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RECOGNITION AND ENFORCEMENT OF TAIWAN'S COURTS' CIVIL JUDGMENTS ABROAD: A PRACTICAL CASE

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SOMMARIO: 1. Introduction. — 2. Arguments of law and position of the Court of Appeal. — 3. Italian jurisprudence and doctrine. — 4. Precedents in the international landscape. — 5. Conclusions.

Abstract

This article examines a practical case occurred in 2018, where an application for recognition and enforcement of a civil judgment issued in Tapei was brought before the *Corte d'Appello di Roma*. The opponent's main argument was Taiwan's derocognition by the Italian government. In fact, according to the opponent, as Italy interrupted diplomatic relations with Taiwan on 6 November 1970, the lack of formal recognition makes all judgments issued by its Courts unrecognizable.

The Italian Court, on the contrary, ruled in favor of the applicant, arguing that Taiwan enjoys essential sovereignty over its territory and, therefore, the lack of formal recognition wasn't an issue to which any legal relevance should be attributed.

The article also proposes a critical review of the Italian judgment's motivation from a comparative law point of view.

1. *Introduction.* — Unlike the arbitration award whose circulation is facilitated by the United Nations Convention on the Recognition and En-

forcement of Foreign Arbitral Awards [1], the circulation of a final judgment issued by the national court of a different State than the one in which recognition and enforcement are sought, is left — in the absence of an ad hoc widely accepted international convention — to the laws of the latter state. There is therefore, by the courts of the receiving state, a preliminary assessment aimed at evaluating compliance of the judgment with internal mandatory procedural guarantees and a subsequent assessment relating to the compatibility of the decision with internal public order.

In the case of a judgment issued in Taiwan, the situation is even more complicate.

In fact, the peculiar international status of the island, following United Nations Resolution No. 2758 [2] and the generalized derecognition from the international community that started from then on, is likely to create uncertainties also with reference to the judgments issued by Taiwanese courts.

The case described in this article took place in Italy. Formal diplomatic ties between the Republic of China and Italy were officially terminated in 1970, with the recognition of the People's Republic of China as the sole representative of the whole China (and therefore also of the island of Taiwan). In Italian political language, whenever representatives of the institutions are called to make declarations regarding relations with Taiwan, a foreword on Italy's compliance with the "*one-China policy*" is always blatantly reiterated. It can be said that Italy has adopted an approach to the issue of Taiwan international status much closer — if not coincident — to the Chinese One-China Principle [3] than to the more prudent US One-China Policy [4].

Although, as mentioned, Italy's adherence to the One-China Policy

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[1] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958, entered into force 7 June 1959.

[2] General Assembly, *Restoration of the lawful rights of the People's Republic of China in the United Nations*, A/RES/2758 (XXVI).

[3] See F. Chiang, *The One-China-Policy: State, Sovereignty and Taiwan's International Legal Status*, New York, 2018, part. III, chap. VII, par. 2, loc. 7175 (Amazon Kindle Edition).

[4] "The US officials and commentators often used the term 'one-China policy' with different connotations. At times, it was said that the 'one-China policy' was the policy announced in the Shanghai Communiqué. At other times, it was said that the policy of the United States on Taiwan was 'based on one-China policy and Taiwan Relations Act', implying that the one-China policy was a combined policy announced in the three Joint Communiqués. More recently, the United States high officials frequently said that the US's policy on Taiwan was 'a one-China policy', without mentioning the 'Taiwan Relations Act', but in the ensuing explanation of the policy, mentioned the Act as if the Act was a part of the 'one-China policy'.

as outlined above is undisputed and is always mentioned as a premise on every occasion when representatives of the Italian Government find themselves talking about Taiwan [5], the relations between Italy and

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For the purposes of discussion in this work, the term 'one China policy' refers to the combined policy of the three Communiqué. The term 'one-China policy' as used in this work does not include TRA because the Act is a US statute and while an administration may change its policy, it not only cannot change but is rather obligated to implement a Federal statute.

The One China policy derived from the three Communiqués consists of the following five major propositions. The first proposition is that there is only one State called China. This is the basic proposition of the Shanghai Communiqué, which is the primary among the three Communiqués. The second proposition is that the PRC government is the legitimate government of the State called China. This is the principal proposition of the Second Communiqué. The Carter Administration had just switched the recognition of China's representative government from the ROC to the PRC when it announced the Second Communiqué. The third proposition is that the ROC is not a State separate from China. This is also a proposition in the Shanghai Communiqué. The ROC was not a State, but was recognized as the representative government of the State called China by the United States until 1979. The fourth proposition is that the United States does not recognize the island of Taiwan as Chinas territory. This is a proposition of all three Communiqués. While the Second Communiqué only confirmed the US position in the Shanghai Communiqué that the US Government took notice of China's claim over Taiwan and made no statement about Taiwan's legal status, the Third Communiqué by its language, together with the principles of the TRA and Reagan's Six Assurances, positively implied that Reagan Administration did not consider the island of Taiwan as China's territory. The fifth proposition is that both sides of Taiwan Strait should peacefully settle their dispute. This proposition is derived from the Shanghai Communiqué". *Id.*, loc. 7060.

[5] Italian diplomatic practice tends to reiterate on every occasion the adherence to the One-China policy. For example, the *Scambio di Note tra il Governo della Repubblica Italiana e il Governo della Repubblica Popolare Cinese costituente un'Intesa in materia di apertura dei trasporti aerei tra Italia e Taiwan* (Exchange of notes between the Italian Government and the Government of the People's Republic of China Constituting an Agreement in Relation to the Opening of Air Transport Between Italy and Taiwan, author's translation) dated 2 February 1994, arises from the consideration that establishing a direct air connection between Rome and Taipei "*non avrà ripercussioni sulla politica tradizionale dell'Italia che, come noto, ha riconosciuto la Repubblica Popolare cinese nel 1970. Il Governo della Repubblica italiana conferma la propria linea politica secondo cui il Governo della Repubblica Popolare cinese è l'unico Governo legittimo della Cina, Taiwan è parte integrante del territorio cinese. Il Governo della Repubblica italiana non avvierà alcun rapporto o contatto ufficiale con le autorità taiwanesi, né firmerà alcun accordo intergovernativo o altri documenti di natura ufficiale con Taiwan nel settore dei trasporti aerei*" (will not have repercussions on the traditional politics of Italy which, as is known, recognized the People's Republic of China in 1970. The Government of the Italian Republic confirms its policy that the Government of the People's Republic of China is the only legitimate Government of China. Taiwan is an integral part of the Chinese territory. The Government of the Republic of Italy will not enter into any relationship or official contact with the Taiwanese authorities, nor will it sign any intergovernmental agreement or other documents of an official nature with Taiwan in the air transport sector).

