to that prescribed by the two covenants, although Taiwan cannot submit the reports to the UN treaty bodies or participate in the Universal Periodic Review at the UN Human Rights Council. Thus, a Human Rights Advisory Committee (the “Advisory Committee”) was established under the Presidential Office in December 2010, and one of its responsibilities is to work with civil society in preparing national human rights reports and reviewing them.²²

Despite the government’s efforts, the institutional arrangement regarding human rights reports seems confusing and controversial. Many civic groups argue that the government should draft its own reports while NGOs prepare their own “shadow”

Speedy Criminal Trial Act. Some laws have been revised, such as the Criminal Procedural Law’s guarantee of the lawyer’s right to meet with detained clients in the course of interrogation. As of November 2010, 61 laws and regulations remained to be revised. 法務部新聞稿 [Press release of the Ministry of Justice], December 13, 2010, <http://www.moj.gov.tw/public/Attachment/0121316292496.pdf> (last visited December 20, 2010) and 各機關主管法令及行政措施是否符合公民與政治權利國際公約、經濟社會文化權利國際公約規定檢討清冊之辦理情形 [Progress report on government agencies’ review of the laws, regulations and administrative measures that are incompatible with the two covenants], Ministry of Justice, December 8, 2010 (on file with author).

²² 總統府新聞稿 [Press release of the Presidential Office], December 10, 2010, <http://www.president.gov.tw/Default.aspx?tabid=131&itemid=23046&rmid=514> (last visited January 8, 2011).

reports. In addition, they suggest that this reporting system is not really in line with the spirit of the covenants and that prestigious experts from the international human rights community should be invited to review Taiwan's reports.²³ These developments demonstrate that, thus far, efforts to address Taiwan's unique implementation challenges are insufficient.

A few lawyers have started to invoke legal arguments based on the covenants in litigating cases, and the courts have sometimes endorsed their advocacy. Between December 2009 and November 2010, there were 25 court judgments that cited the two covenants.²⁴ However, the relevant legal arguments were generally quite primitive; they invoked provisions in the covenants without elucidating their meaning or citing relevant interpretations or case studies. Moreover, since Taiwan's courts handle over a hundred thousand cases every year, 25 judgments only constitute a drop in the bucket. It seems that both the lawyers and the courts have been slow to respond to their new responsibilities and opportunities.

²³ 一年又七個月來政府落實兩公約及其施行法之檢討 [Review report on the government's measures to fulfill the two covenants and the implementation law for the past one year and seven months], Covenants Watch, December 10, 2010, available at <http://www.tahr.org.tw/files/2010report.pdf> (last visited January 8, 2011).

²⁴ *id.*

Taiwan's constitutional court, the Council of Grand Justices, warrants a special word. In 1985, for the first time, it invoked the Universal Declaration of Human Rights in the reasoning of one of its interpretations. From that time until ratification, it issued seven interpretations mentioning international human rights documents.²⁵ Yet, as a scholar has pointed out, there seem to be no criteria for whether and when it will adopt international human rights law arguments.²⁶ Since the 2009 ratification, the Council has not rendered any interpretation citing either of the two covenants.

There are initial signs of civil society's mobilization for implementation.

Forty-two social groups, including the Taiwan Bar Association and leading NGOs, have formed an umbrella organization called "Covenants Watch", which aims to monitor government's implementation of the two covenants, provide training, file litigation of significance, and advocate for ratification of more human rights treaties.

In a detailed investigative report published in December 2010 that examines post-ratification progress, Covenants Watch concluded that the government has thus

²⁵ Chang, Wen-Chen, *An Isolated Nation with Global-Minded Citizens: Bottom-Up Transnational Constitutionalism in Taiwan*, National Taiwan University Law Review, Vol. 4, No. 3, 203, 212 (2009), available at SSRN: <http://ssrn.com/abstract=1573735> (pointing out as of September 1, 2009, that, out of 664 interpretations made by the Council, there were only seven interpretations that in the holdings and/or majority opinions referred to international human rights treaties or other documents).

