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Taiwan's International Personality: Crossing the River by Feeling the Stones

ANGELINE G. CHEN*

Once upon a time, fierce dragons lived at Five Tiger Gate, guarding the seaboard entrance to the present-day port of Fuzhou, in China's south-eastern province of Fujian. One day, venturing forth into the depths of the sea, the dragons came upon a tiny bit of land—shaped like a tobacco leaf—floating in the waters. They began to cavort upon the island with abandon, ploughing through the earth and leaping with ferocity along the curving shoreline. Where their heads surfaced at the north of the island, they threw up the bluff at Keelung. Writhing in ecstasy and scratching their scaly backs upon the rocky land, they coiled themselves down the spine of the island, heaving up a jagged range of mountains. Striking the island thunderous blows with their formidable tails, they created the sheer cliffs which mark the imposing south end of what is now called the Hengchun Peninsula. And so, Taiwan was born.¹

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1. Taiwan's creation myth, reprinted in SIMON LONG, TAIWAN: CHINA'S LAST FRONTIER 1 (1991).

I. INTRODUCTION

A small island floats on the western edge of the Philippine Sea, nestled between the East China Sea to the north and the South China Sea to the south. Taiwan—sometimes referred to as *Ilha Formosa*²—is a territory consisting of a mere 36 thousand square kilometers³ and a population of approximately 21 million people.⁴ Across the Taiwan Straits, a body of water west of Taiwan, lies the territorial land mass known as China. China sprawls over a vast portion of the Eurasian continent and accounts for approximately one-fifth of the world's population.⁵

Slightly more than 100 miles separate the two entities geographically.⁶ The distance between them in the political and diplomatic arenas, however, is worlds apart. As the result of a convoluted and strained history of interaction, there is a direct conflict between China and Taiwan regarding Taiwan's international status. The People's Republic of China (China, the PRC or mainland government) claims that Taiwan constitutes a part of its territory. The PRC asserts such a claim despite the fact that the PRC (the political descendants of Mao Tse-Tung), even in its earlier incarnations, never controlled a single square inch of the land that is now Taiwan.⁷

Meanwhile, Taiwan's controlling government operates separately and independently from China as it has done for the past forty-seven years. Moreover, Taiwan's government has begun bolstering its quiet but progressive campaign for recognition of Taiwan as a sovereign nation-state.⁸

2. The Portuguese christened the island with the name *Ihla Formosa*, which translated means "beautiful island." See 4 ENCYCLOPEDIA OF ASIAN HISTORY 52 (1988).

3. This is approximately the equivalent of the territory of the state of Massachusetts. See *id.*

4. See James W. Soong, *Taiwan and Mainland China: Unfinished Business*, 1 U.C. DAVIS J. INT'L L. & POL'Y 361, 362 (1995).

5. See THE WORLD ALMANAC AND BOOK OF FACTS 1997, at 753, 839 (1996).

6. See ENCYCLOPEDIA OF ASIAN HISTORY, *supra* note 2, at 520. Even less distance exists between mainland China and several islands that the Taiwanese government controls which lie within the Straits. For instance, Quemoy Island is within 35 miles of China's shoreline in the Fujian province. Access to Quemoy is restricted to military and government personnel. Quemoy is also referred to as Kinmen.

7. See discussion *infra* Part IV.C.1.

8. Until 1991, the government of the Republic of China on Taiwan (ROC or Taiwan government) insisted that it was the sole representative government of Taiwan and China. The ROC has since relinquished this position, to the extent of implicitly recognizing the

Historically, the international community has maneuvered to maintain relations with both the PRC and Taiwan, attempting to preserve the benefits of continued contact with both.⁹ Thus, the historical policy of "one country, two governments" embraced by both the PRC and Taiwan has belied the reality of "two countries, two governments" for nearly half a century.