Furthermore, at the time this article was drafted, the Corona virus epidemic that started from Wuhan and spread throughout China was booming. To contain the risks of contagion, an order from the Italian Ministry of Health blocked all flights to and from China from 31 January 2020 and for the following ninety days. By assimilating Taiwan to Hong Kong and Macao, all

Taiwan have never actually stopped nor they have ever been characterized by hostility [6]. Following the US example of the American Institute in Taiwan [7], Italy has also installed its own representative office on the island, which, although not being formally an embassy, surrogates many of its functions. Finally, in 2015 Italy approved Law No. 62/2015 "*Rules under special taxation arrangements regarding relations with the territory of Taiwan*" [8] which is, in so far, the only Italian anti-double taxation measure adopted by law instead of by means of a bilateral State treaty.

The complexity of the relationship between Italy and Taiwan was the background for an interesting case brought to the attention of the *Corte d'Appello di Roma*, concerning the possibility for that Court to proceed with the recognition and enforcement of a judgment issued in Taiwan by the Court of New Taipei and already become *res judicata* according to the island's law.

On that stage, the proceeding had seen a European citizen opposed to

routes to and from the island have also been closed due to the same provision. See Pompili, "Il pasticcio del virus", Il Foglio, 4 February 2020, available at <https://www.ilfoglio.it/esteri/2020/02/04/news/il-pasticcio-del-virus-299958/?underPaywall=true>.

[6] This, however, does not mean that there have been no moments of conflict. In addition to what has already been said with reference to the facts that led to the temporary abolition of the air routes to Taiwan, see *supra* note 5, another recent case of conflict occurred on the occasion of EXPO 2015 held in Milan. On this occasion Taiwan decided not to participate in the event after reviewing an Italian government proposal that it should have presented itself as a "corporate entity" at the world fair rather than a nation. See H. Shih, *Taiwan shuns Milan expo after sovereignty squabble*, Taipei Times, 26 November 2014, available at <http://www.taipeitimes.com/News/front/archives/2014/11/26/2003605313>.

[7] However, here must be noted that while the American Institute in Taiwan is a wholly owned subsidiary of the Federal government of the United States in Taiwan with Congressional oversight, the Italian Economic, Commercial and Cultural Promotion Office based in Taiwan is more para-diplomatic, being formally a special diplomatic delegation created on the basis of art. 35 of the decree of the President of the Republic of January 5, 1967, no. 18 "Order of the Administration of Foreign Affairs"; see C. Curti Gialdino, *Diritto diplomatico-consolare italiano ed europeo*, 5th ed., Pioltello, 2018, p. 193. It is important to underline how that of Taiwan is the only Italian special diplomatic delegation ever created.

[8] This is essentially an anti-double taxation treaty implemented by law rather than with the usual bilateral treaty instrument due to Taiwan's particular international *status*. It is already a widely known stopgap in Europe, since eleven European countries before Italy had made agreements against double taxation with Taiwan by adopting laws: Belgium, Denmark, France, Germany, Macedonia, the Netherlands, the United Kingdom, Sweden, Switzerland, Slovakia and Hungary.

This law defines Taiwan as a "territory" and, deviating from the practice generally followed by Italy with other States on the matter in question, it issued the law under discussion following the stipulation of a "non-binding agreement" between the Italian Office for Economic, Commercial and Cultural Promotion in Taipei and the Representative Office of Taipei in Italy.

a Taiwanese company, plaintiff and defendant respectively, and had ended with the Taiwanese company being sentenced to pay a significant amount of money. When the judgment became *res judicata*, as all degrees of appeal were completed, the plaintiff, having learned that the Taiwanese company was holding important receivables in Italy, filed two parallel proceedings: with the first, the plaintiff sought to be granted a precautionary measure by the *Corte d'Appello di Roma* that could prevent the Taiwanese company to dispose of or collect those credits; with the second, the plaintiff applied to the same *Corte d'Appello di Roma* [9] for the recognition in Italy of the judgment of the Court of New Taipei to proceed with its enforcement by means of attachment of those receivables.

During the precautionary procedure first, and then during the procedure for the recognition of the judgement issued in Taipei, the defence of the Taiwanese company objected by claiming that the Italian court could not recognize the judgment, since if it emanates from a country not recognized by the government of Italy, the requirements laid down by the Italian International Private Law cannot not be met.

2. *Arguments of law and position of the Court of appeal.* — Before examining how the Court of Appeal of Rome resolved the matter, it is appropriate to review the arguments put forward by the Taiwanese company in support of the non-recognizability of the Taipei judgement.

First of all, it is argued that Article 64 and Article 67 [10] of Italian Law

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[9] Whose exclusive jurisdiction on the recognition and enforcement of foreign judgments is set forth by art. 30, par. 2 of Law Decree no. 150 dated 1 September 2011.

[10] Art. 64 — Recognition of foreign judgements "1. A judgement rendered by a foreign authority shall be recognized in Italy without requiring any further proceedings if: *a*) the authority rendering the judgement had jurisdiction pursuant to the criteria of jurisdiction in force under Italian law; *b*) the defendant was properly served with the document instituting the proceedings pursuant to the law in force in the place where the proceedings were carried out, and the fundamental rights of the defense were complied with; *c*) the parties proceeded to the merits pursuant to the law in force in the place where the proceedings were carried out, or default of appearance was pronounced in pursuance of that law; *d*) the judgement became final according to the law in force in the place where it was pronounced; *e*) the judgement does not conflict with any other final judgement pronounced by an Italian court/authority; *f*) no proceedings are pending before an Italian court between the same parties and on the same object, which was initiated before the foreign proceedings; *g*) the provisions of the judgement do not conflict with the requirements of public policy (ordre public)".

Art. 67 — Enforcement of foreign judgements and rulings relating to voluntary jurisdiction, and challenging of recognition "1. Whenever foreign judgements or rulings relating to voluntary jurisdiction are not complied with or challenged as to their recognition, as well as where forceable execution is required, any person concerned may ask the Court of appeals

No. 218, 31 May 1995, "*Riforma del Sistema italiano di diritto internazionale privato*", are impedimental, since they would require that the recognition of the foreign judgement necessarily presupposes the prior formal recognition (*i*) of the authority issuing the measure, and (*ii*) of the State's Authority in whose name the judgement was issued.

Therefore, according to the defendant's arguments, Taiwan's lack of international personality would prevent the application of the Italian rules of private international law, rules that — always according to the defendant — postulate the prior formal recognition by the Italian government.

The above arguments seem to refer to a tendency of Italian jurisprudence of merit [11] whose last appearance dates back to 1971, even before the entry into force of Italian Law No. 218/1995. This approach, in turn, would draw to the fullest extent on the so-called "constitutive theory" of recognition, a theory also disavowed by jurisprudence in the years immediately following its publication [12].