²⁶ Liao Fu-te, *台灣與國際人權條約* [*Taiwan and international human rights treaties*], 月旦法學教室 [Taiwan Jurist], vol. 61, 63 at 70 (2009).

far “failed the test” of implementation because of insufficient preparation and slow progress, and proposed several recommendations.²⁷ Moreover, although lawyers generally have been slow to invoke the covenants, NGOs have recently started to include legal arguments based on the covenants in some high-profile cases they initiated in 2010.²⁸

At this early stage, the domestic dynamics described above present a picture of modest post-ratification mobilization and show some of the innovative implementation strategies that Taiwan's actors have devised to compensate for their difficulties. This research will also suggest alternative or additional strategies that should be considered to deal with this challenge.

²⁷ 一年又七個月來政府落實兩公約及其施行法之檢討 [Review report on the government's measures to fulfill the two covenants and the implementation law for the past one year and seven months], *supra* note 23.

²⁸ For example, a small yet active NGO, the Taiwan Alliance to Abolish the Death Penalty, made ICCPR-related arguments in death penalty cases that were pending at the Council of Grand Justices. Regrettably, the cases were dismissed by the Council for procedural reasons, and thus the Council did not need to confront the relevant ICCPR provisions. In another case challenging application of the Assembly and Parade Law, a district court accepted the arguments of the Judicial Reform Foundation, a leading NGO, including those based on the ICCPR, and filed an application with the Council of Grand Justices asking it to review the constitutionality of the Assembly and Parade Law. This case is considered a litmus test of whether, when and how the Council will apply the covenants now that ratification has occurred.

5. Methodological strategies

I will first analyze the theoretical and empirical literature about state compliance in the human rights field and focus on each model's explanations about why states ratify human rights treaties and how treaties influence practice.

Second, to document the processes of Taiwan's ratification and implementation, the research will (1) review published materials, including academic articles, news reports, official documents, laws and regulations, legislative records and court judgments, and (2) conduct interviews with relevant actors. I will use Professor Koh's categories of legal, political and social internalization to trace developments and identify relevant actors (e.g., legal academics, judges, prosecutors and lawyers, for legal internalization; policy makers and government officials, for political internalization; and the NGO community, for social internalization).²⁹

Generally, government records, court judgments and academic materials in Taiwan are easily accessible. However, because Taiwan just ratified the two covenants in 2009, and there has been little public and academic discussion in Taiwan on

²⁹ Beth Simmons also identified three ways by which human rights treaties affect domestic politics, i.e., setting elite agenda, prompting litigation and stimulating mass political mobilization, which would similarly involve these actors, including policy makers, government officials, legal professionals and academics, and civil society. *See supra* note 2.

international human rights for the past four decades, much knowledge about Taiwan's domestic situation will need to be drawn from the interviews with relevant actors.

To conduct quality fieldwork, I will review the literature on methodology in law and society research, especially qualitative research methods, to consider the range of methods and techniques that can be used in my interviews and to design in-depth research questions. My goal is to understand the actors' attitudes toward the covenants and international human rights law in general, their actions in the process of ratification and implementation, any interactions with international organizations and individuals, the challenges they encounter, and their strategies.

6. Possible difficulties

Taiwan ratified the two covenants in May 2009. While I will research the early years of post-ratification development, more long-term effects will inevitably extend beyond the time of this research, which is expected to extend from the fall of 2011 to the spring of 2014. Obviously, definitive determination of the extent to which international norms, as well as the values embodied in these norms, are internalized requires long-term observation. Later developments may change the conclusions of this research from the initial period.

Yet this can often be said of research. Moreover, documenting the processes during the first five years following ratification has its virtues. One is that I will be able to obtain detailed, accurate information while the major challenges are part of the relevant actors' daily experiences. Five years should be a suitable period for at least preliminary analysis.

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