Since 1991, strong factions within the Taiwanese population—governed by a democratic government since 1993—have publicly voiced their demands for international recognition of Taiwan's *de facto* sovereignty.¹⁰ Taiwan openly campaigned for United Nations' membership as a sovereign nation in 1993.¹¹ China, however, continues to steadfastly insist that Taiwan is a "renegade province" of China with which it will inevitably reunify. Moreover, China has consistently asserted that a Taiwanese declaration of independence will result in an immediate invasion of the island to reinforce the Chinese claim of sovereignty over Taiwan.¹²

For a number of political, diplomatic, and other reasons, the majority of nations today officially recognize the PRC as the representative government of China.¹³ Subsumed within these official

PRC. In May of 1991, Taiwan's President Lee Teng-hui officially recognized that the political body in Beijing controlled the mainland. See Jeremy Mark, *Taiwan, in Historic Gesture, Says it Recognizes Leadership of China*, WALL ST. J., May 1, 1991. In 1994, the Mainland Affairs Council (a Taiwanese governmental agency created to address mainland China-Taiwan concerns and issues) announced that Taiwan's government would cease competing for the right to represent China in the international community. See Virginia Sheng, *Taipei Calls for an End to China Representation Argument*, July 8, 1994, FREE CHINA JOURNAL, at 1, available in 1994 WL 11284297.

9. See *infra* note 129 and accompanying text.

10. See *Party Told to Clarify Independence Path*, S. CHINA MORNING POST, May 12, 1996; see also Ross H. Munro, *Taipei Merits U.N. Place*, FREE CHINA JOURNAL, Dec. 2, 1994.

11. See, e.g., David O. Lloyd, *Succession, Secession, and State Membership in the United Nations*, 26 N.Y.U.J. INT'L L. & POL. 134 (1994). Taiwan became a member of the United Nations in 1949 and fulfilled its obligations for 22 years, until the PRC was admitted in 1971, stating that there was only "one China." See *U.N. Blocks Move to Admit Taiwan*, TORONTO STAR, Sept. 22, 1994, at A17.

12. For instance, in the summer of 1995 during a turbulent political period in Taiwan because of upcoming elections, China began "testing" missiles in the waters of the Taiwan Straits. The general consensus regarding this activity was that China hoped to quell independence movements in Taiwan. The maneuvering was specifically intended to intimidate those who might otherwise be tempted to support the Democratic Progressive Party, a minority political opposition party that has openly proclaimed Taiwan independence as one of its party goals. See *China Slams Support for Taiwan's U.N. Bid*, UNITED PRESS INT'L, July 24, 1996.

13. See Tzu-Wen Lee, *The International Legal Status of the Republic of China on Taiwan*, 1 UCLA J. INT'L L. & FOREIGN AFF. 351, 351-52 (1996-97). A minority of sov-

relations is an acknowledgment, although not necessarily acceptance, of China's territorial claims. Notwithstanding this "official" position, the majority of nations concurrently maintain "unofficial" trade, political and cultural relations with Taiwan as though Taiwan was a sovereign nation.¹⁴ This inconsistent approach in dealing with the two governments forces other countries to use delicate language when describing their relationships with the PRC. Many nations either expressly or implicitly treat the status of Taiwan as an "internal Chinese matter."¹⁵ Using this approach, nations have been able to avoid direct confrontation on the issue of Taiwan's sovereignty.

So far, this dual existence has survived this treatment. Yet current events indicate that the status quo cannot sustain itself indefinitely.¹⁶ Since Taiwan established its democratic government,

foreign nation-states officially recognize Taiwan in lieu of recognizing China. These states, however, tend to be smaller developing countries with weaker voices and little power or influence in the international community as a whole. *See id.* at 360.

14. *See, e.g.,* Cheri Attix, *Between the Devil and the Deep Blue Sea: Are Taiwan's Trading Partners Implying Recognition of Taiwanese Statehood?*, 25 CAL. W. INT'L L.J. 257 (1995) (discussing extension of unofficial trade and cultural relations to Taiwan by nation-states despite official recognition of the PRC as the representative of China, and the possibility that recognition of Taiwan's statehood can be deduced from this conduct).