The Court of Appeal of Rome called to decide upon the application for precautionary measure, solved the issue by means of a twofold argument. Firstly, it focused on the legal value of the formal recognition of a State by the international community and by the State in which the judgement is to be enforced. Secondly, the Court first addressed the issue of the sovereignty exerted by the Government of Taiwan on its territory, then it analysed a series of factual elements demonstrating the actual exercise of that sovereignty.

According to the Court, for the purposes of applying the rules of private international law, it would not be decisive that the State in which

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(Corte d'appello) of the district where enforcement is sought to determine the prerequisites for recognition.

2. The foreign judgement or voluntary jurisdiction ruling, together with the ruling acceding to the request referred to under paragraph 1, shall entitle to enforcement and forcible execution.

3. If the foreign judgement or ruling is challenged during a proceeding, the court seized shall render a decision effective only in relation to this sole proceeding".

A full translation of l. no. 218 of 31 May 1995, *Riforma del Sistema italiano di diritto internazionale privato*, is available on *HeinOnline*, *Reform of the Italian System of Private International Law*, International Legal Materials, Vol. 35, 1996, p. 765.

[11] Trib. Bolzano, 21 May 1971, in *Foro Italiano* 1972, I, p. 226, see also *infra* par. III.

[12] C. Cass., sez. I civile, *Warenzeichenverband Regekungstechnik E.V. v. Min. industria, commercio e artigianato*, 7 February 1975, No. 468, in *Foro Italiano*, 1975, I, p. 1114; C. Cass., sez. I pen., *Criminal Proceedings against Yasser Arafat and Kalaf Salah*, 1 June 1985, No. 1981, in *Foro Italiano* 1986, II, p. 277.

the judgement was issued was formally recognized by other States and in particular by the State in which the judgement should be enforced. Neither the lack of diplomatic relations can be regarded as legally relevant, since the recognition by other States has no constitutive value, given that such recognition is "*an act having a merely political value*".

What is relevant, also according to the Court of Appeal, is the judge's ascertainment of the actual presence of the element of sovereignty. According to the Court, sovereignty belongs to the realm of known facts (since it is inferable from elements within the reach of a person of average culture), and it is widely known that Taiwan exercises the typical sovereignty of the "State" in an effective and independent manner on the population of the island of Taiwan. Always according to the Italian Court, the people of Taiwan enjoys a constitutional system dating back to 1947 (with a President of the Republic elected by direct universal suffrage, a Council of Ministers, a Parliament of 164 members elected by universal suffrage every four years); it has an army; it mints its currency; it has its own capital. By dealing with effectiveness of that sovereignty inferable from well-known facts, the Court of Appeal found significant confirmation of such in the text of Italian Law No. 62 of 7 May 2015, "*Rules under special taxation arrangements regarding relations with the territory of Taiwan*". Such text, while avoiding the expression "State of Taiwan" replaced by "territory of Taiwan", at Art. 2 refers to the Ministry of Finance of Taiwan, that is the body which, in all evidence, presupposes the existence of a state organization. Another element considered in the text of the decision of Rome's Court of Appeal is contained in Art. 25 of the same anti-double taxation law, which refers to the "appeals provided for in the national legislation of these territories" and to the "nationality" of taxable persons, thus using terminology which presupposes and recognizes the existence of a "national tax legislation" and a nationality ("territory of which it has nationality") with reference to the population of Taiwan. According to the Court of Rome, therefore, the elements previously taken into consideration, globally, would be indicative of the "undisclosed" awareness of the Italian legislator of the *de facto* sovereignty of Taiwan's government on its territory [13].

[13] In the passage referred to just above the Court is careful not to make any comment on the oddity that the l. dated 7 May 2015, No. 62 "*Rules under special taxation arrangements regarding relations with the territory of Taiwan*" is the only case ever recorded in Italy in which

These considerations, taken as a whole, would therefore infer an awareness of the Italian legislator with reference to the *de facto* sovereignty of Taiwan. As a consequence the Court of Appeal of Rome issued an order granting those precautionary measures sought by the plaintiff.

Following the filing of a complaint against such order, those same arguments that represented the legal ground of the first proceedings, were subject to review by the same Court, this time in a collegial composition. Also this time the arguments of the Taiwanese defendant were rejected, but with a more concise argument. The judging panel focused exclusively on the legal value to be attributed to the absence of formal recognition of Taiwan by Italy (and by the international community), without going into the analysis of factual elements or circumstances that would be indicative of an existing *de facto* sovereignty. The key issue in this new proceeding was therefore limited to decide whether the lack of recognition could be held as essential when deciding over a country's international personality. According to the Court, for the purposes of ascertaining the international personality of a State, the two requirements of *actuality* (in the sense of the actual exercise of the state/organization on a territorial community) and of *independence* (that is, the government organization does not depend on another State) must be satisfied. An organization of government that actually and independently exerts its power over a territorial community becomes an international legal person automatically without any need for third parties' consent, which may be exteriorized or not into an act of formal recognition. Moving from this assumption, the judging panel concludes that the recognition (or lack of recognition) of a State by another State has very limited legal relevance. The new order issued at the end of this second proceeding reads: "*For international law, recognition is a purely lawful act, as merely lawful is the non-recognition: both do not produce consequences. The recognition belongs, in short, to the realm of politics; it shows nothing more than the intention of establishing friendly relations, of exchanging diplomatic representations, and of initiating more or less intense forms of cooperation by concluding agreements. When the recognition's legal value is denied, this rejects the argument that it is constitutive of the international personality*".

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a measure against double taxation is adopted by means of a law and not by means of a bilateral treaty.

The position adopted by the Court of Appeal in this new decision endorses in a more coherent way — in comparison to the order issued at the end of the first proceeding — the "declarative" theory of recognition. Therefore, the new order concludes on this point with the finding that there can be no doubt as to whether Taiwan must be treated as full international legal person. Consequently, from this viewpoint there is no obstacle to recognize judgements issued by the island's courts into the Italian judicial system.

3. *Italian jurisprudence and doctrine*. — One of the arguments raised by the plaintiff for the recognition of the Taiwanese judgement, not expressly incorporated by the judging panel in the text of the decision issued at the end of the respective judgement stage, relates to a literal element found in Italian Law No. 218/1995, Reform of the Italian system of private international law. In the entire body of the law and in the rules of reference contained therein, the term "law of the State" is constantly used to identify the referenced entity. There is only one exception: Article 64 "Recognition of foreign judgements", where the legislator is careful not to use such wording, preferring instead "law of the *place* where the trial was held". This cannot be considered random chance, but rather a conscious choice of the legislator from 1995 who, well aware of the complexities entailed by the uncertain outlines of the definition of "State", decided to entrust the judge with a measure of control that did not involve resolving complex issues of international law [14].

