In the
Supreme Court of the United States

Roger C.S. Lin, Julian T.A. Lin and Taiwan Civil Government,

***Petitioners*,**

v.

United States of America and Republic of China (Taiwan),

***Respondents*.**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 1945, following Japan's surrender at the end of World War II, the United States commissioned Generalissimo Chiang Kai-shek, head of the Nationalist Chinese Party of the Republic of China (the "R.O.C."), to undertake the administration and governance of Taiwan. While acting as an agent of the United States, the RO.C. promulgated the 1946 Nationality Decrees (the "Decrees"), admitted by the R.O.C. and determined by the U.S. Court of Appeals to have caused the people of Taiwan "injuries in fact"—the "loss of Japanese citizenship and resulting statelessness" "fairly traceable" to the 1946 Decrees.

The first question presented is whether the declaratory judgment Petitioners seek determining that the 1946 Decrees violated international law and were ineffective, coupled with Respondents' obligations to comply with international laws prohibiting statelessness, satisfies the redressability requirement.

The second question presented is whether the tort of arbitrary denationalization and Respondents' continuing—indeed, daily—failure to take any actions to end the illegal statelessness of the people of Taiwan caused by the 1946 Decrees, is a continuing violation of the law of nations, tolling the statute of limitations.

PARTIES TO PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

All Petitioners in this Court (Plaintiffs-Appellants below) are named in the caption.

Defendants-Appellees below (Respondents here) were the United States of America and the Republic of China (Taiwan).

Pursuant to Rule 29.6, Petitioner Taiwan Civil Government is not a corporation, and does not have a parent corporation or any publicly held owner.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Roger C.S. Lin, Julian T.A. Lin, and the Taiwan Civil Government ("Petitioners") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (Collyer, J.) (Pet. App. 10a-40a) dismissing Petitioners' Amended Complaint for Declaratory Judgment ("Complaint") is reported at 177 F. Supp. 3d 242 (D.D.C. 2016).

The opinion of the United States Court of Appeals for the District of Columbia Circuit (Pet. App. 1a-7a) affirming the District Court's opinion was not published.

JURISDICTION

The judgment of the Court of Appeals was entered on March 30, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES AND STATUTES INVOLVED IN THE CASE

Pertinent constitutional, treaty and statutory provisions are reproduced at Pet. App. 41a-63a.

STATEMENT OF THE CASE

Petitioners Dr. Roger C. S. Lin, Julian T.A. Lin, and the Taiwan Civil Government ("T.C.G.") are all native inhabitants of Taiwan. T.C.G. is a political and educational organization committed to advocating for the rights of their over 70,000 Taiwanese members. The Petitioners are or represent a number of individuals whom suffer, by no fault or action of their own, from the evils of persistent statelessness and seek declarations that the legal instruments authoring their statelessness are illegal and invalid.

Petitioners' Amended Complaint (at 28-31) seeks the following:

> Considering that this Court has the constitutional power and duty to interpret treaties, statutes, and the Constitution, including customary international law, Petitioners respectfully pray that this Court enter an Order declaring that:
>
> (a) Promulgated while Taiwan was under the control of the United States (the "U.S.") as the lead Allied Power, the 1946 Nationality Decrees (the "Decrees") stripped the entire population of Taiwan of their Japanese nationality. This caused the population to become stateless as they, and their descendants, remain to this day.

(b) The 1946 Nationality Decrees were promulgated by the Republic of China (the "R.O.C."), acting as the agent of the U.S., without the appropriate authorization of the U.S., and allowed to remain in effect in violation of international law.

(c) Promulgated by the R.O.C. acting as the U.S.' agent, and while Taiwan was under the control of the U.S., the 1946 Nationality Decrees violated customary international law prohibiting the arbitrary deprivation of nationality and the creation of statelessness.

(d) The 1946 Nationality Decrees are invalid because they violated customary international law prohibiting the arbitrary deprivation of nationality and the creation of statelessness.

(e) The Nationality Decrees of 1946 effectuated a deprivation of one nationality, without the provision of another cognizable nationality, also in violation of international law.

(f) Through the Nationality Decrees of 1946, the R.O.C. committed arbitrary denationalization by

arbitrarily and summarily terminating the existing Japanese nationalities of millions of individuals living in Taiwan, as well as those living abroad, including Petitioners or their Japanese-national ancestors through whom Petitioners would have inherited Japanese nationality.

(g) The arbitrary denationalization committed by the R.O.C. in 1946 caused damages to the Petitioners or those whom Petitioners represent, by leaving such persons stateless and without an internationally recognized nationality, and causing Petitioners or those whom they represent to suffer personal injury and/or loss of property in an amount to be determined at trial.

A. The Nationality Of The Taiwanese Population Before The 1946 Decrees.

In 1895, the Chinese Emperor transferred Taiwan to the Japanese Emperor at the conclusion of the Sino-Japanese War. Treaty of Shimonoseki, China-Japan, art. 2(b), April 17, 1895, 181 Consol. TS 217. This transfer was formalized in the Treaty of Shimonoseki, which entered into force on May 8, 1895

and transferred sovereignty and title over Formosa[1] to Japan.

Consistent with international law, Article 5 of the Treaty gave residents a two-year period to "sell their real property and retire" to an un-ceded Chinese territory instead of adopting Japanese nationality. Treaty of Shimonoseki, China-Japan, art. 5. As a result, millions of Taiwanese living on the island of Formosa opted to become Japanese nationals, while only 0.16% of the population opted for a Chinese nationality. *See* Lung-chu Chen & W. Michael Reisman, "*Who Owns Taiwan: A Search for International Title*," Faculty Scholarship Series, Paper 666 (1972).

On September 2, 1945 after the attack on Pearl Harbor, Japan surrendered to the U.S. and other Allied Powers. Following Japan's surrender, at the request and on behalf of the Allied Powers, Generalissimo Chiang Kai-shek undertook the administration and governance of Taiwan. Chiang Kai-shek was the head of the Nationalist Chinese Party of the R.O.C.[2] The role of Chiang Kai-Shek, as leader of the Chinese Nationalist Party, was defined as the "**representative** of the Allied Powers

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[1] In the post-war period, Taiwan was variously referred to as Formosa.

[2] Chiang Kai-Shek, along with nearly two million of his supporters, fled Mainland China during the course of 1949 to escape the rise of communist forces that took over mainland China and eventually founded the People's Republic of China ("P.R.C.") on October 1, 1949.

empowered to accept surrender[]" of the Japanese forces in Taiwan. General Order No. 1, Sept. 2, 1945, J.C.S. 1467/2 (emphasis added).

On October 25, 1945, Chiang Kai-shek's representative accepted the surrender of Japanese forces remaining in Taiwan on behalf of the Allied Powers and with the assistance of the U.S. Armed Forces. *See* Department of State Office Memorandum from Mr. Harding F. Bancroft to Mr. Rusk June 6, 1949. The June 1949 Memorandum reflected that, "[a]t the time of the surrender of the Japan military (sic)[,] responsibility for accepting and, carrying out the surrender in respect of Formosa was delegated by the Allies to Chiang Kai-shek. *Id.*

B. The Nationality Decrees Of 1946 Creating The Petitioners' Statelessness.

Chiang Kai-shek, while acting as the agent of the U.S. and post-war administrator of Taiwan, extinguished the Japanese nationalities of all residents of Taiwan through the 1946 Nationality Decrees. On January 12, 1946, the first decree was issued, retroactive to December 25, 1945. It mandated the automatic "restoration" of Chinese nationality for the people of Taiwan and it stated:

> The people of Taiwan are people of our country. They lost their nationality because the island was invaded by an enemy. Now that the land has been recovered, the people who originally had the

> nationality of our country shall, effective December 25, 1945, resume the nationality of our country. This is announced by this general decree in addition to individual orders.

Swan Sik Ko, ed., *Nationality and International Law in Asian Perspective*, T.M.C. Asser Instituut, The Hague (1990) p. 53 (providing English translation of January 12, 1946 Decree).[3]

On June 22, 1946, a second nationality decree relating to Measures Concerning the Nationality of Overseas Taiwanese (also translated as "Measures For The Adjustment of Nationality of Taiwanese Abroad"). This measure required persons living outside of Taiwan to have Chinese nationality "restored" to them, and issued a certificate of registration. *See* Letter, Foreign Service of the United States of America, from the American Embassy in Nanking to the Secretary of State, June 17, 1945, with enclosure: translation of, "Measures for the Adjustment of Nationality of Taiwanese Abroad."

Notably, the Nationality Decrees did not give residents any choice in the matter and, importantly, it was not enacted as part of, or pursuant to, any legitimate or recognized Treaty. The R.O.C. did not consider the loss of Japanese citizenship to constitute

[3] This translation notes the effective date as December 25, 1945, even though secondary sources reference the effective date as October 25, 1945.

"voluntary renunciation." Judicial Yuan Interpretation 36 [1947], Chieh No. 3571.

The U.S., as principal occupying power over Taiwan, failed and refused to intervene and prevent blatant violations of international law by its agent, the R.O.C. The U.S. was fully aware of the Decrees and continued for many years thereafter to accept the benefits of, and authorize, the continued administration of Taiwan by the R.O.C.

The U.S. State Department was demonstrably aware that, at least according to Japanese legal experts, the Decrees violated international law. In September of 1950, the American Consul General forwarded to the State Department an article by "one of the leading experts of the Japanese Government on nationality. . . ." *See* Foreign Service of The United States of America, Memorandum from Leo J. Callahan to Department of State, with enclosure: "On the New [Japanese] Nationality Law," Kenta Hiraga, Lawyers Association Journal, Vol. II, No. 6, pp. 341-368. The article explicitly states that the 1946 Nationality Decrees raise a "question as to the validity of this law from the standpoint of the international law. . . . [P]ending conclusion of a peace treaty it cannot be interpreted that Formosans already have lost their Japanese nationality." *Id.* at 4-5.

Despite international and internal recognition that the Decrees violated international law, the U.S. abandoned its legal obligations to ensure that its agent's actions complied with international law. The U.S.'s inaction enabled its agent's illegal decrees to go into effect, rendering the people of Taiwan stateless. To this day, the R.O.C.'s Nationality Decrees do not

offer the people of Taiwan an internationally accepted nationality. Importantly, on September 8, 1951, the Allied Powers signed the San Francisco Peace Treaty with Japan. *See* Treaty of Peace with Japan (hereinafter "S.F.P.T."), Sept. 8, 1951, Allied Powers-Japan, 136 U.N.T.S. 46, entered into force Apr. 28, 1952, *available at* www.state.gov/documents/organization/65540.pdf). Currently, 46 countries are parties to the S.F.P.T., but neither the P.R.C. nor the R.O.C. are signatories. *See id*.

C. The Current Nationality Of The People Of Taiwan.

Pursuant to the S.F.P.T. Article 2(b), Japan renounced "all right, title and claim to Formosa and the Pescadores." The S.F.P.T. did not address, nor resolve, the nationality of the people living on Taiwan. Neither the R.O.C. nor the P.R.C. was a party to the S.F.P.T.

The nationality status of Taiwan residents has remained unsettled, even after the S.F.P.T. came into effect because the S.F.P.T. did not transfer Taiwan to any sovereign. This was recognized at the outset of the Treaty by the American Embassy in Tokyo, which reported its view of the position of the Japanese government regarding Taiwan to the State Department:

> The only thing to which Japan has agreed is a renunciation of sovereignty, thus leaving the islands of Formosa and

> the Pescadores floating unattached and uncontrolled in some misty limbo of international law where the Japanese in some way hope they will remain until the fortune of events makes them once again available to Japan.

Foreign Service Dispatch from the American Embassy, Tokyo, to the Department of State, Dispatch No. 50, May 13, 1952, p. 3.

The people of Taiwan are "without a state"[4] and, to this day, in a circumstance of continually trying "to concretely define their national identity. . . ."[5] The S.F.P.T. did nothing to undo the illegal Nationality Decrees imposed upon the Petitioners by the Respondents. The only nationality Petitioners possess is an R.O.C. nationality – an internationally unrecognized nationality. The international community, including the U.N. and the U.S., currently do not recognize the R.O.C. as a state. Therefore, Petitioners' lack of a recognized nationality constitutes statelessness.

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[4] *Lin v. United States,* 539 F. Supp. 2d 173, 180 (D.D.C. 2008) (the "*Lin I*" case).

[5] *Lin v. United States*, 561 F.3d 502, 503 (D.C. Cir. 2009), *cert. denied*, 558 U.S. 875 (2009).

D. The District Court Judgment.

On March 31, 2016, Judge Rosemary M. Collyer granted the U.S.' and the R.O.C.'s motions to dismiss Petitioners' case on the basis of standing, the political question doctrine and for lack of subject matter jurisdiction. Pet. App. 8a-9a, 10a-40a. The District Court agreed that Petitioners' statelessness constituted a particularized and concrete injury, however the court believed that Petitioners' injuries were not fairly traceable to that injury, and that the injury could not be redressed by a favorable decision of the court. Pet. App. 18a-30a. Moreover, the District Court found that the suit presented a non-justiciable political question and that the court lacked subject matter jurisdiction. Pet. App. 30a-40a.

Notably, the District Court did not consider Respondents' arguments as to whether the applicable statute of limitations bars Petitioners' claims. Pet. App. 17a.

E. The Court of Appeals Judgment.

On March 30, 2017, the Court of Appeals for the District of Columbia Circuit affirmed Judge Collyer's finding and dismissed Petitioners' case on the basis of redressability and on the ground that the case is untimely. Pet. App. 4a-5a.

The Court of Appeals agreed with the lower court that "[petitioners'] alleged loss of Japanese citizenship and resulting statelessness is an injury in fact." Pet. App. 4a. Interestingly, the Court acknowledged that "Taiwan concedes, and we agree, that [petitioners'] injury is 'fairly traceable' to the

1946 decrees." Pet. App. 5a. However, the Court of Appeals stated that "[petitioners] did not establish that it is 'likely, as opposed to merely speculative,' that a declaratory judgment holding the 1946 decrees illegal would redress their injury" and instead found that "[[p]etitioners'] injury can only be redressed by foreign nations not before the court." Pet. App. 4a.

Furthermore, the Court of Appeals found that Petitioners have not demonstrated a continuing tort, sufficient to extend the statute of limitations. Pet. App. 5a. The Court of Appeals analyzed the District of Columbia's continuing tort statute, and held that Petitioners "have not demonstrated that their injury comes from a course of conduct" and "they do not allege any injurious act within the limitation period. Pet. App. 6a.

Notably, the Court of Appeals acknowledged that the "district court concluded that it did not have jurisdiction over Taiwan under the Foreign Sovereign Immunities Act" and stated that "[w]e will not resolve this question." Pet. App. 5a.