15. *See, e.g.,* Shanghai Communiqué, U.S.-P.R.C., 11 I.L.M. 443 (1972); Communiqué, Mar. 13, 1972, U.K.-P.R.C., reprinted in KEESING'S CONTEMPORARY ARCHIVES 25171 (1972). The comments of the Canadian Secretary of State for External Affairs to the House of Commons were as follows:

From the very beginning of our discussion the Chinese side made clear to us their position that Taiwan was an inalienable part of Chinese territory and that this was a principle to which the Chinese Government attached the greatest importance. Our position, . . . which was made clear to the Chinese from the start of the negotiations, is that the Canadian Government does not consider it appropriate either to endorse or to challenge the Chinese Government's position on the status of Taiwan. This has been our position and it continues to be our position. As the communiqué says, we have taken note of the Chinese Government's statement about Taiwan. We are aware that this is the Chinese view and we realize the importance they attach to it, but we have no comment to make one way or the other.

22 EXTERNAL AFF. 378 (1970), *quoted in* Lee, *supra* note 13, at 358.

16. The collision course on which the current situation is headed is recognizable, particularly in light of recent events such as the 1989 incident of Tiananmen Square and China's developing treatment of Hong Kong after Hong Kong reverted to China. The incompatibility of China's and Taiwan's views with regard to Taiwan's status is viewed as creating instability and security concerns on the international level. *See, e.g.,* Soong, *supra* note 4, at 361 ("Conflict between mainland China and Taiwan continues to represent one of the most significant threats to economic and political stability in the Pacific Rim."); Attix, *supra* note 14 (discussing international practice of extending official recognition to PRC while, nevertheless, carrying on unofficial trade and cultural relations with Taiwan); *Taiwan Politics: Is Taiwan Still a Province?*, THE ECONOMIST, Jan. 25, 1997, at 35 (referring to renewed suspicions in both Taiwan and China regarding President Lee's

it has steadfastly demanded recognition as a nation-state independent from China. Moreover, notwithstanding the need for political expedience, other factors appear to support Taiwan's right to sovereignty including principles of international law on human rights, the right of self-determination, the right to democratic self-governance, and freedom from economic coercion. All of these principles have gained strength in the international community during the past decade. These principles furnish further reason to question and re-examine the current situation and to discuss its resolution, including the possibility of according Taiwan recognition as an independent nation.

This Article examines Taiwan's *de facto* statehood and establishes that Taiwan is, for all practical purposes, an independent and sovereign state, prevented from openly seeking international recognition because of China's illegal threats of force. To further obstruct Taiwan's bid for statehood, China has threatened to prohibit trading access to its markets to any nation that acknowledges Taiwan's claim of sovereignty. This Article argues that China's sole "justification" for such behavior—its claim of sovereignty over Taiwan as part of China—is insupportable and based upon false premises.

Part II of this Article provides a brief overview of Taiwan's history, specifically focusing on its geography and on foreign occupation of Taiwan. Part III sets forth Taiwan's political framework, which cannot be overlooked in any analysis of Taiwan's international personality as it exists today. Part IV assesses Taiwan's fulfillment of the various indicators of statehood, along with a number of legal theories upon which Taiwan could rely in declaring its statehood and sovereignty. Part V analyzes and refutes China's stated justifications for its claim of sovereignty over Taiwan. The Article concludes that Taiwan's *de facto* statehood should be recognized and that Taiwan be granted the benefits attached to statehood. To accomplish this, however, the world community must recognize its responsibility to uphold basic tenets of international law and both challenge and resist China's coercive tactics aimed at denying Taiwan recognition as a sovereign nation-state. Only then can the Taiwan-China situation be resolved.