In Italy, the Court called to resolve an issue relating to inter-State relations has no obligation to address a precise question to the Ministry of Foreign Affairs and International Cooperation (nor in cases in which object of the dispute is restricted to private rights, neither in cases where international public policy issues are at stake [15]). However, irrespective of whether or not there is a mechanism of coordination between the

[14] Moreover, although it cannot be claimed with confidence that the wording of art. 64 of Law No. 218/1995 is some way related to the particular international status of Taiwan, it cannot even be excluded with certainty that this did not happen, also taking into account the fact that in 1995, year of issuance of the Reform of the Italian system of private international law, the Taiwan's issue was already well known.

[15] This outlines in Italy a scenario that is entirely different from that of other jurisdictions, where the so-called "*one voice doctrine*" is explicitly transposed — or at least adopted *de facto* by means of mechanisms of interaction between powers of the State. On the such topic, see S. H. Cleveland, "Crosby and the One-Voice Myth in U.S. Foreign Relations", *Villanova Law Review*, Vol. 46, 2001, p. 975, available at: <https://digitalcommons.law.villano

judiciary and the executive, the latter's official position on the point was perfectly known to the Court at the time of this decision, since it was introduced in the judgement by the Taiwanese defendant who annexed a specific note of the Ministry of Foreign affairs to its pleadings. The note stated that: *"In compliance with the 'One-China Policy', Italy, like other countries of the European Union, recognizes only the People's Republic of China, in its integrity and territorial sovereignty, as the only state entity of China. Consequently, Italy does not have diplomatic relations with Taiwan, but develops pragmatic economic-commercial and cultural collaborative relationships with the island, facilitated by the presence of a Taipei Representative Office in Rome and an Italian Special Diplomatic Delegation in Taiwan (called the 'Italian Economic, Commercial and Cultural Promotion Office') [...] There are no bilateral agreements on the recognition of documents, nor do multilateral agreements apply, since Taiwan is not a subject of international law [...] The Italian Economic, Commercial and Cultural Promotion Office provides [...] on the basis of courtesy and reciprocity [...] some administrative procedures, such as, for example, the legalization of Taiwanese documents as well as the issuance of declarations of value relating to school and academic qualifications [...] In the absence of diplomatic relations [...]in any case, assistance to individual citizens, public bodies and private companies in all sectors, from commercial to cultural and tourist relationships [...]*".

Nevertheless, the orders issued by the Rome Court of Appeal do not attribute to the official position of the Ministry of Foreign affairs a decisive importance for resolving the issue under review. Instead it labels the issue of the lack of formal recognition of Taiwan as a false problem. This is by virtue of a full adherence to the "declarative" theory of States' recognition.

The diatribe between declarative theory and constitutive theory arises from the question of whether the recognition of a State by other States and/or by the international community should be given legal or solely political value. According to the "constitutive" theory, the recognition *creates* the international personality of the recognized entity. On the contrary, according to the "declarative" theory, the recognition can only ascertain the possible acquisition of the international personality of

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va.edu/vlr/vol46/iss5/3>. See also, MOORE, "Beyond One Voice", *Minnesota Law Review*, Vol. 98, 2014, p. 953.

the recognized entity, an acquisition that it would have irrespective of the formal recognition since in reality the entity is effectively existent and independent [16]. By virtue of this contraposition, according to the first theory, the acquisition of international personality depends on a legal act (precisely the act of recognition), while according to the second, acquiring the personality is a process of fact that creates a legal situation that the pre-existing states can only acknowledge.

We can affirm, without fear of contradiction, that the order of Rome's Court of Appeal fully adheres to the declarative theory and attaches to the act of recognition a purely political significance [17].

The very few traceable precedents in the case of Italian jurisprudence also endorse this preference for the declarative theory.

In fact, only one single precedent — mentioned also by the Taiwanese defendant in the case that inspired this article — leans towards the constitutive theory. We are referring to *Tribunale di Bolzano* 21 May 1971 which stated that: *"A divorce decree delivered by the court of a foreign State (the so-called German Democratic Republic) that is not recognized by the Italian State has no legal value for the purposes of Art. 3, paragraph 2, subpar. e) of Italian Law no. 898 of 1 December 1970. Since the foreign State is not recognized, its court is, in fact, non-existent and non-existent are its pronouncements* [18]."

The above decision, however, did not find confirmation in the development of the subsequent jurisprudence, which — albeit understandably sparse given the particularity of the matter — expressed itself in a manner decidedly open to the possibility of recognizing judgements issued by the authorities of countries with uncertain international *status*. In particular, the Italian Supreme Court of Cassation in the past addressed the matter decisively, with two judgements that are worth mentioning.

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[16] See C. Focarelli, *Trattato di diritto internazionale*, Assago, 2015, p. 103.

[17] Political in a twofold sense "and namely in the sense that it is a free act, which a State can carry out or not carry out without violating international law, and in the sense that any recognition does not produce in itself the personality of the recognized entity, just as the denial does not exclude it. An entity claiming to be a State may not actually be such even if recognized by one or more States, whereas, on the contrary, it may be a State despite the fact that it is not recognized by one or more States. For example, Palestine is recognized by several States, but is not considered a State in internal jurisprudence, whereas Taiwan is considered a State in internal jurisprudence even if it is not officially recognized by the majority of States" (author's translation). *Id*., p. 104

[18] See *supra* note 11.

In the first[19] 19, the Court expressed itself in the following terms: "*In accordance with the vastly prevalent doctrine in Italy and throughout Continental Europe, it should be considered that, regarding relations of private international law, it is irrelevant whether the State of the court maintains normal diplomatic relations with the foreign State covered by the provision of private international law to be applied or that the latter has not been recognized by the former. The necessary and sufficient condition for such application is the effective existence of the foreign judicial system, whether or not the State from which it emanates is recognized (aside from the rules on reciprocity and international public order)*."

The second [20] also expresses itself in terms that in a similar way suggest the full adherence of the Supreme Court to the theory that grants only declarative effects to the recognition, since it establishes that "*for the purposes of International personality, it is irrelevant that a certain entity has been recognized as de facto or de jure by some state government, given that the recognition is not constitutive of that personality, but belongs to the realm of politics and is devoid of legal consequences*" [21].

Even the criminal jurisprudence contributed to the definition of the topic in question. Two judgements in particular are worthy of mention, if only for the media exposure given to their proceedings. In the criminal proceedings against Yasser Arafat and Kalaf Salah [22], respectively President and Security Officer of the Palestine Liberation Organization (PLO), the Court of Cassation was called to assess whether Yasser Arafat could be granted the immunity recognized to foreign Heads of State. On that occasion, the Court denied the applicability of that legal paradigm

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[19] 19 C. cass., sez. I civ., 1 February 1975, No. 468, see *supra* note 12.