REASONS FOR GRANTING THE PETITION

This case involves two questions of exceptional importance: (1) Whether a declaratory judgment can redress human rights violations, such as the statelessness of the Taiwanese people, in violation of international law; and (2) Whether the tort of arbitrary denationalization[6] and continuing—indeed,

[6] The tort of arbitrary denationalization was first recognized by a U.S. court as a violation of the law for nations in *In re S. African*

Apartheid Litig., 617 F. Supp. 2d 228, 252-253 (S.D.N.Y. 2009), where the court states,

> The wealth of international legal instruments articulating a prohibition against arbitrary denationalization indicates both the international nature of the norm and the breadth of its acceptance. In 1907, the Hague Convention Respecting the Laws and Customs of War on Land first articulated that individuals have a right to retain their citizenship, even in the face of a hostile invasion. [Footnote omitted.] Soon thereafter, the United States representative to a 1916 conference concerning the codification of international law stated, "The scope of municipal law governing nationality must be regarded as limited by consideration of the rights and obligations of individuals and other states." [Footnote omitted.] Since then the United States has joined over a hundred other nations in signing and ratifying the International Convention on the Elimination of All Forms of Racial Discrimination, which recognizes that a country may not deprive citizens of their nationality on the basis of race. [Footnote omitted.] Finally, broadly accepted regional international legal materials repeat this prohibition. [Footnote omitted.] The bar on arbitrary denationalization reflects both "legal obligation and

daily—failure of Respondents to take any actions to end the illegal statelessness of the people of Taiwan tolls the statute of limitations.

First, this Court's intervention is necessary and essential to confirm that Petitioners' claims are redressable by an "authoritative declaration of United States law," given that governments, especially the United States Government, have a duty to comply with international law, including an obligation to cease violating international laws prohibiting the Taiwanese peoples' continuing statelessness.[7]

The U.S. abandoned its legal obligations to ensure that its agent's actions complied with

> mutual concern." States face condemnation for violating this norm, including suit in the International Court of Justice. [Footnote omitted.] Moreover, as the Restatement notes, the prohibition on arbitrary denationalization reflects international concern regarding the existence of stateless persons. [Footnote omitted.] In short, I conclude that the tort of arbitrary denationalization satisfies the Second Circuit's test for recognition of a tort in violation of the law of nations.

[7] *See Igartua v. United States*, 626 F.3d 592, 637 (1st Cir. 2010) (Torruela, J., concurring in part; dissenting in part) ("Past experience suggests that the Supreme Court's presumption that executive officials will abide by an authoritative declaration of United States law is a sound one. *See Juda v. United States*, 13 Cl. Ct. 667 (1987) ('Juda II'); *see also Juda v. United States*, 6 Cl. Ct. 441 (1984) ('Juda I').").

international law. The U.S.'s inaction enabled the 1946 Decrees to go into effect—and to remain in effect—rendering the people of Taiwan stateless from 1946 through today.

Consequently, the people of Taiwan are "without a state"[8]—*i.e.*, stateless—and to this day, in a circumstance of continually trying "to concretely define their national identity. . . ."[9]

Second, a determination that the statute of limitations has run on Petitioners' quest for an "authoritative declaration" that the 1946 Decrees were illegal and ineffective—especially given the Court of Appeal's conclusion that the Petitioners' loss of Japanese citizenship and their resulting statelessness were "fairly traceable" to the Decrees—would mean that such statelessness will continue indefinitely. Such a grave injustice should not and cannot be permitted by this Supreme Court in light of the indisputable fact that Respondents' arbitrary denationalization of the Taiwanese people is a continuing, recognized violation of the law of nations.

In sum, the rights of millions of Taiwanese nationals continue to be violated as they remain stateless and without an internationally recognized nationality. Whether the statute of limitations has been tolled by the Respondents' continuing failure to comply with the laws of nations, including international laws prohibiting statelessness, will determine whether or not Taiwanese' statelessness,

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[8] *Lin*, 539 F. Supp. 2d at 180.

[9] *Lin*, 561 F.3d at 503.

through a declaratory judgment that the Executive Branch must recognize as authoritative, can finally be resolved.

Accordingly, and for the reasons set forth in detail below, this Court should grant review of the United States Court of Appeals for the District of Columbia Circuit's decision below.

I. A DECLARATORY JUDGMENT, COUPLED WITH THE OBLIGATIONS OF STATES IMPOSED BY INTERNATIONAL LAW, MAY REDRESS HUMAN RIGHTS VIOLATIONS.

A. Petitioners Have Met The Requirements Of Article III Standing.

1. The Court Of Appeals Agreed That Petitioners Have Suffered A Grievous Cognizable Injury.

The D.C. Circuit agreed that Petitioners' "loss of Japanese citizenship and resulting statelessness is an injury in fact." Pet. App. 4a (citing *Lin*, 177 F. Supp. 3d at 250-251).

The American judicial and executive branches have recognized the evils of statelessness for decades. *See* Pls.' Opp'n to U.S. Mot. to Dismiss Pls.' Compl., Dkt. No. 25 at p. 1 (citing *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 161 n. 16 (1963) (noting that treatise writers have "unanimously disapproved of statutes which denationalize individuals without regard to whether they have dual nationality.")) In

fact, this Court has described denationalization as "a form of punishment more primitive than torture." *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

Petitioners' experiences as stateless individuals constitute a particularized harm. Petitioners are victims of blatant violations of international law prohibiting the arbitrary deprivation of nationality and the creation of statelessness.

2. The Court Of Appeals Agreed And Acknowledged That The R.O.C. Conceded That Petitioners' Injury Is "Fairly Traceable" To The Nationality Decrees Of 1946.

The D.C. Circuit acknowledged that "Taiwan concedes, and we agree, that [Petitioners'] injury is 'fairly traceable' to the 1946 decrees." Pet. App. 5a.

In reviewing this issue, this Court should consider relevant case law from the United States District Court for the Southern District of New York as instructive. In fact, critical to this case is the fact that neither Appellee can "escape liability 'for acts of officials and official bodies, national or local, even if the acts were not authorized by or known to the responsible national authorities,' or acts 'expressly forbidden by law, decree, or instruction.'" *Republic of Iraq v. ABB AG*, 920 F. Supp. 2d 517, 542 (S.D.N.Y. 2013) (citing Restatement (Third) of Foreign Relations Law of the United States § 207 cmt. d (1987)). "Nor can a state avoid responsibility for acts that violate its own laws." *Id.* (citing *Banco de Espana v. Fed. Reserve Bank of New York*, 114 F.2d 438, 444 (2d Cir. 1940))

("It should make no difference whether the foreign act is, under local law, partially or wholly, technically or fundamentally, illegal.").

As such, Petitioners' injury is "fairly traceable" to Respondents as they were both directly involved in administering Taiwan and admitted causing Petitioners' statelessness. It is undisputable that the U.S. is responsible for the illegal actions of its agent, the R.O.C.

3. Respondents' Claims Are Redressable By A Favorable Decision Of This Court Because Governments Have A Duty To Comply With International Law.

The D.C. Circuit found that Petitioners "did not establish that it is 'likely as opposed to merely speculative,' that a declaratory judgment holding the 1946 Decrees illegal would redress their injury." Pet. App. 4a (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotations omitted)).

However, in evaluating redressability dependent on independent future decisions of a third party, the D.C. Circuit pointed out that "[a] plaintiff need not 'negate. . . speculative and hypothetical possibilities . . . in order to demonstrate the likely effectiveness of judicial relief.'" *Teton Historic Aviation Found. v. United States DOD,* 785 F.3d 719, 726 (D.C. Cir. 2015) (citing *Duke Power Co. v. Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59, 78 (1978). Further, the court emphasized that "Article III does not demand a demonstration that victory in court will without a doubt cure the identified injury." *Id.* at 727.

Indeed, in *Igartua*, 626 F.3d at 637 (Torruela, J., concurring in part; dissenting in part), the power of a declaratory judgment against the United States, in a case involving non-parties Canada and Mexico, was described as follows:

> Past experience suggests that the Supreme Court's presumption that executive officials will abide by an authoritative declaration of United States law is a sound one. *See Juda v. United States*, 13 Cl. Ct. 667 (1987) ("Juda II"); *see also Juda v. United States*, 6 Cl. Ct. 441 (1984) ("Juda I").
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> ****
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> In response to this declaration, the United States took steps to comply with these international obligations, and eventually sought and received the UN Security Council's approval for its actions on November 10, 1992. In the intervening seven-year period, the United States complied with the Court's disposition of the case . . . .

Similarly, it further must reasonably be assumed that an "authoritative declaration" on the illegality and ineffectiveness of the 1946 Decrees would have a significant impact with the larger international community, including the United Nations (the "U.N.") and the United Nations High Commissioner for Refugees (the "U.N.H.C.R."), which have concrete international legal obligations to resolve statelessness.

B. Declaratory Judgments Are Commonly Employed To Redress Harms Under International Law.

This Court may properly declare the rights of the Taiwanese people under tenets of customary international law. In deciding this issue, this Court also may look to international courts for guidance since declaratory judgments are frequently the remedy utilized to redress human rights violations across the world.

Importantly, this Court has held that:

> "**International law is part of our law**, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, **where there is**

> **no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations**, and, as evidence of these, to the works of jurists and commentators who by years of labor, research, and experience have made themselves peculiarly well acquainted with the subjects of which they treat."

The Paquete Habana, 175 U.S. 677, 700 (1900) (emphasis added); *see also* Restatement Third of Foreign Relations Law of the United States, Part I, Ch. 1, Introductory Note ("International law is law like other law, promoting order, guiding, restraining, regulating behavior. . . . It is part of the law of the United States, respected by Presidents and Congresses, and by the States, and given effect by the courts.").

Pursuant to Article 30 of the Articles on Responsibility of States for Internationally Wrongful Acts (the "Articles on State Responsibility"): "The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of nonrepetition, if circumstances so require." Rep. of the Int'l Law Comm'n, 53rd Sess., U.N. Doc. A/56/69 (Vol. I) (2001).

The District of Columbia District Court has correctly noted that "the articulation of international law principles in the Articles on State Responsibility, which have been adopted by the U.N.'s I.L.C. are 'generally considered as a statement of customary international law'. . . ." *Republic of Arg. v. AWG Grp. Ltd.*, 2016 U.S. Dist. LEXIS 136318 at *59 (D.D.C. 2016).

It is axiomatic that Respondents must comply with international law and uphold their international obligations. Importantly,

> The responsible state has the duty "to cease that act, if it is continuing" and to "offer appropriate assurances and guarantees of non-repetition, if circumstances so require". The obligation of cessation arises from the general norm of acting in conformity with international law. . . .[10]

The D.C. Circuit failed to consider that a declaratory judgment, coupled with the duty of cessation, set forth in Article 30 of the Articles on State Responsibility, is an integral part of

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[10] Antoine Buyse, *Lost and Regained? Restitution as a Remedy for Human Rights Violations in the Context of International Law*, pg. 130, (2008), http://www.zaoerv.de/ (internal citations omitted).

international customary law, and can in itself redress Appellants' statelessness.

A "declaratory judgment is a 'mere declaration' of the law, yet also a final, binding determination of the parties' rights, which has a 'concrete effect' on the parties' relations . . . the 'fundamental purpose' of the declaratory judgment is to 'clarify and stabilize' the parties' legal relations." *See* Juliette McIntyre, *The Declaratory Judgment in Recent Jurisprudence of the ICJ: Conflicting Approaches to State Responsibility?*, 29 Leiden J. of Int'l Law, 177-195 (2016) (internal quotation omitted). In the context of state responsibility, declaratory judgments are a remedy and should be conceived as a penalty, or the condemnation of an internationally wrongful act by an impartial third party of a recognized authority which serves to punish and deter wrongdoing. *Id.*

Declaratory judgments are used by international courts to remedy human rights violations. For example, "[t]he [Permanent Court of International Justice] noted that even a declaratory judgment alone can serve 'to ensure recognition of a situation at law, once and for all and with binding force as between the Parties.'" Dinah Shelton, *The ILC's State Responsibility Articles: Righting Wrongs: Reparations in the Articles on State Responsibility*, 96 A.J.I.L. 833, 853-854 (October 2002) (internal citations omitted).

Moreover, when "no remedy can make good" the harm suffered, "a declaratory judgment against the foreign State itself ... may suffice for the purposes of doing justice." Rebecca J. Hamilton, 41 Yale J. Int'l L. 301, 339, n. 172 (Summer 2016) (citing Andrea

Bianchi, *Serious Violations of Human Rights and Foreign States' Accountability Before Municipal Courts*, Man's Inhumanity to Man, at 149, 181 (2002)).

In the Canadian case, *Khadr v. Canada (Prime Minister)* 2010 SCC3, the Canadian Supreme Court issued a declaratory judgment after a Canadian national was captured by U.S. forces in Afghanistan and subsequently transferred to a U.S. detention facility at Guantanamo Bay for crimes he allegedly committed as a minor. The Canadian Supreme Court found that the Executive had violated the Canadian Charter of Rights and Freedoms for refusing to seek his repatriation. *Khadr v. Canada*, at para. 24. There, justice was granted when a declaratory judgment was issued because the court could not measure whether the remedy sought would be effective or what impact it would have on foreign relations. *Id.* at para. 43.

Here, Respondents have violated international law by committing the mass tort of arbitrary denationalization. The heinous act of stripping world-recognized Japanese nationality and replacing it with R.O.C. nationality must be denounced, and the requested declarations would go a long way in imposing legal consequences on Respondents.

Plainly, if governments are not made to change course when found to be acting illegally, then the Taiwanese people may never have the chance to exercise their right to self-determination and to end their illegal statelessness. The failure to prevent the codification into law of a mass human rights violation would birth the type of humanitarian crisis which prompts generations of international political crises.

C. A Better Case Cannot Be Imagined For A Definitive Resolution As To Whether Declaratory Judgments Are Appropriate To Remedy Human Rights Violations.

Finally, the decision below merits review because of the conflicting approaches taken by the various circuit courts across the nation regarding declaratory judgments and redressability. An egregious human rights violation presents an excellent opportunity to come to a definitive resolution. As such, this is the perfect case for this Court to follow international law and to provide guidance on how the intersection between redressability through declaratory judgments and international law.

The D.C. Circuit erroneously stated that "[[p]etitioners'] injury can only be redressed by foreign nations not before the court" and that "[[p]etitioners] have not demonstrated that a court ruling invalidating the 1946 decrees would likely cause these foreign nations to provide relief." Pet. App. 4a. In support of its position, the Court of Appeals cited *Cardenas v. Smith*, 733 F.2d 909, 914 (D.C. Cir. 1984) and *Greater Tampa Chamber of Commerce v. Goldschmidt*, 627 F.2d 258, 263 (D.C. Cir. 1980). Pet. App. 4a-5a.