[20] C. cass, sez. I pen., 1 June 1985, No. 1981 see *supra* note 12.

[21] In addition to the *Corte di Cassazione*, the territorial Courts of merit also began to adopt the theoretical approach modelled by the Supreme Court, albeit with less in-depth analysis than the subject deserved. In *Fratelli Martinez v. Thai Airways, Alitalia*, Court of Naples, 23.4.1983, no. 2850, the following case was presented. "*A shipment of goods was sent from Taipei (Republic of China) to Naples. The international leg of Taipei/Rome was carried out by Thai Airlines and Alitalia carried out the Rome/Naples leg of the carriage. When the goods arrived the consignee noticed that merchandise was missing and brought suit against both carriers. Even though the Republic of China was not party to the Warsaw Convention, the Warsaw Convention was applicable on the assumption that a carriage is international when only the departure or only the destination are in a contracting State, if there is a stopping place in another State, even if that State is not a party to the Convention. [...]*" in *Air Law*, Vol. XIV, number 4/5, 1989, p. 213.

[22] *Corte di Cassazione (Sez. I Penale)*, 25 June 1985, No. 1981, see *supra* note 12. For a comment of this judgment, see T. Treves, *Diritto Internazionale problemi fondamentali*, Milano, 2005, p. 186-188.

because the customary international standard which assures the inviolability of personal freedom and immunity from criminal jurisdiction presupposes that: "*the entity — in favour of whose head the derogation is invoked — is qualified as a sovereign organization, equivalent in terms of structure, personal and spatial components, and for the characteristics of actuality, to that of a State. According to international law, States are entities that, in full independence, exercise their power of effective government on a community established in a territory, so it should be considered an acquired principle that statehood is expressed by the triad of people-government-territory [...]*".

The Court of Cassation therefore stated that the PLO could not be regarded as a sovereign organization equivalent to a State because it lacked the requirement of territorial sovereignty which could not be replaced by forms of control over refugee camps, which were still exercised with the consent and under the sovereignty of the host State. The limited nature of the personality of the PLO prevented, therefore, the applicability of the customary international rule on the jurisdictional immunity of the foreign Heads of State.

Therefore, returning to the topic that occupies us, Palestine, although recognized by several States, is not considered a State in Italian jurisprudence for lack of actuality, while Taiwan — as evidenced by what is reported in Part I — is considered a State in internal jurisprudence even if it is not officially recognized by the majority of States.

Another very interesting case, also pertaining to criminal jurisprudence, is that of former Montenegrin President Milo Đukanović. Accused of criminal conspiracy for tobacco smuggling, in 2004 the Court of Cassation [23] was called to rule on the existence of the international immunity of the President of Montenegro. Beyond the concrete events that characterized the affair [24], the judgement in question is characterized by a long argument on the subject of qualification of "State".

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[23] C. cass, sez. III pen., Criminal proceedings against Milo Djukanovic, 28 December 2004, No. 49666.

[24] At the time of the proceedings against Milo Đukanović, Montenegro was not formally independent — the referendum of 21 May 2006 had not yet been held — but it was part of the State Union of Serbia and Montenegro, *i.e.* a federal state consisting of two States: Serbia and Montenegro. In the end, the Supreme Court considered that diplomatic immunity could not be recognized to the defendant because Montenegro, a member State of a federation, lacked the requirements of autonomous sovereignty required for the application of the customary International law, since it was not recognized a personality under international law by the Union that it belonged to.

According to the Court: *"an organization of government that actually and independently exercises its power over a territorial community becomes an entity under international law automatically. A sovereign State, therefore, exists as an autonomous entity under international law in the presence of the triad territory-people-government and in the presence of the requirements of actuality and independence. It is, however, not necessary for said organization of government to be recognized by the other States. The recognition of a State by another State is, in fact, an act devoid of legal consequences (on a par with non-recognition) belonging to the realm of politics, showing nothing more than the intention of establishing friendly relations, of exchanging diplomatic representations, and of initiating more or less intense forms of cooperation by concluding agreements. [...] In the case under scrutiny, therefore, it is entirely irrelevant whether Italy (like other States) has recognized Montenegro or not as a sovereign State in order to recognize criminal immunity to its institutional high offices.*" [25].

4. *Precedents in the international landscape*. — As of today, the only country that has adopted a comprehensive statute designed to regulate relationship with Taiwan is the U.S. [26]. The *Taiwan Relations Act* was passed by both chambers of the United States Congress and signed by President Jimmy Carter in 1979 after the breaking of relations between the United States and the Republic of China on Taiwan and the consequent termination of the *Mutual Defense Treaty*. Scope of the TRA is "*To help maintain peace, security and stability in the Western Pacific and to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan* [...]".

For the purposes of this article, some statements contained under Section 4 of the TRA are particularly important. Section 4, titled "*Application of Laws; International Agreements"* states that: *"The absence of diplomatic relations or recognition shall not affect the application of the*

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[25] See A. MILLER, *Personalità dello Stato, dottrina smentita. Il riconoscimento internazionale è inutile*, in *Diritto e Giustizia*, vol. 11, 2005, p. 28.

[26] "The TRA is the only comprehensive domestic statute in the world governing relations with Taiwan", P. HSIEH, *An Unrecognized State in Foreign and International Courts: The Case of the Republic of China on Taiwan*, in *Michigan Journal of International Law*, Vol. 28, 2007, p. 775.

laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979" [27]. And following "*The application of subsection (a) of this section shall include, but shall not be limited to, the following: (1) Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan*" [28].

It is worth noting that also the discussion that took place in the House of Representatives upon Chairman Zablocki's filing of the House Committee's report accompanying H.R. 2479, expressly took into consideration the issue of mutual recognition and enforcement of Court's judgments: "[...] *the ability to sue and to be sued of corporations and other entities established under the laws of Taiwan remains unchanged. The laws of Taiwan will have the same validity under U.S. laws as before. For example, marriages performed under Taiwan law will continue to be recognized as valid in the United States. Likewise, a business contract entered into under Taiwan law will continue to be dealt with under U.S. law as before. Judgments rendered by the courts of Taiwan will continue to be enforceable under U.S. courts*" [29].

The TRA allows U.S. Courts to have a clear reference to rely upon for deciding on issues related to Taiwan uncertain international status. Courts can therefore focus on verifying if a foreign judgment brought before it satisfies the requirements of the *Uniform Foreign Country Money Judgments Recognition Act of 2005*. So, instead of focusing on formal issues debating if Taiwan is a state or not and if final judgments issued in place do come from a recognized state, U.S. courts have focused on the merit, determining whether Taiwan's courts provided an adequate alternative forum. In such circumstance, *forum non conveniens* motions are generally dismissed, having verified that Taiwan's judicial system and procedures are compliant with the notion of due process [30].