Implicitly, the D.C. Circuit found that in order to succeed, Petitioners must show that a court ruling would relieve their statelessness. A court's issuance of a declaratory judgment has redressed harms in the past and would certainly do so here.

Moreover, the cases cited by the Court of Appeals are distinguishable. In *Cardenas*, 733 F.2d at 911-912, the plaintiff sought a declaration that the Swiss government's actions in seizing a bank account in Switzerland were unlawful, and an order revoking the order to the Swiss authorities and to restore her property. There, the court held that the relief requested could only be obtained through the consent of the Swiss government. *Id.* at 914.

Further, in *Greater Tampa Chamber of Commerce*, 627 F.2d at 259-260, a plaintiff challenged an Executive Agreement restricting air travel between the United States and the United Kingdom. Once again, there the court held that it could not redress the plaintiffs' injuries because the relief requested could only be obtained by the consent of the British government. *Id.* at 261.

In contrast, here, no government consent is required to attain the relief Petitioners seek. Instead, this Court should follow the approach taken by the Third Circuit, the Tenth Circuit, the Eleventh Circuit, and the Court of Claims to address the intersection of declaratory judgments and redressability.

At the outset, it is highly persuasive that this Court has found that Article III redressability was met, and that the Declaratory Judgment Act was met, upon finding that it was "substantially likely" that a non-party, co-equal party branch of government would abide by a federal court's interpretation of the law "even though they would not be directly bound by a such a determination." *Utah v. Evans*, 536 U.S. 452, 460 (2002) (internal quotations omitted). Specifically, this Court found that "the practical consequences of [a

court order] would amount to a significant increase in the likelihood that the plaintiff would obtain relief [from the President] that directly redresses the injury suffered." *Id.* at 464. There, this Court also pointed out that limitations on jurisdiction should be read narrowly. *Id.* at 463.

The United States Court of Appeals for the Third Circuit has held that, "[a] plaintiff seeking a declaratory judgment must possess constitutional standing but need not have suffered 'the full harm expected.'" *Khodara Envtl., Inc. v. Blakey*, 376 F.3d 187, 193 (3d Cir. 2004) (internal citations omitted). Under these circumstances, the Third Circuit provides that Article III standing exists "'if there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Id.* at 193-194 (internal quotations omitted).

Additionally, the United States Court of Appeals for the Tenth Circuit has recognized that "[a]s part of the redressability requirement, a declaratory judgment action must be brought against a defendant who can, if ordered to do so, remedy the alleged injury." *Bishop v. Smith*, 760 F.3d 1070, 1091 n.13 (10th Cir. 2014) (internal quotations omitted).

In deciding that appellant national and local labor organizations and non-profit groups that promote the purchase of American-made products had standing to bring their claims, the United States Court of Appeals for the Eleventh Circuit held:

> [W]e conclude that the appellants have sufficiently alleged injuries that are fairly traceable to NAFTA, and that there is a substantial likelihood that their injuries would be redressed by a favorable decision from this court. Despite being unable to predict with certainty what all of the ramifications of an order declaring NAFTA unconstitutional might be, we agree with the district court that while "some previously accrued injuries may not be redressable ... that is not to say that future injuries may not be avoided," and that this is enough to establish that "it is substantially likely that at least some of the institutional plaintiffs' alleged injuries will be redressed."

Made in the USA Found. v. United States, 242 F.3d 1300, 1311 (11th Cir. 2001)

Further, the Court of Claims has held that "[c]ourts of the United States have final authority to interpret an international agreement for purposes of applying it as law of the United States." *Juda v. United States*, 13 Cl. Ct. 667, 678 (Cl. Ct. 1987). In

Juda, the court invoked its duty to interpret international agreements in deciding whether the United States could unilaterally terminate its trusteeship over the Marshall Islands and over the Pacific island territories without seeking approval of the UN Security Council. There, the Claims Court found that the Trusteeship remained in effect *de jure* as a matter of international law, and agreed that the Proclamation did not comply with the U.S.' international obligations, including the U.N. Charter. *Id.* at 678-682. The court set forth a procedure, which Congress followed even though it was not required to do so.

Juda demonstrates that it is highly unlikely that Congress would ignore a declaratory judgment of this Court finding that the U.S. (and the R.O.C.) is in violation of its international obligations. It is unequally unlikely and rather unfathomable that international bodies such as the U.N. and the U.N.H.C.R. would ignore such a declaration, and allow these blatant and deliberate violations of human rights to continue.

Here, a declaratory judgment is appropriate, given the existence of a legitimate controversy between adverse parties, and that the declaratory judgment would be ordered against the party who has caused Petitioners harm. Further, the requested declarations are substantially likely to shape the choices of the U.N. and the U.N.H.C.R. The people of Taiwan have waited over seventy years to regain the nationality they were stripped of when the Nationality Decrees were enacted in 1946. A declaratory judgment would be a great help in recovering these rights.

Denying review here is simply not an option, given the severity of the harm. It would be a great injustice if this Court were to determine that it could not provide the relief sought by Petitioners that would benefit the millions of stateless Taiwanese.

II. PETITIONERS' STATELESSNESS, CAUSED BY VIRTUE OF THE ILLEGAL NATIONALITY DECREES, IS A CONTINUING VIOLATION OF INTERNATIONAL LAW.

A. Denationalization Is An Internationally Recognized Wrong And Is The Source of Petitioners' Injuries.

As noted above, in *Trop*, 356 U.S. at 101, this Court described denationalization as "the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture[,]" – a punishment repeated *every day* a person is stateless. In *Trop*, this Court further found that,

> While any one country may accord [a denationalized person] some rights, . . . no country need to do so because he is stateless. . . . This punishment is offensive to cardinal principles for which the Constitution stands. It subjects the individual to a

> fate of ever-increasing fear and distress. He knows not what discriminations may be established against him, what proscriptions may be directed against him, and when and for what cause his existence in his native land may be terminated. He may be subject to banishment, a fate universally decried by civilized people. **He is stateless, a condition deplored in the international community of democracies.**

Id. at 101-102 (Emphasis added).

This Court has also held that "[t]he drastic consequences of statelessness have led to reaffirmation in the United Nations Universal Declaration of Human Rights, Article 15, of the right of every individual to retain a nationality." *Kennedy*, 372 U.S. at 161, n.16. In *Kennedy*, this Court recognized that statelessness and its consequences are issues of utmost importance. *Id.* at 160-161.

Indeed, as it should, the D.C. Circuit recognized that Petitioners have alleged an injury in fact and agree that their injury is fairly traceable to the 1946 Decrees. Pet. App. 4a. The absence of any legal authority for the deprivation of nationality, without the provision of another recognized nationality,

renders the deprivation arbitrary and illegal. The 1946 Decrees arbitrarily deprived Petitioners, and their ancestors, of a recognized nationality. *See S. African Apartheid Litig. v. Daimler AG*, 617 F. Supp. 2d 228, 252 (S.D.N.Y. 2009) ("A state actor commits arbitrary denationalization if it terminates the nationality of a citizen either arbitrarily or on the basis of race, religion, ethnicity, gender, or political beliefs.").

The implementation of the 1946 Decrees stands in blatant violation of international law which must be complied with. *See, e.g., The Paquete Habana*, 175 U.S. at 700; *see also* Restatement Third of Foreign Relations Law of the United States, Part I, Ch. I, Introductory Note. The only nationality Petitioners possess is an R.O.C. nationality – an internationally unrecognized nationality. The international community, including the U.N. and the U.S., currently do not recognize the R.O.C. as a state. Therefore, Petitioners' lack of a recognized nationality constitutes statelessness. Petitioners' stateless status is a continuing violation because it begins each day and has not been remedied since the enactment of the illegal nationality decrees. Importantly, the Court of Appeals did not dispute this undeniable fact. Respondents are required to comply with international law and uphold their international obligations.

B. The Statute of Limitations For Arbitrary Denationalization Has Not Run.

1. The Daily Failure To End Petitioners' Statelessness Is A Continuing Violation Of International Law.

The D.C. Circuit totally glossed over Petitioners' argument that Petitioners' statelessness is absolutely not a "lingering effect" of the 1946 Decrees because each day Petitioners are stateless, the tort and the injuries are repeated. Petitioners' arbitrary denationalization claim constitutes a continuing violation of international law. The Court of Appeals erroneously concluded that the three-year statute of limitations for a common law tort under District of Columbia law has run. *See* D.C. Code § 12-301(8). Pet. App. 5a.

The D.C. Circuit's analysis that Petitioners must show a continuing tort within the last three years is simply wrong, and in fact, their statelessness has been ongoing for the past three years. Pet. App. 5a-6a. The D.C. Circuit relied upon *Beard v. Edmonson & Gallagher*, 790 A.2d 541, 547-48 (D.C. 2002) which states the applicable test for the existence of a continuing tort – "(1) a continuous and repetitious wrong; (2) with damages flowing from the act as a whole rather than from each individual act; and (3) at least one injurious act within the limitation period." What the Court failed to appreciate, however, is that Petitioners do satisfy the requirements for a continuing tort to exist for statute of limitations purposes.

In *Beard*, the District of Columbia Court of Appeals further stated,

> [I]f the continuing tort has a cumulative effect, *such that the injury might not have come about but for the entire course of conduct*, then all damages caused by the tortious conduct are recoverable even though some of the conduct occurred outside the limitations period. It makes sense to say that the running of the limitations period is tolled until the continuation of the wrongful conduct renders the existence of the cause of action sufficiently manifest to permit the victim to seek recovery.

Id. at 548.

The denationalization of the Taiwanese people would not have occurred but for the implementation of the 1946 Decrees. The D.C. Circuit misunderstands that Petitioners' injury results from a continuous course of conduct. The Court concluded that Petitioners statelessness is not an "injurious act within the limitation period" and that Petitioners' continued statelessness resulting from the 1946 Decrees is merely a "lingering effect of an unlawful act" and Respondents' failure to "right a past wrong is itself an unlawful act." Pet. App. 6a. (citing *AKM LLC dba Volks Constructors v. Sec'y of Labor*, 675 F.3d 752, 757 (D.C. Cir. 2012) (internal quotations omitted)).

To the contrary, Petitioners wake up every day and are still stateless, therefore the daily failure to

end illegal statelessness is a continuing tort. Petitioners' statelessness is not a "lingering effect" of the passage of the Decrees because Petitioners' grave injury has remained the same for decades. The people of Taiwan are continually trying "to concretely define their national identity. . . ." *Lin*, 561 F.3d at 503. The D.C. Circuit refused to undertake a detailed analysis of Petitioners' claims and neglected to consider the obvious fact that Petitioners suffer from the evils of statelessness that persists to this day in flagrant violation of international law. Nothing has been done to redress Petitioners' grave injuries that, as explained above, this Court has characterized as "a form of punishment more primitive than torture." *Trop*, 365 U.S. at 101.

At least one U.S. District Court has made a determination that resulting injuries from a continuous course of conduct constitutes a continuing violation. *In Made in the USA Found. v. United States,* 56 F. Supp. 2d 1226, 1253-1254 (N.D. Ala. 1999), a continuing violation existed where plaintiffs challenged the constitutionality of the North American Free Trade Agreement ("NAFTA") as to whether it was a proper exercise of Congress' power and because they claimed their voting power had been diluted and they had suffered injuries from its implementation. The Court rejected the government's claim that the agreement was separate from its implementation, and accordingly, the violation would be continuing. *Id.* Similarly, the implementation of the illegal Decrees cannot be separate and distinct from the continuing harm.

Significantly, the United States Court of Appeals for the Fifth Circuit has held that where the

government had a duty to warn servicemen of hazardous radiation exposure during their military duty, and failed to do so, the government's breach of its duty to warn was a continuing tort even after the injuries occurred and after their military duty had ended. *Gaspard v. United States*, 713 F.2d 1097, 1101 (5th Cir. 1983). The Court noted that the government did not have a new and independent duty to warn the servicemen of the dangers of radiation as scientific knowledge increased and that the duty to warn arose while they were in service, and not after discharge. *Id.* Their injuries resulted from a continuing tort. This case squarely contradicts the D.C. Circuit's argument that Petitioners' injury does not result from a continuous course of conduct. Pet. App. 6a.

This Court should look to the Eleventh Circuit for a more instructive and simple approach in concluding that arbitrary denationalization is a continuing tort. The Eleventh Circuit has held that "in determining whether a violation is continuing, we distinguish single, discrete acts from charges of **continuously maintained** illegal policies." *Bloom v. Alvereze*, 498 Fed. Appx. 867, 874 (11th Cir. 2012) (citing *Beavers v. Am. Cast Iron Pipe Co.*, 975 F.2d 792, 797 (11th Cir. 1992)) (emphasis added); *see also Beavers*, 975 F.2d at 796 ("[w]e must distinguish between the 'present consequence of a one-time violation,' which does not extend the limitations period, and the 'continuation of the violation into the present,' which does.") (quoting *Webb v. Indiana Nat'l Bank*, 931 F.2d 434, 438 (7th Cir. 1991)).

Under this approach, it is plainly obvious that Petitioners' statelessness is a continuing tort because it has been "continuously maintained" since 1946 and

cannot merely be described as a "one-time violation" since the Decrees, to this day, do not offer the people of Taiwan an internationally accepted nationality. The gravity of this situation is indisputable.

2. The Statute Of Limitations Period Is Precluded For The Tort Of Arbitrary Denationalization.

It is clear that courts agree that where the violation pled is a continuing violation of applicable legal principles, the statutes of limitation do not begin to run. *See, e.g., Rosner v. United States*, 231 F. Supp. 2d 1202, 1207 (S.D. Fla. 2002) ("[U]nder [the continuing violation doctrine], the plaintiff may recover for all violations where the violations outside the limitation period are so closely related to those inside the period that they constitute one continuing infraction.") (internal citation omitted); *see also Robinson v. United States*, 327 Fed. Appx. 816, 818 (11th Cir. 2007) ("When the violation alleged involves continuing injury, the cause of action accrues, and the limitation period begins to run, at the time the unlawful conduct ceases.") (internal citation omitted).

Importantly, "[i]n developing a federal statute of limitations applicable in international law cases, account should be taken of the fact that many states of the United States provide for tolling." *Nguyen Thang Loi v. Dow Chem. Co.* (*In Re Agent Orange Prod. Liab. Litig.)*, 373 F. Supp. 2d 7, 62 (E.D.N.Y 2005) (citing *Young v. United States*, 535 U.S. 43, 49 (2002)). Furthermore, certain treaties and conventions provide that statute of limitations periods do not apply to war crimes and crimes against

humanity. *See* The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Nov. 26, 1968. Art. 1, 754 U.N.T.S. 73, 75 (entered into force Nov. 11, 1970); *see also* Rome Statute of the International Criminal Court, July 17, 1998, arts. 5, 29, U.N. Doc. A/Conf. 183/9 (1998) (entered into force July 1, 2002). As explained in *In Re Agent Orange Prod. Liab. Litig.*, these instruments suggest the need to recognize such a rule under customary international law. 373 F. Supp. 2d at 63. The statelessness of the Taiwanese people can undeniably be characterized as a crime against humanity.

Further, the principle of continuing violations was also well-articulated in this context by the United States District Court for the District of Columbia in *Guy Von Dardel v. Union of Soviet Socialist Republics*, 623 F. Supp. 246 (D.D.C. 1985), *rev'd on other grounds*, 736 F. Supp. 1 (D.D.C. 1990). In that case, the plaintiffs claimed that the continuing unlawful detention of the plaintiff by the then-USSR continued to violate the laws and treaties of the law of nations as well as the United States. 623 F. Supp. at 259. As such, the court stated, "[i]n such circumstances, the statute of limitations has not yet begun to run. *Id.* at 259-260. Where the tortious conduct of the defendant continues as an ongoing violation of applicable laws, this "precludes the running of a limitations period." *Id.* at 260. As the court explained in *Guy Von Dardel*, in cases involving an ongoing tort . . . the cause of action does not accrue for purposes of the running of the statute until the last act constituting the tort is complete." *Id.* The court held that the plaintiffs' claims were not barred by any applicable statute of

limitations and the tortious conduct by the defendant was an ongoing violation. *Id*. at 259-260.

Other courts have similarly precluded limitations periods on the basis of a recognized continuing violation. In *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117, 134 (E.D.N.Y. 2000), the plaintiffs asserted that because the defendants continued to fail to return assets allegedly looted from the plaintiffs in the 1940s, "time has not yet begun to accrue because defendants' alleged continued denial and failure to return the looted assets to plaintiffs, until this very day, means the statute has not begun to run." Stated more broadly, "the limitations period for a continuing offense does not begin until the offense is complete." *United States v. Rivera-Ventura*, 72 F.3d 277, 281 (2d Cir. 1995).

Similar to the facts of *Bodner*, Petitioners' nationality rights were revoked in the 1940s, and their stateless status has been left without resolution for decades. The offense, the creation and perpetuation of the Petitioners' statelessness, continues to this day. Each day Petitioners are stateless and the tort and the injuries are repeated. The R.O.C.'s failure to remedy the statelessness of Taiwanese persons stems from the act of the denationalization by virtue of the Decrees.

Here, it is beyond evident that Petitioners' claims are not time-barred and constitute a continuing violation of international law. Once Chiang Kai-shek and his Chinese National Government illegally extinguished the Japanese nationalities of the Taiwanese people, the tort of arbitrary denationalization was committed. To this

day, the Taiwanese people have no internationally accepted nationality and remain stateless, and as such, this constitutes a continuing tort.

The D.C. Circuit's improper reliance on District of Columbia case law, which provides no support for its conclusion that the statute of limitations has run and that no continuing tort exists, cannot be reconciled with the well-established precedent of other courts that speak to the contrary and have precluded statute of limitations periods on the basis of a continuing tort, such as is the case here. The D.C. Circuit's exceptionally narrow reading of the continuing tort doctrine makes little sense, especially since it recognized that Petitioners have suffered a grave injury. Until the R.O.C. fails to remedy the statelessness of the Taiwanese people, the tort of arbitrary denationalization is ongoing and the statute of limitations has not run. By resolving the question of whether the claim of arbitrary denationalization is timely, Petitioners may finally have a chance to determine their nationality after decades of being stateless.

C. The Issue Of Whether The Taiwanese Peoples' Statelessness Is A Continuing Tort For Statute Of Limitations Purposes Is A Matter Of Supreme National And International Importance.

It would be a grave injustice if this Court were to determine that statelessness is not a continuing violation of international law. Statelessness is not unique to the Taiwanese people, rather, more than ten million people are characterized as stateless across the world today. *See* http://www.unhcr.org/ibelong/;

see also Statelessness at the United Nations Compensation Commission, Statelessness Working Paper Series, No. 2015/03, p. 3. The possession of a nationality gives an individual access to various rights that are typically reserved to nationals of a particular state; for example, rights of entry and voting rights. *Id*. When the D.C. Circuit determined that Petitioners' claim of arbitrary denationalization was untimely, it effectively denied Petitioners the opportunity to determine their nationality from which they were illegally stripped decades ago, and deprives them of certain rights. Indeed, the D.C. Circuit ignored established precedent from various courts that correctly applied the continuing violation doctrine and instead relied upon case law that was inapplicable.

There is no reason to await a direct circuit split on this issue. This Court is the *only* court that can vindicate Petitioners' rights—rights that Petitioners (nor the R.O.C. itself) can assert in any other court, including the International Court of Justice, which is available only to recognized states.

As noted above, a determination that the statute of limitations has run on Petitioners' quest for an "authoritative declaration" that the 1946 Decrees were illegal and ineffective—especially given the D.C. Circuit's conclusion that the Petitioners' loss of Japanese citizenship and their resulting statelessness were "fairly traceable" to the Decrees—would mean that such statelessness will continue indefinitely. Such a grave injustice should not and cannot be permitted by this Supreme Court in light of the indisputable fact that Respondents' arbitrary

denationalization of the Taiwanese people is a continuing, recognized violation of the law of nations.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 27, 2017

APPENDIX

APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, FILED MARCH 30, 2017

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 16-5149

ROGER C.S. LIN, *et al.*,

Appellants

v.

UNITED STATES OF AMERICA
AND REPUBLIC OF CHINA (TAIWAN),

Appellees

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cv-00295)

September Term, 2016
FILED ON: MARCH 30, 2017

Before: MILLETT and WILKINS, *Circuit Judges*, and RANDOLPH, *Senior Circuit Judge.*

Appendix A

JUDGMENT

The court has considered this appeal on the record from the United States District Court for the District of Columbia and on the parties' briefs. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). After giving full consideration to the issues, we have determined that a published opinion is not needed. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED and ADJUDGED that the judgment of the district court be affirmed.

Plaintiffs in this case – two residents of Taiwan and a political advocacy organization representing residents of Taiwan – challenge nationality decrees issued by the Republic of China in 1946. The challenged decrees supposedly deprived plaintiffs of their Japanese nationality and rendered them stateless. They seek a declaratory judgment against the United States and the Republic of China ("Taiwan") that the decrees were unlawful. They also seek damages against Taiwan for the tort of arbitrary denationalization. The district court dismissed plaintiffs' claims for lack of jurisdiction.

In 1946, the government of the Republic of China issued two decrees that reportedly "stripped" the people of the island of Taiwan (then known as Formosa) of their Japanese nationality and conferred on them a Republic of China nationality. Amended Complaint ¶¶ 8, 37, 39. Plaintiffs claim that the United States shares legal

responsibility for these decrees. *Id.* ¶ 45-69. They allege that General Chiang Kai-shek, leader of the Republic of China when the decrees were issued, was administering Taiwan "as an agent" of the United States following Japan's surrender at the end of World War II. *Id.* ¶ 53. Plaintiffs further claim that, because of these decrees, they do not have an "internationally accepted nationality" to this day.[1] *Id.* ¶ 7.

The district court dismissed plaintiffs' claim for a declaratory judgment that the decrees were unlawful because plaintiffs had not demonstrated that the United States caused their injury or that a declaratory judgment against either defendant would redress the injury. *Lin v. United States*, 177 F. Supp. 3d 242, 249-55 (D.D.C. 2016). The court also concluded that the political question doctrine prevented it from issuing a declaratory judgment. *Id.* At 255-57.

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1. We discussed the subsequent political status of Taiwan in *Lin v. United States*, 561 F.3d 502, 504-05 (D.C. Cir. 2009). In 1949, when the communist party established the People's Republic of China on the mainland of China, General Chiang Kai-shek and his government fled to Taiwan and established the Republic of China in exile. *Id.* at 504. *See also* Amended Complaint ¶ 46. Both governments claim to be the legitimate government of China, including Taiwan. *Lin*, 561 F.3d at 505. The Republic of China governs the island of Taiwan. *Id.* The United States has since recognized the People's Republic of China as the legitimate government of China, but it maintains unofficial relations with the people of Taiwan and "strategic ambiguity with respect to sovereignty over Taiwan." *Id.* (internal quotation omitted). *See also* Amended Complaint ¶ 75.

Appendix A

We affirm the district court's dismissal of the declaratory judgment claim against both the United States and Taiwan on the basis of redressability. We agree with the district court that plaintiffs' alleged loss of Japanese citizenship and resulting statelessness is an injury in fact. *Id.* at 250-51. But the plaintiffs did not establish that it is "likely, as opposed to merely speculative," that a declaratory judgment holding the 1946 decrees illegal would redress their injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotation omitted).

Plaintiffs' injury can only be redressed by foreign nations not before the court. *See id.* at 562. A declaratory judgment would not restore plaintiffs' Japanese citizenship, and it would not resolve Taiwan's international status. Even if we accepted plaintiffs' assertion that a declaratory judgment would inspire action by the United Nations, Appellant Br. at 38- 42, the United Nations cannot confer citizenship or force a member-state to confer citizenship. Sovereign nations control their own citizenship. The United Nations' conventions to prevent statelessness do not require signatory nations to confer citizenship on the residents of Taiwan. *See generally Convention Relating to the Status of Stateless Persons*, 360 U.N.T.S. 117 (Sep. 28, 1954); *Convention on the Reduction of Statelessness*, 989 U.N.T.S. 175 (Aug. 30, 1961). The unusual status of residents of Taiwan is not new, and no nation has acted to redress it. Plaintiffs have not demonstrated that a court ruling invalidating the 1946 decrees would likely cause these foreign nations to provide relief. *See Cardenas v. Smith*, 733 F.2d 909, 914 (D.C. Cir. 1984); *Greater Tampa*

Chamber of Commerce v. Goldschmidt, 627 F.2d 258, 263 (D.C. Cir. 1980).

Plaintiffs also sought damages from Taiwan for the tort of arbitrary denationalization. As we have already mentioned, plaintiffs have alleged an injury in fact. Taiwan concedes, and we agree, that their injury is "fairly traceable" to the 1946 decrees. *Lujan*, 504 U.S. at 560 (internal quotation and alteration omitted). Damages redress a wrong. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 96 (1998). The district court concluded that it did not have jurisdiction over Taiwan under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-11. *Lin*, 177 F. Supp. 3d at 257-59. We will not resolve the question. *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83 (1998), prevents the court from assuming Article III jurisdiction, but we may address a case's merits in order to "avoid a doubtful issue of *statutory* jurisdiction." *Chalabi v. Hashemite Kingdom of Jordan*, 543 F.3d 725, 728 (D.C. Cir. 2008) (internal quotation omitted).

We affirm the district court's dismissal of the claim for damages on the alternative ground that the case is untimely. *See United States ex rel. Heath v. AT&T, Inc.*, 791 F.3d 112, 123 (D.C. Cir. 2015). The statute of limitations for a common-law tort is three years, D.C. Code § 12-301(8). The Republic of China issued the challenged decrees in 1946. Plaintiffs' 2015 complaint is more than sixty years too late.

Plaintiffs have not demonstrated a continuing tort, which can extend the statute of limitations. Under District

of Columbia law, a continuing tort requires "(1) a continuous and repetitious wrong, (2) with damages flowing from the act as a whole rather than from each individual act, and (3) at least one injurious act . . . within the limitation period." *Beard v. Edmonson and Gallagher*, 790 A.2d 541, 547-48 (D.C. 2002) (internal quotation omitted). Plaintiffs have not satisfied any of these requirements. Plaintiffs challenge two 1946 decrees, not a continuous course of conduct. They have not demonstrated that their injury comes from a course of conduct. And they do not allege any injurious act within the limitation period. Plaintiffs' continued statelessness does not create a continuing tort. Neither the "lingering effect of an unlawful act" nor a defendant's failure to right a past wrong is "itself an unlawful act." *AKM LLC dba Volks Constructors v. Sec'y of Labor*, 675 F.3d 752, 757 (D.C. Cir. 2012) (internal quotation omitted).

Once a plaintiff is, or should be, aware of the injury, the rationale for the continuous tort doctrine is inapplicable and the statute of limitations begins to run. *Beard*, 790 A.2d at 548. The plaintiff can then only recover for those portions of the continuing tort that occurred within the limitations period. *Id.* Plaintiffs do not claim that they only became aware of their loss of Japanese citizenship and statelessness within the last three years. Therefore, even if they could prove a continuing tort, they could only recover for acts within the last three years. And plaintiffs have not alleged any injurious acts in that period.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold

issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/_____
Ken Meadows
Deputy Clerk

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED MARCH 31, 2016

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 15-cv-00295 (CKK)

DR. ROGER C.S. LIN, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA

and

REPUBLIC OF CHINA (TAIWAN),

Defendants.

ORDER
(March 31, 2016)

For the reasons set forth in the accompanying Memorandum Opinion, it is, this 31st day of March, 2016, hereby

ORDERED that Defendant United States' [23] Motion to Dismiss is GRANTED.

It is further **ORDERED** that Defendant Republic of China's [24] Motion to Dismiss is GRANTED.

It is further **ORDERED** that Plaintiffs' claims against Defendants are DISMISSED.

This action is dismissed in its entirety.

SO ORDERED.

This is a final, appealable order.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

APPENDIX C — MEMORANDUM OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FILED MARCH 31, 2016

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 15-cv-00295 (CKK)

DR. ROGER C.S. LIN, *et al.*,

Plaintiffs

v.

UNITED STATES OF AMERICA AND
REPUBLIC OF CHINA (TAIWAN),

Defendants.

March 31, 2016, Decided
March 31, 2016, Filed

MEMORANDUM OPINION

Plaintiffs are residents of Taiwan and members of an advocacy group in Taiwan who allege that in 1946, the Republic of China—at that time recognized by the United States as the government of China—unlawfully denied the population of Taiwan of its Japanese nationality at the conclusion of World War II. Specifically, Plaintiff allege that the Republic of China issued nationality decrees that unlawfully denied those residing on Taiwan, as

well as their descendants, of their Japanese nationality. Plaintiff further allege that the United States shares legal responsibility for the denial of Plaintiffs' Japanese nationality because the Republic of China, through Generalissimo Chiang Kai-shek, was "acting as an agent of the United States" when the decrees were issued in 1946. Plaintiffs filed suit against Defendants, the United States and the Republic of China (Taiwan), seeking relief in the form of (1) a declaration that the nationality decrees of 1946 violated international law and (2) an award for monetary damages for the tort of arbitrary denationalization.