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[27] 22 USC 3303 Sec. 4 (a).

[28] 22 USC 3303 Sec. 4 (b).

[29] House of Representatives, Report No. 96-26, p. 9 which continues "Furthermore, derecognition will not affect the applicability to Taiwan of U.S: laws referring to foreign countries, governments, states, nations, and similar entities. Similarly, restrictions applicable to communist countries will not apply to Taiwan".

[30] M. Moedritzer, K. C. Whittaker, A. Ye, *Judgments 'Made in China' But Enforceable in the United States? Obtaining Recognition and Enforcement in the United States of Monetary*

Another case of a state that has considered the adoption of a comprehensive statute governing relations with Taiwan is that of Canada. The *Taiwan Affairs Act* [31], largely based on US' TRA model, stated that "*Whenever the laws of Canada refer to or relate to foreign countries, nations, states and their governments or governmental entities, such laws are deemed to refer or relate also to Taiwan and its government and governmental entities*". This Bill was never passed and it was stopped on Second reading [32]. Without taking into consideration any of the political aims pursued by the promoter [33] of this bill, the text, if approved, may have brought significant clarity for Canadian courts when those are called to decide cases where Taiwan's international status is preliminarily involved [34], especially in cases where international public issues represent matter of dispute.

The importance of the distinction between judgments deciding upon litigation where private rights are involved instead of public policy issues, arises very clearly if we check a famous case occurred not long ago in Hong Kong.

Judgments Entered in China Against U.S. Companies Doing Business Abroad, in *International Lawyer*, Vol. 44, 2010, p. 823 citing *Chou v. Shieh*, No. G031589, 2004 WL 843708, at *7-8 (Cal. Ct. App. Apr. 20, 2004).

[31] Bill C357, First Session, Thirty-eight Parliament, 53-54 Elizabeth II, 2004-2005, First reading, April 4, 2005, "An act to provide for an improved framework for economic, trade, cultural and other initiatives between the people of Canada and the people of Taiwan".

[32] Notwithstanding, it triggered the reaction of the Embassy of PRC in Canada that issued a note on June 21, 2005 stating that: "We take no exception to the development of normal people-to-people exchanges and economic cooperation and trade between Canada and Taiwan. The "Taiwan Affairs Act", however, is in essence treating Taiwan as a country and aims to change the status of Taiwan being an inalienable part of China and to create "one China, one Taiwan" or "two Chinas". This runs counter to the "one China policy" the Canadian government has long pursued. We can not but express our serious concern about this.

At present, bilateral cooperation in all areas is developing quite smoothly. The bill in point, if passed, would inevitably undermine the political foundation of bilateral relations, a result, which we believe neither governments and peoples would like to see. It is hoped that the Canadian government and people concerned will proceed from the overall interests of bilateral relations, handle the relevant matter properly and with caution, so as not to bring negative impacts to the friendly relations and cooperation of two countries, which has not come by easily". Available at http://ca.chineseembassy.org/eng/xw/t200706.htm

[33] Mr. Jim Abbott, conservative, Kootenay-Columbia, BC.

[34] Similarly to the US' presidents Nixon and Carter who in the *Three Communiqués* followed through the years have always limited themselves to simply *acknowledge* PRC's territorial claims over the island of Taiwan, at the time of its recognition of the PRC in 1970, Canada limited itself to "*take note*" of PRC position that "*Taiwan is an inalienable part of the Peoples Republic of China*", but did not formally recognize this claim.

We are referring to *Chen Li Hong v. Ting Lei Miao* [35]. The case involved a Taiwanese bankruptcy order and the possibility for Courts in Hong Kong to give effect to such order. The question of law was summarized as follows: "*To what extent is effect to be given by our courts to orders made by courts sitting in Taiwan which is part of and under the* de jure *sovereignty of the People's Republic of China but is presently under the de facto albeit unlawful control of a usurper government?*" [36]. It is worth noting that, before to reach Hong Kong Court of Final Appeal, local lower courts never considered it necessary for the adjudication of the case to seek a certificate from the chief Executive of the Hong Kong Special Administrative Region. The reason must be find in multiple factors. First of all, it is absolutely certain that no certificate would have been issued by HKSAR's Chief Executive as Taiwan's sovereignty could have never been acknowledged by such office; secondly, Hong Kong's lower courts clearly moved from the assumption that the island is undoubtedly Chinese territory (the wording of the question of law formulated by the HKCFA is, with this respect, indisputable). Lastly, but perhaps more importantly, the reason lies in the very nature of the interests at stake, which is limited to private rights being litigated between private parties.

Eventually, a certificate was produced by the defendant before reaching HKCFA in Hong Kong High Court. The Foreign and Commonwealth Office's certificate predictably stated that "*Her Majesty's Government does not recognize Taiwan as a state, ... acknowledge[s] the position of the Government of the PRC that Taiwan [is] a province of the PRC and recognize[s] the PRC Government as the sole legal government of China*" [37].

Notwithstanding, the HKCFA dismissed the appeal of the defendants judging in favor of the bankruptcy's trusteeship that the Taipei Disctrict Court's order was to be given effect. The judgment also set the conditions for general recognition and enforcement of orders and judgments issued in "*non-recognized courts*" [38]. In fact, it reads that whenever

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[35] Court of Final Appeal, Hong Kong, PRC, *Ting Lei Miao v Chen Li Hung & Others*, 27 January 2000, [2000] 1 HKLRD 252.

[36] *Ibid*., para. 3.

[37] *Ibid*., para. 15.

[38] Defined as "courts sitting in foreign states the governments of which our sovereign does not recognize as well as courts sitting in territory under the *de jure* sovereignty of our

(*i*) the rights covered by those orders are private rights; (*ii*) giving effect to such orders accords with the interests of justice, the dictates of common sense and the needs of law and order; and; (*iii*) giving them effect would not be inimical to the sovereign's interests or otherwise contrary to public policy, there is no ground for denying recognition and enforcement.

According to the HKCFA the first and the second condition were clearly satisfied in the case brought to its attention. [39]. The third condition regarding public policy was also satisfied as giving effect to Taiwan's Bankruptcy Order was "*not for the benefit of the usurper regime. It is for the benefit of out-of-pocket depositors. Furthermore it should be clearly understood that giving effect to the Taiwanese Bankruptcy Order does not involve recognizing the usurper regime or courts in Taiwan*" [40].