Presently before the Court are Defendant United States' [23] Motion to Dismiss and Defendant Republic of China's [24] Motion to Dismiss, both pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Upon consideration of the pleadings,[1] the relevant legal authorities, and the record as a whole, the Court finds that the Court lacks subject matter jurisdiction over Plaintiffs' claims with respect to both Defendants. Accordingly,

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1. The Court's consideration has focused on the following documents: Plaintiffs' Amended Complaint ("Pls.' Am. Compl."), ECF No. [18]; Defendant United States' Motion to Dismiss ("USA's Mot."), ECF No. [23]; Defendant Republic of China's Motion to Dismiss ("ROC's Mot."), ECF No. [24]; Plaintiffs' Opposition to Defendant United States' Motion to Dismiss ("Pls.' Opp'n to USA's Mot."), ECF No. [25]; Plaintiffs' Opposition to Defendant Republic of China's Motion to Dismiss ("Pls.' Opp'n to USA's Mot."), ECF No. [26]; Defendant United States' Reply in Support of Motion to Dismiss ("USA's Reply"), ECF No. [29]; and Defendant Republic of China's Reply in Support of Motion to Dismiss ("ROC's Reply"), ECF No. [30].

the Court shall GRANT Defendant United States' [23] Motion to Dismiss, and the Court shall GRANT Defendant Republic of China's [24] Motion to Dismiss.

I. BACKGROUND

For the purposes of the motions before the Court, the Court accepts as true the well-pleaded allegations in Plaintiffs' Amended Complaint. The Court does "not accept as true, however, the plaintiff's legal conclusions or inferences that are unsupported by the facts alleged." *Ralls Corp. v. Comm. on Foreign Inv. in U.S.*, 758 F.3d 296, 315, 411 U.S. App. D.C. 105 (D.C. Cir. 2014). The Court recites the principal facts pertaining to the issues raised in the pending motions, reserving further presentation of the facts for the discussion of the individual issues below.

Plaintiffs' Amended Complaint provides a "short history lesson" concerning the political status of Taiwan over the last 120 years.[2] In 1895, at the conclusion of the Sino-Japanese War, China and Japan signed the Treaty of Shimonoseki, pursuant to which, China ceded Taiwan

2. The instant case marks Plaintiff Dr. Roger C.S. Lin's second attempt to obtain a declaratory judgment from this District Court concerning the nationality of Dr. Lin and other Taiwan residents. *See Lin v. United States*, 539 F. Supp. 2d 173 (D.D.C. 2008) *aff'd* 561 F.3d 502, 385 U.S. App. D.C. 191 (2009) (dismissing plaintiffs' claims because they were barred by the political question doctrine). Plaintiffs' instant Amended Complaint contains factual allegations that substantially mirror the factual allegations made in the amended complaint in the first *Lin* case. For a comprehensive recitation of the background facts, see Judge Rosemary M. Collyer's decision in the first *Lin* case. *See Lin*, 539 F. Supp. at 174-77.

(then known as Formosa) to Japan in "perpetuity and full sovereignty." Am. Compl. ¶¶ 28-31. On December 7, 1941, Japan attacked the United States naval base at Pearl Harbor, Hawaii, and as a result the United States Congress issued a Declaration of War on December 8. *Id.* ¶¶ 33-34. After four years of war, Japan surrendered on September 2, 1945. *Id.* ¶ 34. On that same day, General Douglas MacArthur, Supreme Commander for the Allied Powers, issued General Order No. 1, ordering the "senior Japanese commanders and all ground, sea, air, and auxiliary forces within . . . Formosa" to "surrender to Generalissimo Chiang Kai-shek." *Id.* ¶ 35.

According to the Amended Complaint, Chiang Kai-shek was the leader of the Chinese Nationalist Party of the Republic of China and was the "representative of the Allied Powers empowered to accept surrender[]" of the Japanese forces in Taiwan. *Id.* On October 25, 1945, Chiang Kai-shek's representative in Taiwan accepted the surrender of the Japanese forces there, although "[t]he surrender of Japanese forces in Taiwan (Formosa) was assisted by the United States Armed Forces." *Id.* Plaintiffs allege that in the aftermath of Japan's surrender, Chiang Kai-shek and his Chinese Nationalist Party administered Taiwan on behalf of the Allied Powers, such that the Republic of China acted as "the agent of the United States." *Id.* ¶ 45.[3]

3. As stated in the Amended Complaint, in 1949, Taiwan (Formosa) became the only home of the Chinese Nationalist Party. In that same year, China's civil war between Chinese Nationalists and Communists ended with the establishment of the People's Republic of China and the ouster of the Chinese Nationalists from Mainland China. The Chinese Nationalists, led by Chiang Kai-shek, remained

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On January 12, 1946, the Republic of China issued a decree mandating, effective December 25, 1945, the automatic restoration of Chinese nationality for the people of Taiwan. *Id.* ¶ 37. The decree stated:

> The people of Taiwan are people of our country. They lost their nationality because the island was invaded by an enemy. Now that the land has been recovered, the people who originally had the nationality of our country shall, effective December 25, 1945, resume the nationality of our country. This is announced by this general decree in addition to individual orders.

Id. Several months later, on June 22, 1946, the Republic of China issued a decree on Measures Concerning the Nationality of Overseas Taiwanese (also translated as "Measures For The Adjustment of Nationality of Taiwanese Abroad"). *Id.* ¶ 39. The measure provided that persons living outside of Taiwan would likewise have Chinese nationality restored to them, and issued a certificate of registration. *Id.*

Plaintiffs allege that "the United States did not give the Republic of China the appropriate authority to issue the 1946 Nationality Decrees." *Id.* ¶ 41. Plaintiffs also allege that the United States was "fully aware of these Decrees" and was also "aware . . . that the decree[s] violated international law." *Id.* ¶ 41, 43.

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in Taiwan, where, Plaintiffs allege, they continued to administer the island for the Allied Powers as the Republic of China. *See* Am. Compl. ¶ 46.

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On February 27, 2015, Plaintiffs filed suit against Defendants the United States and the Republic of China. Plaintiffs seek a series of Court-ordered declarations holding that the Republic of China's nationality decrees are legally invalid under various international instruments, and that the United States did not authorize the Republic of China to issue those decrees. *See id.*, Prayer for Relief, ¶ 1. Plaintiffs also seek an award for monetary damages against the Republic of China for the tort of arbitrary denationalization. *See id.*, Prayer for Relief, ¶ 2. Both Defendants have filed Motions to Dismiss Plaintiffs' Amended Complaint, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

II. LEGAL STANDARD

"Federal courts are courts of limited jurisdiction" and can adjudicate only those cases or controversies entrusted to them by the Constitution or an Act of Congress. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391. "In an attempt to give meaning to Article III's case-or-controversy requirement, the courts have developed a series of principles termed 'justiciability doctrines,' among which are standing . . . and the political question doctrine." *Nat'l Treasury Employees Union v. United States*, 101 F.3d 1423, 1427, 322 U.S. App. D.C. 135 (D.C. Cir. 1996) (citing *Allen v. Wright*, 468 U.S. 737, 750, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984)). These doctrines incorporate both the prudential elements, which "'Congress is free to override,'" *id.* (quoting *Fair Employment Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268,

1278, 307 U.S. App. D.C. 401 (D.C. Cir. 1994)), and "'core component[s]'" which are "'essential and unchanging part[s] of the case-or-controversy requirement of Article III,'" *id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)).

The Court begins with the presumption that it does not have subject matter jurisdiction over a case. *Id.* To survive a motion to dismiss pursuant to Rule 12(b)(1), a plaintiff bears the burden of establishing that the Court has subject matter jurisdiction over its claim. *Moms Against Mercury v. FDA*, 483 F.3d 824, 828, 376 U.S. App. D.C. 18 (D.C. Cir. 2007). In determining whether there is jurisdiction, the Court may "consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Coal. for Underground Expansion v. Mineta*, 333 F.3d 193, 198, 357 U.S. App. D.C. 72 (D.C. Cir. 2003) (citations omitted). "Although a court must accept as true all factual allegations contained in the complaint when reviewing a motion to dismiss pursuant to Rule 12(b)(1)," the factual allegations in the complaint "will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim." *Wright v. Foreign Serv. Grievance Bd.*, 503 F. Supp. 2d 163, 170 (D.D.C. 2007) (citations omitted).

III. DISCUSSION

In moving to dismiss, the two Defendants have each put forward a plethora of arguments as to why this Court

should dismiss Plaintiffs' case for lack of subject matter jurisdiction. Specifically, both Defendants argue that this Court lacks jurisdiction over Plaintiffs' claims because (1) Plaintiffs do not have standing under Article III of the United States Constitution and (2) Plaintiffs' request that declarations be issued concerning the nationality status of residents of Taiwan presents a "quintessential non-justiciable political question." In addition, Defendant Republic of China argues that the Court lacks jurisdiction over Plaintiffs' claims against the Republic of China under the Foreign Sovereign Immunities Act.

Upon review of the parties' submissions, the Court finds that it lacks subject matter jurisdiction over Plaintiffs' case. Accordingly, the Court shall not consider Defendants' remaining arguments, which concern the merits of Plaintiffs' claims, namely, whether Plaintiffs fail to state a cause of action and whether the applicable statutes of limitations bar Plaintiffs' claims. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998). The Court shall limit its discussion to the threshold jurisdictional issues that bar adjudication of this matter. *See Anderson v. Carter*, 802 F.3d 4, 10 (D.C. Cir. 2015) ("While the Supreme Court in *Steel Co.* makes clear that once we have established that we have no subject-matter jurisdiction, we can proceed no further, we do not violate this admonition when we observe that more than one threshold basis bars adjudication.").

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A. Plaintiffs lack standing under Article III of the United States Constitution.

Pursuant to Article III of the Constitution, Defendants move to dismiss this action on the basis that this Court has no jurisdiction because Plaintiffs lack standing. "Article III of the Constitution limits the jurisdiction of federal courts to 'actual cases or controversies between proper litigants.'" *Mendoza v. Perez*, 754 F.3d 1002, 1010, 410 U.S. App. D.C. 210 (D.C. Cir. 2014) (quoting *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 661, 320 U.S. App. D.C. 324 (D.C. Cir. 1996)). Because standing is a "threshold jurisdictional requirement," a court may not assume that Plaintiff has standing in order to proceed to evaluate a case on the merits. *Bauer v. Marmara*, 774 F.3d 1026, 1031, 413 U.S. App. D.C. 338 (D.C. Cir. 2014). A plaintiff "bears the burden of showing that he has standing for each type of relief sought." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009). "To establish constitutional standing, plaintiffs 'must have suffered or be imminently threatened with a concrete and particularized injury in fact that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.'" *Mendoza*, 754 F.3d at 1010 (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, U.S., 134 S.Ct. 1377, 1386, 188 L.Ed.2d 392 (2014); *see also Lujan*, 504 U.S. at 560.

"The 'irreducible constitutional minimum of standing contains three elements': injury in fact, causation, and redressability." *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015) (quoting *Lujan*, 504 U.S.at 560-61). "Injury in fact

is the 'invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical." *Id.* (quoting *Lujan*, 504 U.S. at 560) (alterations in original). "The 'causal connection between the injury and the conduct complained of' must be 'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.'" *Id.* (quoting *Lujan*, 504 U.S. at 561). Finally, "it must be 'likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *Id.* (quoting *Lujan*, 504 U.S. at 561).

Defendant United States challenges standing with respect to all three prongs, while Defendant Republic of China challenges standing only with respect to prong #1, the injury-in-fact requirement, and prong #3, the redressability requirement.

1. Plaintiffs have alleged an "injury-in-fact."

To constitute an "injury-in-fact" under Article III, an injury must be "particularized," which means that "the injury must affect the plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 560 n.1.

Defendants argue that Plaintiffs "have not alleged facts showing that they have suffered a *personal* injury as a result of the 1946 nationality decrees." *See* USA's Mot. at 17 (emphasis in original).[4] Defendants characterize

4. Defendant Republic of China adopts Defendant United States' arguments with respect to the injury-in-fact requirement. *See* ROC's Mot. at 12.

Plaintiffs' alleged injury merely as a "general interest in obtaining a different international status for Taiwan and defining Taiwan's identity." *Id.* Defendants contend that Plaintiffs' allegations present the type of "abstract question of wide public significance which amount to generalized grievances, pervasively shared and most appropriately addressed in the representative branches. *See id.* at 18 (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 475, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982)).

Plaintiffs argue that their injury is "separate and apart from questions of Taiwan's unresolved political status" and that Plaintiffs' "daily experiences facing statelessness are neither abstract nor general." Pls.' Opp'n to USA's Mot. at 33. Relying on the Supreme Court's decision in *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962), Plaintiffs argue that the requirement that their injury be "personal, individualized, and peculiar to himself" does not mean that they must allege injuries that affect only them, or that there is an upper limit on the number of people that may be injured by a defendant's acts beyond which there is no standing. Pls.' Opp'n to USA's Mot. at 34.

The Court agrees with Plaintiffs and finds that they have alleged a "particularized" injury that affects them in a "personal and individual way." *Lujan*, 504 U.S. at 560 n.1. Plaintiffs' allegations go beyond having a "general interest in obtaining a different international status for Taiwain." USA's Mot. at 17. Rather, Plaintiffs allege that they have been injured by virtue of having been "stripped

of their Japanese nationality" and having been "impos[ed] a nationality of the ROC." Am. Compl. ¶ 8. Such an injury is not a mere "generalized grievance about the conduct of government or the allocation of power." *Valley Forge Christian Coll.*, 454 U.S. at 480 (finding that plaintiff taxpayers did not have standing as taxpayers to challenge transfer of federally owned property). Accordingly, the Court finds that Plaintiffs have alleged "facts showing disadvantage to themselves as individuals," so as to demonstrate that they have "such a personal stake in the outcome of the controversy as to assure [] concrete adverseness." *Baker*, 369 U.S. at 205, 206.

2. Plaintiffs cannot meet their burden of showing that their alleged injury is fairly traceable to the United States.[5]

In order for Plaintiffs to have standing, they must demonstrate that their alleged injury is "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560 (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976)). To satisfy this "causation" or "traceability" prong, Plaintiffs must show that "it is substantially probable that the challenged acts of the defendant, not an absent third party, [] cause[d] the particularized injury of the plaintiffs." *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663, 320 U.S. App. D.C. 324 (D.C. Cir. 1996).

5. Defendant Republic of China concedes that Plaintiffs have met this element of standing with respect to Defendant Republic of China. *See* ROC's Mot. at 12.