The solidity of the arguments supporting the *Chen Li Hong* decision were once more confirmed when in 2004 the Taiwan Supreme Court was called to judge upon an appeal over the dismissal of divorce proceedings instituted in the Taiwanese Court issued by the Hong Kong Family Court in the *Lin v. Lin* case [41]. The Taiwan Supreme Court, making application of art. 402 of Taiwan's Civil Procedure Law, considered as non-applicable one of the negative condition set forth by such provision as an impedi-

sovereign but presently under the *de facto* albeit unlawful control of a usurper government", *Ibid*., para. 37

[39] "By the general nature and particular circumstances of those rights, giving effect to them accords with the interests of justice, the dictates of common sense and the needs of law and order. And there is nothing inimical to the sovereign's interests or otherwise contrary to public policy in giving effect to the Taiwanese Bankruptcy Order", *ibid*., paras. 38-39.

[40] With this respect it is also worthy of being mentioned Lord Cooke of Thornton NPJ's opinion: "[...] the Preamble to the Constitution of the People's Republic of China declares that Taiwan is a part of the sacred territory of the People's Republic of China and that it is the lofty duty of the entire Chinese people, including the compatriots in Taiwan, to accomplish the great task of reunifying the motherland. I think that reunification will tend to be promoted rather than impeded if people resident in Taiwan, one part of China, are able to enforce in Hong Kong, another part of China, bankruptcy orders made in Taiwan. [...] Commercially Taiwan and Hong Kong are both relatively highly developed parts of China. It is in the interests of the People's Republic of China, and necessary as a matter of common sense and justice, that bankruptcy orders made in one of these parts should be enforceable in the other. Viewing the case from a different perspective, the issue is essentially between the Taiwan creditors on the one hand and Mr. Ting, Madam Chen and Mr. Chan on the other. It is not an issue with which national politics have any natural connection. They should not be allowed to obtrude into or overshadow a question of the private rights and day-to-day affairs of ordinary people. The ordinary principles of private international law should be applied without importing extraneous high-level public controversy.", *ibid*., paras. 53-54.

[41] *Lin v. Lin*, (Taiwan Appeal No. 1943/93) (23 September 004) 47(7), Judicial Yuan Gazette 105 (2005).

ment for recognition, namely "*where there is no international mutual recognition*". The Supreme Court interpretation was that "*mutual recognition*" should not be intended in its international public law meaning but, instead, as a "*comity of courts in mutually recognizing each other's judgment*" [42]. There it can be read: "*As to mutual recognition in judicial matters, on the basis of the principle of mutual respect and comity of judicial authorities internationally, if a foreign court has as a matter of fact recognized Taiwanese judgments or could be objectively expected to recognize Taiwanese judgments in the future, the Taiwanese court may accept that there is mutual recognition*"

Express reference was made to the *Chen Li Hong* case and to the *ratio* expressed therein, that is to say, where a foreign judgment involves private rights, recognition of such judgment does not imply recognition of the government of the state where that judgment was issued. Or, in other terms, international recognition and enforcement of foreign judgments should not be linked to the issue of sovereignty and mutual recognition between states, so that "*private parties litigating private disputes should not suffer the backlash of an international dispute when the litigation that took place seems to be fair and ordinary*" [43].

In consideration of the above arguments, it may be validly argued that whenever a judgment decides upon private-rights-only disputes, there is no need for the judiciary of a country to call in a *one-voice-doctrine* alike mechanism, seeking for a last word from the executive power in order to decide upon recognisability of a judgment issued into a state whose international personality is unclear.

However, even in cases where such mechanism of coordination between the judiciary and the executive does exist — and it generally happens only in cases where foreign public policy issues are involved — a negative reply from the body allowed to express a State's voice in foreign relations may not automatically lead to a dismissal of application for recognition of a foreign judgment.

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[42] See note 69 in S. N. M. Young, Y. Ghai, *Hong Kong's Court of Final Appeal: the development of the Law in China's Hong Kong*, Cambridge University Press, 2013, p. 592, which always referring to the approach adopted in *Lin v. Lin* by the Taiwan Supreme Court states that "The appropriate approach would be that if the court outside Taiwan has not expressly declined to recognize the effect of a Taiwanese judgment, the Taiwanese court should as far as possible take a tolerant and active stance on the basis of mutual benefit to recognize the effect of the other court's judgment".

[43] See M. M. Karayanni, *Conflicts in a Conflict: A Conflict of Laws Case Study on Israel and the Palestinian Territories*, Oxford, 2014, p. 222.

A good example of this consideration arises from the parallel cases held in Canada and Singapore arising from the crash on 31 October 2001 of Singapore Airlines flight SQ006 at Chiang Kai-Shek International Airport.

Before to proceed any further, it must be pointed out that judgment involving private rights of private citizens issued in Taiwan are generally held recognizable both in Canada and Singapore. But when public interests and/or public parties are involved, the situation gets much more complicate.

In the Canadian proceedings related to *Parent v. Singapore Airlines Ltd.* [44], the defendant called the Civil Aeronautics Administration of Taiwan [45] as guarantor. The latter, which intervened in Court, claimed immunity from Canadian jurisdiction as it was directly part of the Ministry of Transport and Communications of Taiwan. The issue, according to the Canadian *State Immunity Act* [46], required that the local Minister of Foreign Affairs express itself on the *status* of Taiwan by issuing a *certificate*. The response of the Ministry was negative and no certificate was issued: according to the MFA, Canada had no diplomatic relations with Taiwan or the Republic of China [47]. Nevertheless, the Canadian Court considered that the certificate required by the *State Immunity Act* was only *one of the possible means of proof* and that it —

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[44] Superior Court of Quebec (Canada), *François Parent, Specnor Tecnic Corporation et Corporation Specnor Tecnic International c. Singapore Airlines Limited* (22 October 2003), Montreal 500-05-074778-026.

[45] 民用航空局

[46] Canada *State Immunity Act* of 1992: "Art. 14 - Certificate is conclusive evidence.

(1) A certificate issued by the Minister of Foreign Affairs, or on his behalf by a person authorized by him, with respect to any of the following questions, namely,

(*a*) whether a country is a foreign state for the purposes of this Act,

(*b*) whether a particular area or territory of a foreign state is a political subdivision of that state, or

(*c*) whether a person or persons are to be regarded as the head or government of a foreign state or of a political subdivision of the foreign state,

is admissible in evidence as conclusive proof of any matter stated in the certificate with respect to that question, without proof of the signature of the Minister of Foreign Affairs or other person or of that other person's authorization by the Minister of Foreign Affairs [...]".

[47] "I wish to inform you that the Department cannot respond positively to your request and no such certificate will be issued at this time. Canada has a one-China policy which recognises the People's Republic of China, with its government located in Beijing, and it has full diplomatic relations with that government. Canada does not have diplomatic relations with 'Taiwan' or the 'Republic of China'", in O. A. Elias, "The International Status of Taiwan in the Courts of Canada and Singapore", *Singapore Year Book of International Law*, 2004, p. 94.

or its failed issuance, as in the case we are dealing with — should not be attributed a decisive effect [48].