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Defendant United States contends that Plaintiffs cannot establish that the United States caused their nationality injury through the 1946 decrees because the United States did not issue those decrees. USA's Mot. at 19. Defendant United States cites Plaintiffs' own allegation in their Amended Complaint: "the United States did not give the ROC the appropriate authority to issue the 1946 Nationality Decrees." *Id.* (quoting Am. Compl. ¶ 41). Defendant United States also argues that Plaintiffs cannot establish causation by alleging that the Republic of China was "acting as an agent of the United States" when it promulgated the nationality decrees in 1946. *Id.* (citing Am. Compl. ¶ 6). Defendant United States further argues that, accepting *arguendo* that such an agency relationship existed in 1946, "almost seven decades have passed since then, with numerous events having occurred that are more directly relevant to Taiwan's political status," and that it would be "completely speculative to conclude that the nationality of Taiwan residents was caused by decrees issued by the Republic of China in 1946." *Id.* at 19-20 (listing intervening events).

In response, Plaintiffs repeat their allegation that the United States is liable for the challenged acts of its alleged agent, the Republic of China. Pls.' Opp'n to USA's Mot. at 36 (citing Restatement (Third) of Agency (2006) § 7.03(1)). Plaintiffs also cite allegations in their Amended Complaint, which they believe establish the principal-agent relationship between the United States and the Republic of China. *See id.* Plaintiffs also argue that "the fact that Plaintiffs' statelessness has been allowed to exist for nearly 70 years should not be held against the Plaintiffs." *See id.* at 37.

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At the outset, the Court notes that this is not the first time that Plaintiffs have brought claims against the United States based on their assertion that the Republic of China acted as an agent for the United States during the relevant post-World-War II time period. In *Lin v. United States*, 539 F. Supp. 2d 173 (D.D.C. 2008), Plaintiff Dr. Roger C.S. Lin—who is also a plaintiff in this lawsuit—and a group of Taiwan residents claimed that "General Order No. 1 made Chiang Kai-shek an agent for the principal Occupying Power, *i.e.*, the United States," and that the asserted principal-agent relationship enabled the United States to exercise temporary sovereignty over Taiwan. *Id.* at 178, 180. In that case, Judge Rosemary M. Collyer held that the court could not examine the bases for Plaintiffs' claims because doing so would require the court to resolve non-justiciable political questions, such as whether the United States exercised sovereign authority over Taiwan. *See id.* at 178-181. The United States Court of Appeals for the District of Columbia Circuit affirmed Judge Collyer's decision to dismiss the plaintiffs' claims, finding that the plaintiffs were asking the court to "trespass into a controversial area of U.S. foreign policy in order to resolve a question the Executive Branch intentionally left unanswered for over sixty years: who exercises sovereignty over Taiwan." *Lin v. United States*, 561 F.3d 502, 503-04, 385 U.S. App. D.C. 191 (D.C. Cir. 2009).

Similarly here, Plaintiffs are asking the Court to conclude that a principal-agency relationship existed between the United States and the Republic of China, and that through the asserted principal-agent relationship, the United States has caused Plaintiffs' alleged injuries,

namely the deprivation of Plaintiffs' recognized nationality. As the Court discusses in greater detail below in Part III.B, the Court cannot issue such a finding without addressing the complex and delicate contours of certain non-justiciable political questions, including whether the United States exhibited sovereign control over Taiwan during the time period at issue. *See infra*, Part III.B.

Without addressing any such non-justiciable political questions, the Court notes several readily apparent deficiencies in Plaintiffs' allegations that the Court deems problematic in proving that Defendant United States has caused Plaintiffs' alleged injuries. First, Plaintiffs concede in their Amended Complaint that "the United States did not give the ROC the appropriate authority to issue the 1946 Nationality Decrees." Am. Compl. ¶ 41. Plaintiffs, citing relevant State Department documents, allege that the United States was merely "aware" of the Decrees. *Id.* ¶¶ 41, 43. As Defendant United States observes in its Motion to Dismiss, if "by Plaintiffs' own allegations, the United States did not authorize the Republic of China to issue the nationality decrees in 1946, then any alleged injury arising from the decrees cannot be 'fairly traceable' to the United States." USA's Mot. at 19.[6]

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6. Plaintiffs misleadingly cite two inapposite out-of-circuit cases to argue the proposition that where "the United States is sufficiently involved in the activity in the activity of foreign officials, the United States may be responsible for the acts of those officials as agents of the United States." Pls.' Opp'n to USA's Mot. at 36. The first case, *United States v. Hensel*, 699 F.2d 18, 25 (1st Cir. 1983), cert. denied, 461 U.S. 958 (1983), concerns whether the "exclusionary rule" under the Fourth Amendment applied to a search conducted

Furthermore, Plaintiffs repeatedly allege in their Amended Complaint that Chiang Kai-shek acted as a representative of the *Allied Powers*. *See* Am. Compl. ¶¶ 1, 18, 36, 46, 57. Plaintiffs' assertion that Chiang Kai-shek acted as an agent of the United States appears to be part of an attempt by Plaintiffs to benignly conflate the Allied Powers and the United States into one. However, such an attempt appears problematic, given Plaintiffs' concession that the "Allied Powers," as defined in Article 23(a) of the Treaty of Peace with Japan, included "Australia, Australia, Canada, Ceylon, France, Indonesia, the Kingdom of the Netherlands, New Zealand, Pakistan, the Republic of the Philippines, the United Kingdom of Great Britain and Northern Ireland, and the United States of America." Am. Compl. ¶ 70, n.57.

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by Canadian law enforcement of evidence seized by foreign police agents, after an American DEA agent urged the Canadians to seize the ship if it entered Canadian waters. *See id.* The second case, *Stonehill v. United States* 405 F.2d 738, 743 (9th Cir. 1968), cert. denied, 395 U.S. 960 (1969), also concerned the "exclusionary rule," specifically, the legality of certain raids found to have been illegal searches and seizures by the Philippine Supreme Court as violating a section of the Philippine Constitution that was identical to the Fourth Amendment of the United States Constitution. *See id.* Neither cited decision provides any support for Plaintiffs' contention that United States is responsible for Plaintiffs' injuries that allegedly have resulted from the issuing of the 1946 nationality decrees.

Likewise, Plaintiffs' reliance on *Cobb v. United States*, 191 F.2d 604 (1951) is misplaced. *Cobb* concerned whether the military occupation of Okinawa rendered the occupied territory part of the United States for purposes of the Federal Tort Claims Act and did not address the principles of agency law on which Plaintiffs rely. *See id.* at 610-611.

Finally, Plaintiffs are asking the Court to conclude that Defendant United States—by virtue of its alleged principal-agent relationship with the Republic of China in 1946—has caused Plaintiffs' present-day injuries as stateless persons deprived of their Japanese nationality. *See* Am. Compl. ¶¶ 6, 8. However, even if one were to accept, *arguendo* , that such an agency relationship existed in 1946, seven decades have passed since the issuing of the nationality decrees in 1946, with numerous events having occurred that are directly relevant to Taiwan's political status. *See* U.S.A.'s Mot. at 19, Ex. 2. Furthermore, Plaintiffs have not put forward any evidence demonstrating that Plaintiffs' current situation is a result of the events in 1946 and not a consequence of the "years and years of diplomatic negotiations and delicate agreements" that have occurred during the intervening years. *Lin I*, 539 F. Supp. 2d at 181. Given the lapse of time and the numerous intervening events involving a number of nonparty sovereign nations, it would be speculative to conclude, based on the record currently before the Court, that Plaintiffs' current injuries were caused by the decrees issued by the Republic of China in 1946.

Accordingly, the Court cannot find that Plaintiffs have met their burden of demonstrating the second element required for Article III standing, *i.e.*, that "it is substantially probable" that the challenged actions by Defendant United States have caused Plaintiffs' alleged injuries. *Fla. Audubon Soc'y*, 94 F.3d at 663.

3. Plaintiffs' alleged injuries are not redressable by a favorable decision of this Court.

In order for Plaintiffs to have standing, Plaintiffs must also demonstrate that it is "likely, as opposed to merely speculative that the injury will be redressed by a favorable decision" of this Court. *Lujan*, 504 U.S. at 561 (internal quotations and citation omitted). "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement." *Steel Co.*, 523 U.S. at 107.

Plaintiffs request that the Court redress their alleged injuries—the deprivation of their Japanese nationality and their current stateless status—by entering a series of declarations holding that the nationality decrees issued in 1946 are legally invalid under various international instruments, and that the United States did not authorize the Republic of China to issue those decrees. *See* Am. Compl., Prayer for Relief, ¶ 1.

Defendants argue that no declaratory judgment can restore Plaintiffs' alleged Japanese nationality, and that the Court lacks authority to resolve Plaintiffs' nationality. Defendants further argue that Plaintiffs' nationality status cannot be resolved without first resolving the political status of Taiwan, the resolution of which the United States has long favored through a "peaceful settlement . . . by the Chinese themselves." *See* USA's Mot. at 21.[7]

7. Defendant Republic of China adopts Defendant United States' arguments with respect to the injury-in-fact requirement. *See* ROC's Mot. at 12.

According to Defendants, resolving the political status of Taiwan involves "independent actors not before the court and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict." *See id.* (quoting *Lujan*, 504 U.S. at 562 (quoting *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 615, 109 S. Ct. 2037, 104 L. Ed. 2d 696 (1989) (internal quotations omitted))).

Plaintiffs assert that this Court can redress Plaintiffs' injuries. Specifically, Plaintiffs contend that Plaintiffs' action "seeks a declaration by this Court that is substantially likely to support and materially change the Plaintiffs' ability to clarify their nationality status." Pls.' Opp'n to USA's Mot. at 38. Plaintiffs assert that they do not claim to be Japanese nationals, but rather claim to be stateless persons, whose statelessness began with the illegal deprivation of their, and their descendants', Japanese nationality." *Id.* at 38-39. Plaintiffs argue that the declaration that Plaintiffs seek would "support the Plaintiffs' position in securing an answer, any answer, to the question of their nationality" and would "significantly support the Plaintiffs' efforts in Taiwan and around the world, and within international bodies such as the United Nations, to end their statelessness." *Id.* at 39.

Upon review of the parties' submissions, the Court finds that this Court cannot redress Plaintiffs' alleged injuries. "Redressability examines whether the relief sought, assuming that the court chooses to grant it, will likely alleviate the particularized injury alleged by the plaintiff." *Fla. Audubon Soc'y*, 94 F.3d at 661. Here, the relief sought by Plaintiffs—a declaration stating that

the Republic of China's nationality decrees are legally invalid—would not redress their alleged injury as "stateless persons" who lack an internationally recognized nationality. In fact, Plaintiffs do not even attempt to argue that the declaration that Plaintiffs are seeking would provide them with an internationally recognized nationality or directly affect their nationality status. *See* Pls.' Opp'n to USA's Mot. at 38-39. Rather, Plaintiffs merely contend that the sought declaration, if issued by the Court, would "significantly support the Plaintiffs' efforts in Taiwan and around the world, and within international bodies such as the United Nations, to end their statelessness." *Id.* at 39. However, redressability cannot rest on speculation concerning the discretionary actions that non-parties may take in the future. *See Univ. Med. Ctr. Of S. Nev. v. Shalala*, 173 F.3d 438, 442, 335 U.S. App. D.C. 322 (D.C. Cir. 1999) (stating that even if the plaintiff prevailed, "it has never explained how, or under what legal theory, it would be entitled to recover" against non-parties).

Furthermore, when "redress depends on the cooperation of a third party, it becomes the burden of the [plaintiff] to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury." *U.S. Ecology, Inc. v. U.S. Dep't of Interior*, 231 F.3d 20, 24-25 (D.C. Cir. 2000) (citation omitted). Here, Plaintiffs allege no facts plausibly demonstrating how the sought declaration, if issued by this Court, would be used "within international bodies such as the United Nations [] to end their statelessness." Pls.' Opp'n to USA's Mot. at 39. As

such, the resolution of Plaintiffs' alleged injury necessarily involves "independent actors not before the court and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict." *Lujan* 504 U.S. at 562 (citation omitted).

In sum, Plaintiffs have failed to show that it is "likely, as opposed to merely speculative" that their injury will be redressed by a favorable decision of this Court. *Lujan*, 504 U.S. at 561. Accordingly, the Court finds that Plaintiffs lack standing to bring the present suit, and that this Court lacks subject matter jurisdiction to hear Plaintiffs' claims against Defendants.

B. Additional grounds as to why this Court lacks subject matter jurisdiction over Plaintiffs' claims.

When a court concludes that it lacks subject matter jurisdiction over a plaintiff's claims, the Court is prohibited from addressing the merits of those claims. *See Steel Co.*, 523 U.S. at 104-05. A court does not violate that admonition when the court "observes that more than one threshold basis bars adjudication," and proceeds to explain why such threshold jurisdictional issues provide additional grounds for why the court lacks jurisdiction to hear the plaintiff's case. *Anderson*, 802 F.3d at 10 (citing *Public Citizen v. United States District Court*, 486 F.3d 1342, 1346, 376 U.S. App. D.C. 222 (D.C. Cir. 2007)).

Here, Plaintiffs' request that a declaration be issued concerning the nationality status of Taiwan residents presents a "quintessential non-justiciable political

question." In addition, Plaintiffs fail to show that this Court has jurisdiction over Plaintiffs' claims against Defendant Republic of China under the FSIA.

1. The political question doctrine bars adjudication of Plaintiffs' claims.

"The principle that the courts lack jurisdiction over political questions that are by their nature 'committed to the political branches to the exclusion of the judiciary' is as old as the fundamental principle of judicial review." *Schneider v. Kissinger*, 412 F.3d 190, 193, 366 U.S. App. D.C. 408 (D.C. Cir. 2005) (quoting *Antolok v. United States*, 873 F.2d 369, 379, 277 U.S. App. D.C. 156 (D.C. Cir. 1989)). In determining whether a case presents a nonjusticiable political question, the courts look for six factors: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing a lack of respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment of multifarious pronouncements by various departments on one question. *Baker v. Carr*, 369 U.S. 186, 217, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). If any one of these factors is present, the Court may find that the political question doctrine bars adjudication of Plaintiffs' claims. *Schneider*, 412 F.3d at 194.

Appendix C

Here, Plaintiffs ask this Court to address broad questions about the nationality of Taiwan residents under various international instruments and to issue declarations regarding their nationality. *See* Am. Compl. ¶¶ 5, 6, 8, 9, 13, 45, 53, 50, 77; *id.*, Prayer for Relief, ¶ 1. Under settled D.C. Circuit precedent, however, the nationality of Taiwan residents presents a quintessential non-justiciable political question.

In *Lin v. United States*, 539 F. Supp. 2d 173 (D.D.C. 2008), the plaintiffs, which included the named Plaintiff in this case Dr. Roger C.S. Lin sought a judicial declaration that they are nationals of the United States with all related rights and privileges, including the right to obtain U.S. passports. *Id.* at 176-77. As noted above, Judge Collyer granted the government's motion to dismiss, concluding that the plaintiffs' challenge involved "a quintessential political question" that required "trespass into the extremely delicate relationship between and among the United States, Taiwan and China." *Id.* at 178. Judge Collyer also noted that the plaintiffs were asking the court to "catapult over" a decision by the political branches to "obviously and intentionally *not* recognize[] any power as sovereign over Taiwan." *Id.* at 179 (emphasis in original). Given the "years and years of diplomatic negotiations and delicate agreements" between the United States and China, the court concluded it "would be foolhardy for a judge to believe that she had the jurisdiction to make a policy choice on the sovereignty of Taiwan." *Id.* at 181.

The United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") affirmed Judge Collyer's

decision, holding that the plaintiffs' request to be declared nationals of the United States was barred by the political question doctrine. *See Lin v. United States*, 561 F.3d 502, 508, 385 U.S. App. D.C. 191 (D.C. Cir. 2009). The D.C. Circuit explained that addressing plaintiffs' attempt to be declared U.S. nationals "would require us to trespass into a controversial area of U.S. foreign policy in order to resolve a question the Executive Branch intentionally left unanswered for over sixty years: who exercises sovereignty over Taiwan. This we cannot do." *Id.* at 503-04.

Here, as in the earlier case, Plaintiffs ask the Court to issue declarations that directly address the nationality of Taiwan's residents. *See* Am. Compl. Prayer for Relief, ¶ 1. However, as noted above, the D.C. Circuit has explicitly held that determining the nationality of Taiwan's residents would require this Court to resolve political questions that this Court does not have jurisdiction to resolve. *See Lin*, 561 F.3d at 504. Furthermore, resolving Plaintiffs' claims regarding their nationality status would first require answering the "antecedent question" of identifying Taiwan's sovereign, an issue that cannot be answered under the political question doctrine. *Id.* at 506.

Plaintiffs argue, to no avail, that the declarations sought by Plaintiffs "do not touch upon the political status or sovereignty of Taiwan." Pls.' Opp'n to USA's Mot. at 42. Plaintiffs contend that they have identified a "specific and concrete violation of international law" that is unrelated to the current status of Taiwan, and that "the declarations sought by [Plaintiffs] would make no statement in any way on the current sovereignty status of Taiwan." *See*

id. Plaintiffs' argument is essentially identical to the arguments rejected by the district court and the D.C. Circuit in the earlier *Lin* case. *See Lin*, 539 F. Supp. 2d at 179 ("Plaintiffs argue that the Court need only perform a traditional judicial task, interpret treaties, laws, and the Constitution . . . but they misapprehend the nature of their own Amended Complaint."); *Lin*, 561 F.3d at 506 ("Appellants argue this is a straightforward question of treaty and statutory interpretation . . . Appellants insist they do not ask the court to determine Taiwan's sovereign; however, without knowing Appellants' status, we cannot delineate Appellants' resultant rights.").

Furthermore, Plaintiffs' arguments are fundamentally inconsistent with Plaintiffs' assertion that the declaratory judgment sought by Plaintiffs would redress Plaintiffs' injuries as stateless persons. Plaintiffs assert that the sought declaration "would support the Plaintiffs' position in securing an answer, any answer to the question of their nationality" and that such a declaration would "significantly support the Plaintiffs' efforts in Taiwan and around the world, and within international bodies such as the United Nations, to end their statelessness." *Id.* at 39. In short, Plaintiffs argue that the sought declaration is both "unrelated to the current status of Taiwan" and sufficiently related to the current status that the sought declaration would be "substantially likely to support and materially change" the status of Taiwan. *See id.* Plaintiffs cannot have it both ways.

In light of the foregoing, the Court finds that Plaintiffs' claims are barred by the political question doctrine.

2. Plaintiffs fail to demonstrate that the Court has subject matter jurisdiction over the Republic of China under the Foreign Sovereign Immunities Act.

Under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602-1611, "a foreign state is presumptively immune from the jurisdiction of United States courts," and "unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state." *Saudi Arabia v. Nelson*, 507 U.S. 349, 355, 113 S. Ct. 1471, 123 L. Ed. 2d 47, (1993); *see also* 28 U.S.C. §§ 1604-1605. The FSIA provides "the sole basis for obtaining jurisdiction over a foreign state in the courts of this country." *Nelson*, 507 U.S. at 355, 113 S.Ct. 1471, quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443, 109 S. Ct. 683, 102 L. Ed. 2d 818 (1989) (internal quotation marks omitted). Because "subject matter jurisdiction in any such action depends on the existence of one of the specified exceptions . . . [a]t the threshold of every action in a District Court against a foreign state . . . the court must satisfy itself that one of the exceptions applies." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 493-94, 103 S. Ct. 1962, 76 L. Ed. 2d 81 (1983). "In other words, U.S. courts have no power to hear a case brought against a foreign sovereign *unless* one of the exceptions applies." *Diag Human S.E. v. Czech Republic-Ministry of Health*, 64 F. Supp. 3d 22, 30 (D.D.C. 2014).

Plaintiffs assert that this Court has subject matter jurisdiction over Plaintiffs' claims against the Republic of

China under the FSIA's non-commercial tort exception, 28 U.S.C. § 1605(a)(5). *See* Pls.' Opp'n to ROC's Mot. at 18. Plaintiffs allege that Defendant Republic of China committed the tort of "arbitrary denationalization" when it promulgated the nationality decrees in 1946.[8]

The non-commercial tort exception provides jurisdiction for cases alleging "personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment." *Jerez v. Republic of Cuba*, 775 F.3d 419, 424, 413 U.S. App. D.C. 378 (D.C. Cir. 2014) cert. denied, 136 S. Ct. 38, 193 L. Ed. 2d 26 (2015) (quoting 28 U.S.C. § 1605(a)(5)). "[B]oth the tort and the injury must occur in the United States." *Id.* (quoting *Persinger v. Islamic Republic of Iran*, 729 F.2d 835, 842, 234 U.S. App. D.C.

8. Only one federal case has recognized the tort of "arbitrary denationalization." *See In re S. African Apartheid Litig.*, 617 F. Supp. 2d 228, 252 (S.D.N.Y. 2009). In that case, the court analyzed the tort of "arbitrary denationalization" in the context of the Alien Tort Statute, holding that a "state actor commits arbitrary denationalization if it terminates the nationality of a citizen either arbitrarily or on the basis of race, religion, ethnicity, gender, or political beliefs." *Id.*

Because the Court finds that the tortious activity at issue did not occur "within the United States" for the purposes of the FSIA's non-commercial tort exception, the Court finds it unnecessary to resolve Defendant Republic of China's contentions that the tort of "arbitrary denationalization" is not a tort recognized under the exception or that the Republic of China's decisions fall within the discretionary function exception under § 1605(a)(5)(A).

349 (D.C. Cir. 1984)). "The entire tort"—including not only the injury but also the act precipitating that injury—must occur in the United States. *Id.* (citing *Asociacion de Reclamantes v. United Mexican States*, 735 F.2d 1517, 1525, 237 U.S. App. D.C. 81 (D.C. Cir. 1984)). "Congress' primary purpose in enacting § 1605(a)(5) was to eliminate a foreign state's immunity for traffic accidents and other torts committed in the United States, for which liability is imposed under domestic tort law." *Amerada Hess*, 488 U.S. at 439-40.

The FSIA's term "United States" is narrowly construed to mean only "the continental United States and those islands that are part of the United States and its possessions," *Amerada Hess*, 488 U.S. at 440, and does *not* include territories over which the United States might exercise some form of jurisdiction. *See id.* at 440-41; *Persinger v. Islamic Rep. of Iran*, 729 F.2d 835, 839, 234 U.S. App. D.C. 349 (D.C. Cir. 1984). For example, the "high seas" fall outside the FSIA's definition of the "United States" even though the high seas might otherwise be within the United States' admiralty jurisdiction. *Amerada Hess*, 488 U.S. at 440-41. Similarly, a U.S. embassy in a foreign country does not constitute the "United States" for purposes of the FSIA because, even though the United States exercises certain forms of jurisdiction over its embassies, embassies are not within the continental United States and are not islands or possessions of the United States. *Persinger*, 729 F.2d at 839-842. *See also Perez v. The Bahamas*, 652 F.2d 186, 189 n.1, 209 U.S. App. D.C. 193 (D.C. Cir. 1981) (expressing doubt that a territory falling within the "Fishery Conservation Zone suffices as

territory of the United States within the meaning of the FSIA" because it was clear that Congress intended the Fishery Conservation Management Act to extend U.S. jurisdiction only for limited maritime purposes).

Here, Plaintiffs argue that the tortious activity at issue occurred "within the United States" because when the nationality decrees were issued in 1946, Taiwan was "subject to complete American military occupation" and therefore should be considered "within the United States" for purposes of the FSIA's non-commercial tort exception. *See* Pls.' Opp'n to ROC's Mot. at 18. Plaintiffs' argument is unavailing and contrary to the established case law described above. The Supreme Court and the D.C. Circuit have definitely held that the FSIA's term, "United States," is narrowly construed to mean only "the continental United States and those islands that are part of the United States and its possessions," *Amerada Hess*, 488 U.S. at 440, and does *not* include territories over which the United States might exercise some form of jurisdiction. *See id.* at 440-41; *Persinger*, 729 F.2d at 839.[9]

9. Plaintiffs' reliance on *Cobb v. United States*, 191 F.2d 604 (9th Cir. 1951) is misplaced, as *Cobb* is inapposite to the facts and issues before the Court. *Cobb* concerned whether the military occupation of Okinawa rendered the occupied territory part of the United States for purposes of the *Federal Tort Claims Act* and did not address the FSIA or the exception at issue in this case. *See id.* at 610-611. Furthermore, to the extent that *Cobb* does have bearing on this case, *Cobb* actually cuts against Plaintiffs' argument, as the Ninth Circuit found that the United States' military occupation of Okinawa did not render the occupied territory part of the United States. *See id.* at 608-611.

Additionally, Plaintiffs allege that the United States was the "principal occupying power of Taiwan," but they do not allege that the United States had any form of legal jurisdiction over Taiwan, let alone jurisdiction as expressly defined as a U.N.-approved, congressionally ratified trusteeship. *See* Am. Compl. ¶ 5. In fact, Plaintiffs allege the opposite, that is, after World War II, the Allied Powers turned over "the trusteeship of Formosa[10] to China" but that, "legalistically Formosa [was] still a part of the Empire of Japan." *Id.* ¶ 63 (quoting General MacArthur's testimony to a congressional committee in 1951)).[11]

Furthermore, Plaintiffs have not alleged that the decisions regarding the 1946 nationality decrees occurred *entirely* in Taiwan. In briefing, Plaintiffs concede a point raised in Defendant's motion, that is, in 1946, the Republic of China was actually operating its government out of Nanjing—which is not part of mainland China, not Taiwan. *See* ROC's Mot. at 5, ex. A; Pls.' Opp'n to ROC's Mot. at 25. Accordingly, even if Taiwan could have been considered "within the United States" in 1946 for the purposes of the FSIA's tort exception, Plaintiffs have not shown that the "entire alleged tort" occurred "within the United States," as required by established case law. *Jerez*, 775 F.3d at 424.

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10. At the time, Taiwan was known as "Formosa."

11. To the extent that Plaintiffs dispute Taiwan's legal status at the relevant time, Plaintiff would be asking the Court to resolve a political question that this Court may not adjudicate. *See supra*, Part III.A.

In sum, there simply is no basis for the Court to conclude that the tortious acts at issue occurred "within the United States" for purposes of the FSIA's non-commercial tort exception. Accordingly, the Court finds that it lacks subject matter jurisdiction over Plaintiffs' claims against Defendant Republic of China.

IV. CONCLUSION

For the reasons set forth above, the Court finds that it lacks subject matter jurisdiction over this case. Accordingly, the Court shall GRANT Defendant United States' [23] Motion to Dismiss, and the Court shall GRANT Defendant Republic of China's [24] Motion to Dismiss.

An appropriate Order accompanies this Memorandum Opinion.

/s/ COLLEEN KOLLAR-KOTELLY
United States District Judge

APPENDIX D — RELEVANT AUTHORITIES

No. 1832. TREATY[1] OF PEACE WITH JAPAN. SIGNED AT SAN FRANCISCO, ON 8 SEPTEMBER 1951

Whereas the Allied Powers and Japan are resolved that henceforth their relations shall be those of nations which, as sovereign equals, cooperate in friendly association to promote their common welfare and to maintain international peace and security, and are therefore desirous of concluding a Treaty of Peace which will settle questions still outstanding as a result of the existence of a state of war between them;

Whereas Japan for its part declares its intention to apply for membership in the United Nations and in all

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1. In accordance with article 23 *(a)* the Treaty came into force initially on 28 April 1952 with respect to the following States by virtue of the deposit by those States with the Government of the United States of America of their respective instruments of ratification on the dates indicated:

Japan	28 November	1951
United Kingdom of Great Britain and Northern Ireland	3 January	1952
Mexico	3 March	1952
Argentina	9 April	1952
Australia	10 April	1952
New Zealand	10 April	1952
Canada	17 April	1952
Pakistan	17 April	1952
France	18 April	1952
Ceylon	28 April	1952
United States of America (with a declaration)*	28 April	1952

circumstances to conform to the principles of the Charter of the United Nations; to strive to realize the objectives of the Universal Declaration of Human Rights; to seek to create within Japan conditions of stability and well-being as defined in Articles 55 and 56 of the Charter of the United Nations and already initiated by post-surrender Japanese legislation; and in public and private trade and commerce to conform to internationally accepted fair practices;

Whereas the Allied Powers welcome the intentions of Japan set out in the foregoing paragraph;

The Allied Powers and Japan have therefore determined to conclude the present Treaty of Peace, and have accordingly appointed the undersigned Plenipotentiaries, who, after presentation of their full powers, found in good and due form, have agreed on the following provisions:

CHAPTER I

Peace

Article 1

(a) The state of war between Japan and each of the Allied Powers is terminated as from the date on which the present Treaty comes into force between Japan and the Allied Power concerned as provided for in Article 23.

(b) The Allied Powers recognize the full sovereignty of the Japanese people over Japan and its territorial waters.

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CHAPTER II

TERRITORY

Article 2

(*b*) Japan renounces all right, title and claim to Formosa and the Pescadores.

CHAPTER VII

FINAL CLAUSES

Article 23

(*a*) The present Treaty shall be ratified by the States which sign it, including Japan, and will come into force for all the States which have then ratified it, when instruments of ratification have been deposited by Japan and by a majority, including the United States of America as the principal occupying Power, of the following States, namely Australia, Canada, Ceylon, France, Indonesia, the Kingdom of the Netherlands, New Zealand, Pakistan, the Republic of the Philippines, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The present Treaty shall come into force for each State which subsequently ratifies it, on the date of the deposit of its instrument of ratification.