The Court considered that the definition of "State" should be inferred independently by the judge called upon to decide, resorting to customary international law. It was therefore found that Taiwan, fulfilling the criteria set out in Art. 1 of the Montevideo Convention of 1933 on the basis of which a State may be said to be "sovereign" (i.e. with a defined territory, a permanent population, an effective government), could in all respects be defined as such for the limited purposes of the pending judgement.

The Canadian Court — as the Court of Appeal of Rome also did in the case extensively examined above — expressed strong support for the declarative theory of recognition, according to which statehood is an objective fact that must be determined by assessing objective criteria and which cannot be remitted to the subjective opinions of States. In light of these arguments, the reasons of Singapore Airlines against the Civil Aeronautics Administration of Taiwan were rejected.

A twin-case related to the same plane crash was brought before the High Court of Singapore and known as *Anthony Woo v. Singapore International Airlines* [49]. Also in this judgement, the State Immunity Act [50] of Singapore of 1985 established — again in deference to the general principle that identifies in the executive the main interlocutor regarding the recognition of other States — that the "certificate" issued by competent Ministry of Foreign Affairs constitutes decisive evidence in identifying a particular country as a "State".

In this case, the Ministry declared itself "*unable to issue the certificate*", a circumstance which was judged first by the *High court* and then

[48] "[...] this was the first case in which a Canadian court took an independent course and made its own enquiry into the issue of Taiwan's statehood", in A. Nollkaemper, A. Reinisch, R. Janik, F. Simlinger, *International Law in Domestic Courts: A Casebook*, Oxford, 2018, p. 55, also clarifying at note 35 that, contrary to the Court's assumption that considered the certificate only one of the possible means of proof, "when *the Canadian government issues a certificate, it's conclusive evidence of its content*".

[49] High Court, *Anthony Woo v. Singapore International Airlines* [2003], *Singapore Law Review*, Vol. 3, p. 688, (Choo Han Teck J.).

[50] Art. 18. Evidence by certificate — "A certificate by or on behalf of the Minister for Foreign Affairs shall be conclusive evidence on any question —

(*a*) whether any country is a State for the purposes of Part 2, whether any territory is a constituent territory of a federal State for those purposes or as to the person or persons to be regarded for those purposes as the head or government of a State".

by the *Court of Appeal* of the city-state as clear and conclusive evidence of a negative response to the question whether Taiwan could be regarded as a "State" for the purposes of the *State Immunity Act*. The rigor adopted in this case is particularly understood on the basis of what the Court of Appeal established. According to the latter, having the competent Ministry clearly expressed itself negatively, it is not appropriate for the judges to engage in assessments based on the arguments of the parties that are beyond its powers [51], since it is important in this matter that executive power and judicial power express themselves "with one voice" [52].

This decision is also noteworthy if we consider the conclusions it reached in relation to implied recognition. It affirmed that cooperation by means of maintaining a representative office or even concluding agreements in specific areas (in forms different than a treaty) does not amount *per se* to an implied recognition nor to the acknowledgment of a *de facto* statehood. Which is all the way contrary to what was ascertained by the Court of Appeal in Rome in the case analyzed above.

[51] "As the government's position as to Taiwan's status was vague and inconclusive, the court ruled that Taiwan was not a foreign state within the meaning of Singapore's State Immunity Act of 1985. It is interesting to observe that both courts in Singapore and Canada followed "the one voice doctrine" under which the court should defer to the executive branch as to recognition, but ruled differently", see P. Hsieh, *An Unrecognized State in Foreign and International Courts*, supra note 26, p. 791, note 149.

[52] It seems that the different outcome of *Anthony Woo v. Singapore International Airlines* and *François Parent v. Singapore Airlines Limited* is due, according to the Singapore Court of Appeal, to the different wording of Art. 14 of the *Canadian State Immunity Act* ("*the certificate ... is admissible in evidence*"), which appears to be more permissive than the equivalent Article of the Singapore State Immunity Act ("*A certificate by or on behalf of the Minister for Foreign Affairs shall be conclusive evidence*"). Such opinion is criticized in O. A. Elias, *supra* note 47, p. 97, where the author states that "it was 'eminently ... within the exclusive province of the executive' to determine the question such as whether a foreign country is a state so as to enjoy sovereign immunity, and that, as recognized by section 18 of the Act, the courts are ill-equipped to deal with international relations. [...] The Court held that where the Ministry had expressed a clear view as in the present case, the courts should not conduct their own independent enquiry based on other evidence, because it was fundamental that the executive and the judiciary should speak with one voice, irrespective of the views of the courts as to the status of the foreign country under the general principles of international law". The Singapore Court of Appeal also added that if the response from the Ministry had not been understandable or unequivocal, the only path would have been for the Court to reissue the question to the same Ministry, in order to obtain a more precise response, and only if the latter had refused could the Court have made its own assessments.

On the case in comment, see also C. L. Lim, *Public International Law before the Singapore and Malaysian Courts*, *Singapore Year Book of International Law and Contributors*, Vol. 8, 2004, p. 269.

5. *Conclusions*. — In conclusion, with the exception of the United States, which to date is the only country that has adopted an *ad hoc* law to regulate its relations with Taiwan, the verification of the possibility of recognition abroad of judgments issued by the island's courts appears to be referred to criteria determined by the national courts called upon to recognize and execute such judgments.

The approach followed by Italian jurisprudence seems to draw fully from the international public law doctrine of the declarative theory of statehood. Consequently, the Court of Appeal of Rome called to decide upon the recognition of a final judgment issued into a state not formally recognized by the Italian government, carried out in first person an assessment on the existence for such unrecognized government of those factual circumstances able to demonstrate its autonomy and independence and its consequent *de facto* statehood, sufficient for granting recognition to the judgment issued in Taiwan.

While the Italian approach requires an appraisal of nature of the authority issuing the judgment, that of Canada, Singapore and Hong Kong focuses more on the content of the decision, pondering over on the nature of the interests in dispute and the quality of the parties taking part in that judgment.

Taiwan itself recognizes the judgments issued in third countries on the basis of a condition of reciprocity, which only means that the island's Courts will limit themselves to checking whether the Taiwanese judgments are recognized or not in the country where the decision to be recognized was issued, without investigating or attaching any consequences to the reasons adopted by the foreign Court for recognizing and enforcing a Taiwanese judgment (i.e. if the recognition is the result of an affirmative evaluation on the *de facto* statehood of Taiwan or if such evaluation is completely missing and the recognition is simply the result of a pragmatic evaluation of opportunity).