Article 25

For the purposes of the present Treaty the Allied Powers shall be the States at war with Japan, or any State

which previously formed a part of the territory of a State named in Article 23, provided that in each case the State concerned has signed and ratified the Treaty. Subject to the provisions of Article 21, the present Treaty shall not confer any rights, titles or benefits on any State which is not an Allied Power as herein defined; nor shall any right, title or interest of Japan be deemed to be diminished or prejudiced by any provision of the Treaty in favor of a State which is not an Allied Power as so defined.

IN FAITH WHEREOF the undersigned Plenipotentiaries have signed the present Treaty.

DONE at the city of San Francisco this eighth day of September 1951, in the English, French, and Spanish languages, all being equally authentic, and in the Japanese language.

Note by the Secretariat: According to information supplied by the Government of the United States of America, the signatures reproduced in facsimile on the preceding pages are those of the following plenipotentiaries:

For Argentina:	Pour I' Argentine:
	Hipólito J. PAZ
For Australia:	Pour l'Australie:
	Percy C. SPENDER
For Belgium:	Pour la Belgique:
	Paul VAN ZEELAND SILVERCRUY$
For Bolivia:	Pour la Bolivie:
	Luis GUACHALLA

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For Brazil:	Pour le Brésil:
	Carlos MARTINS A. DE MELLO-FRANCO
For Cambodia:	Pour le Cambodge:
	PHLENG
For Canada:	Pour le Canada:
	Lester B. PEARSON R. W. MAYHEW
For Ceylon:	Pour Ceylan:
	J. R. JAYEWARDENE G. C. S. COREA R. G. SENANAYAKE
For Chile:	Pour le Chili:
	F. NIETO DEL RIO
For Colombia:	Pour la Colombie:
	Cipriano RESTREPO JARAMILLO Sebastián· OSPINA
For Costa Rica:	Pour Costa-Rica:
	J. Rafael OREA MUNO V. VARGAS Luis DOBLES SANCHEZ

For Cuba:	Pour Cuba:
	O. GANS L. MACHADO Joaquín MEYER
For the Dominican Republic:	Pour la République Dominicaine:
	V. ORDÓNEZ Luis F. THOMEN
For Ecuador:	Pour l'Equateur:
	A. QUEVEDO R. G. VALENZUELA

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For Egypt:	Pour l'Égypte:
	Kamil A. Rahim
For El Salvador:	Pour le Salvador:
	Hector David Castro Luis Rivas Palacios
For Ethiopia:	Pour l'Éthiopie:
	Men Yayehirad
For France:	Pour la France:
	Schuman H. Bonnet Paul-Émile Naggiar
For Greece:	Pour la Grèce:
	A. G. Politis
For Guatemala:	Pour le Guatemala:
	E. Castillo A. A. M. Orellana J. Mendoza
For Haiti:	Pour Haïti:
	Jacques N. Leger Gust. Laraque
For Honduras:	Pour le Honduras:
	J. E. Valenzuela Roberto Gálvez B. Raul Alvarado T.
For Indonesia:	Pour l'Indonésie:
	Ahmad Subardjo
For Iran:	Pour l'Iran:
	A. G. Ardalan
For Iraq:	Pour l'Irak:
	A. I. Bakr
For Laos:	Pour le Laos:
	Savang

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For Lebanon:	Pour le Liban:
	Charles MALIK
For Liberia:	Pour le Liberia:
	Gabriel L. DENNIS James ANDERSON Raymond HORACE J. Rudolph GRIMES
For the Grand Duchy of Luxembourg:	Pour le Grand-Duché de Luxembourg:
	Hugues LE GALLAIS
For Mexico:	Pour le Mexique:
	Rafael DE LA COLINA Gustavo DÍAZ ORDAZ A. P. GASGA
For the Netherlands:	Pour les Pays-Bas:
	D. U. STIKKER J. H. VAN ROIJEN
For New Zealand:	Pour la Nouvelle-Zélande:
	C. BERENDSEN
For Nicaragua:	Pour le Nicaragua:
	G. SEVILLA SACASA Gustavo MANZANARES
For Norway:	Pour la Norvège:
	Wilhelm MUNTHE MORGENSTIERNE
For Pakistan:	Pour le Pakistan:
	Zafrulla KHAN
For Panama:	Pour le Panama:
	Ignacio MOLINO José A. REMON Alfredo ALÉMAN J. CORDOVEZ
For Paraguay:	Pour le Paraguay:
	Luis Oscar BOETTNER

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For Peru:	Pour le Pérou:
	F. Berckmeyer
For the Republic of the Philippines:	Pour la République des Philippines:
	Carlos P. Rómulo J. M. Elizalde Vicente Francisco Diosdado Macapagal Emiliano T. Tirona V. G. Sinco
For Saudi Arabia:	Pour l'Arabie saoudite:
	Asad Al-Faqih
For Syria:	Pour la Syrie:
	F. El-Khouri
For Turkey:	Pour la Turquie:
	Feridun C. Erkin
For the Union of South Africa:	Pour l'Union Sud-Africaine:
	G. P. Jooste
For the United Kingdom of Great Britain and Northern Ireland:	Pour le Royaume-Uni de Grande Bretagne et d'Irlande du Nord:
	Herbert Morrison Kenneth Younger Oliver Franks
For the United States of America:	Pour les États-Unis d' Amerique:
	Dean Acheson John Foster Dulles Alexander Wiley John J. Sparkman
For Uruguay:	Pour l'Uruguay:
	José A. Mora

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For Venezuela:	Pour le Venezuela:
	Antonio M. Araujo R. Gallegos M.
For Viet-Nam:	Pour le Viet-Nam:
	T. V. Huu T. Vinh D. Thanh Buu Kinh
For Japan:	Pour le Japon:
	Sbigeru Yoshida Hayato Ikeda Gizo Tomabechi Niro Hoshijima Muneyoshi Tokugawa Hisato Ichimada

Appendix D

TREATY OF SHIMONOSEKI, 1895

The peace treaty between Japan and China, April 17, 1895

December 13, 1901

Treaty of Shimonoseki
April 17, 1895

(took force on May 8, 1895)

TREATY OF PEACE

His Majesty the Emperor of Japan and His Majesty the Emperor of China, desiring to restore the blessings of peace to their countries and subjects and to remove all cause for future complications, have named as their Plenipotentiaries for the purpose of concluding a Treaty of Peace, that is to say:

His Majesty the Emperor of Japan, Count ITO Hirobumi, Junii, Grand Cross of the Imperial Order of Paullownia, Minister President of State; and Viscount MUTSU Munemitsu, Junii, First Class of the Imperial Order of the Sacred Treasure, Minister of State for Foreign Affairs.

And His Majesty the Emperor of China, LI Hung-chang [Li Hongzhang], Senior Tutor to the Heir Apparent, Senior Grand Secretary of State, Minister Superintendent of Trade for the Northern Ports of China, Viceroy of the province of Chili [Zhili], and Earl of the First Rank;

and LI Ching-fang [Li Jingfeng], Ex-Minister of the Diplomatic Service, of the Second Official Rank:

Who, after having exchanged their full powers, which were found to be in good and proper form, have agreed to the following Articles:

Article 2

China cedes to Japan in perpetuity and full sovereignty the following territories, together with all fortifications, arsenals, and public property thereon:

(c) The Pescadores Group , that is to say, all islands lying between the 119th and 120th degrees of longitude east of Greenwich and the 23rd and 24th degrees of north latitude.

Article 5

The inhabitants of the territories ceded to Japan who wish to take up their residence outside the ceded districts shall be at liberty to sell their real property and retire. For this purpose a period of two years from the date of the exchange of ratifications of the present Act shall be granted. At the expiration of that period those of the inhabitants who shall not have left such territories shall, at the option of Japan, be deemed to be Japanese subjects.

Each of the two Governments shall, immediately upon the exchange of the ratifications of the present Act, send one or more Commissioners to Formosa to effect a final

transfer of that province, and within the space of two months after the exchange of the ratifications of this Act such transfer shall be completed.

Article 11

The present Act shall be ratified by their Majesties the Emperor of Japan and the Emperor of China, and the ratifications shall be exchanged at Chefoo on the 8th day of the 5th month of the 28th year of MEIJI, corresponding to the 14th day of the 4th month of the 21st year of KUANG HSO [Guangxu).

In witness whereof the respective Plenipotentiaries have signed the same and affixed thereto the seal of their arms.

Done in Shimonoseki, in duplicate, this 17th day of the fourth month of the 28th year of MEIJI, corresponding to the 23rd day of the 3rd month of the 21st year of KUANG HSO [Guangxu].

Appendix D

CONVENTION[1] ON THE NON-APPLICABILITY OF STATUTORY LIMITATIONS TO WAR CRIMES AND CRIMES AGAINST HUMANITY

1. Came into force on 11 November 1970, i.e., the ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification, in accordance with article VIII (l). Following is the list of States having deposited the instruments of ratification:

State	*Date of Deposit*	
Bulgaria (With a declaration)*	21 May	1969
Byelorussian Soviet Socialist Republic (Confirming the declaration made upon signature)*	8 May	1969
Czechoslovakia	13 August	1970
Hungary (Confirming the declaration made upon signature)*	24 June	1969
Mongolia (Confirming the declaration made upon signature)*	21 May	1969
Poland	14 February	1969
Romania (With a declaration)*	15 September	1969
Ukrainian Soviet Socialist Republic (Confirming the declaration made upon signature)*	19 June	1969
Union of Soviet Socialist Republics (Confirming the declaration made upon signature)*	22 April	1969
Yugoslavia	9 June	1970

* See pp. 124 and 127 of this volume for the texts of the declarations made upon signature and ratification.

Appendix D

Preamble

The States Parties to the present Convention,

Recalling resolutions of the General Assembly of the United Nations 3 (1)[2] of 13 February 1946 and 170 (II)[3] of 31 October 1947 on the extradition and punishment of war criminals, resolution 95 (I)[4] of 11 December 1946 affirming the principles of international law recognized by the Charter of the International Military Tribunal,[5] Nürnberg, and the judgement of the Tribunal, and resolutions 2184 (XXI)[6] of 12 December 1966 and 2202 (XXI)[7] of 16 December 1966 which expressly condemned as crimes against humanity the violation of the economic and political rights of the indigenous population on the one hand and the policies of *apartheid* on the other,

Recalling resolutions of the Economic and Social Council of the United Nations 1074 D (XXXIX)[8] of 28 July 1965 and 1158 (XLI)[9] of 5 August 1966 on the punishment

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2. United Nations, *Official Records of the General Assembly, First Session, First Part* (A/64), p. 9.

3. *Ibid., Second Session,* (A/519), p. 102.

4. *Ibid., First Session, Second Part* (A/64/Add.1), p. 188.

5. United Nations, *Treaty Series,* vol. 82, p. 279.

6. United Nations, *Official Records of the General Assembly, Twenty-first Session, Supplement No. 16* (A/6316), p. 70.

7. *Ibid.,* p. 20.

8. United Nations, *Official Records of the Economic and Social Council, Thirty-ninth Session, Supplement No. 1,* p. 23.

9. *Ibid., Forty-first Session, Supplement No. 1,* p. 22.

of war criminals and of persons who have committed crimes against humanity,

Noting that none of the solemn declarations, instruments or conventions relating to the prosecution and punishment of war crimes and crimes against humanity made provision for a period of limitation,

Considering that war crimes and crimes against humanity are among the gravest crimes in international law,

Convinced that the effective punishment of war crimes and crimes against humanity is an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among peoples and the promotion of international peace and security,

Noting that the application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes,

Recognizing that it is necessary and timely to affirm in international law, through this Convention, the principle that there is no period of limitation for war crimes and crimes against humanity, and to secure its universal application,

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Have agreed as follows:

Article I

No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:

(a) War crimes as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949[1] for the protection of war victims;

(b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of *apartheid,* and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide,[2] even if such acts do not constitute a violation of the domestic law of the country in which they were committed.

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1. United Nations, *Treaty Series,* vol. 75, p. 2.

2. *Ibid.,* vol. 78, p. 277.

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Article II

If any of the crimes mentioned in article I is committed, the provisions of this Convention shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or who directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the State authority who tolerate their commission.

Article III

The States Parties to the present Convention undertake to adopt all necessary domestic measures, legislative or otherwise, with a view to making possible the extradition in accordance with international law, of the persons referred to in article II of this Convention.

Article IV

The States Parties to the present Convention undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of the crimes referred to in articles I and II of this Convention and that, where they exist, such limitations shall be abolished.

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Article V

This Convention shall, until 31 December 1969, be open for signature by any State Member of the United Nations or member of any of its specialized agencies or of the International Atomic Energy Agency, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

Article VI

This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VII

This Convention shall be open to accession by any State referred to in article V. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VIII

I. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

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2. For each State ratifying this Convention or acceding to it after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its own instrument of ratification or accession.

Article IX

l. After the expiry of a period of ten years from the date on which this Convention enters into force, a request for the revision of the Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article X

1. This Convention shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article V.

3. The Secretary-General of the United Nations shall inform all States referred to in article V of the following particulars:

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(a) Signatures of this Convention, and instruments of ratification and accession deposited under articles V, VI and VII;

(b) The date of entry into force of this Convention in accordance with article VIII;

(c) Communications received under article IX.

Article XI

This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 26 November 1968.

In Witness whereof the undersigned, being duly authorized for that purpose, have signed this Convention.

D.C. Code § 12-301 (2017)

§ 12-301. Limitation of time for bringing actions.

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

(8) for which a limitation is not otherwise specially prescribed-- 3 years;

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Restat 3d of the Foreign Relations
Law of the U.S., § 101

§ 101 International Law Defined

International law, as used in this Restatement, consists of rules and principles of general application dealing with the conduct of states and of international organizations and with their relations *inter se*, as well as with some of their relations with persons, whether natural or juridical.

Restat 3d of the Foreign Relations
Law of the U.S., § 102

§ 102 Sources of International Law

(1) A rule of international law is one that has been accepted as such by the international community of states

(a) in the form of customary law;

(b) by international agreement; or

(c) by derivation from general principles common to the major legal systems of the world.

(2) Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.

(3) International agreements create law for the states parties thereto and may lead to the creation of customary international law when such agreements are intended for adherence by states generally and are in fact widely accepted.

(4) General principles common to the major legal systems, even if not incorporated or reflected in customary law or international agreement, may be invoked as supplementary rules of international law where appropriate.

Restat 3d of the Foreign Relations
Law of the U.S., § 103

§ 103 Evidence of International Law

(1) Whether a rule has become international law is determined by evidence appropriate to the particular source from which that rule is alleged to derive (§ 102).

(2) In determining whether a rule has become international law, substantial weight is accorded to

(a) judgments and opinions of international judicial and arbitral tribunals;

(b) judgments and opinions of national judicial tribunals;

(c) the writings of scholars;

(d) pronouncements by states that undertake to state a rule of international law, when such pronouncements are not seriously challenged by other states.