II. A BRIEF HISTORY OF TAIWAN¹⁷

The first documentation of Chinese interest in Taiwan was in 605 A.D., when the Sui Emperor, Yang-ti, sent several exploratory groups to investigate the island.¹⁸ The expeditions discovered various groups of native tribes inhabiting the lowland and mountainous regions of the island.¹⁹ The explorers kidnapped a few of the aborigines and brought them back to the Sui Court to serve as slaves and curiosities.²⁰ China's interest in Taiwan, however, faded quickly. Other than these expeditions and a few other brief encounters during that century, the subsequent rulers of mainland China essentially ignored the tiny island's existence. This continued until the collapse of the Ming Dynasty in 1662.²¹

During the second half of the thirteenth century, Chinese from the coastal provinces of Fujian and Guangdong migrated to Taiwan, fleeing persecution of the Mongolian.²² Throughout this time period, increasing dissatisfaction with China's central government in Beijing created chronic unrest among the Chinese living along China's coastal regions. The Chinese government, fearing pirate fleets that operated from MaKung, subjected many of these people to compulsory dislocation.²³ This displacement eventually led to additional migrations from the mainland to Taiwan.

17. See generally LONG, *supra* note 1; GEORGE H. KERR, *THE TAIWAN CONFRONTATION CRISIS* (1986); JACQUES GERNET, *A HISTORY OF CHINESE CIVILIZATION* (1985); *THE CAMBRIDGE ENCYCLOPEDIA OF CHINA* (2d ed., 1982); Yu-ming Shaw, *Modern History of Taiwan: An Interpretive Account*, in *CHINA AND THE TAIWAN ISSUE* (Hung-dah Chiu ed., 1979); W.G. GODDARD, *FORMOSA: A STUDY IN CHINESE HISTORY* (1966).

18. See KERR, *supra* note 17, at 11.

19. The origins of the aboriginal groups, which currently constitute less than one percent of Taiwan's population, are debated. See LONG, *supra* note 1, at 3-4. At least two different tribes are identifiable. The first tribe known as Taiyals and Vonums inhabited the north end of the island, and are generally surmised to be ethnically linked to the Ainu people of the Japanese island of Hokkaido. See *id.* The PRC disputes this view and claims that the Taiyals and Vonums are descendants of mainland Chinese immigrants who reached Taiwan around 1700 B.C. The second tribe is believed to be descendants of early Malaysians and Filipinos who settled on the south end of the island, also sometime during the centuries before Christ.

20. See *id.*

21. See *id.*

22. See Parris Chang and Kok-Ui Lim, *Taiwan's Case for United Nations Membership*, 1 *UCLA J. INT'L L. & FOREIGN AFF.* 393, 405 (1996-97).

23. This forced displacement became a recurring event. In the 1600s, in an effort to isolate Taiwan which had become occupied by the Ming resistance, the central Chinese government mandated that the coastal inhabitants in Fujian, Guangdong and Zhejiang be evacuated inland at least 10 miles or more. See *id.* at 12.

Laws passed to prevent these migrations proved futile.

In addition to the limited Chinese exploration efforts, foreigners established colonies and trading ports on Taiwan and its neighboring islands. Foreign traders and pioneers settled in Taiwan throughout the twelfth century, growing sugar-cane, tea and rice for trade in the mainland.²⁴ Portuguese traders settled at Macao in the 1500s, followed soon thereafter by the Spanish, who settled in Manila.²⁵ In 1592, Japanese merchants received special permission from the Shogun to engage in foreign commerce, and established themselves on the northern part of Taiwan.

Toward the end of the sixteenth century, the Dutch aggressively pursued trade with China through the Dutch East India Company.²⁶ Rebuffed by Chinese refusals to allow them a trading post in China, the Dutch constructed a naval base on the Pescadore Islands to compete with the Portuguese trading channels and to provide security for their own trading posts.²⁷ Galvanized by the threat of actual war between the Dutch and the Portuguese, China sought to appease the Dutch by offering them a trading post in Taiwan. China hoped to displace the Dutch by sending them to a location infamous for piracy and disease.²⁸ The Dutch, meanwhile, agreed and established a settlement in the southwest region of Taiwan.²⁹ Thereafter, the Dutch gradually expanded their control.³⁰ As noted by one scholar, this colonization was perhaps the first documented instance of a peculiar and repetitive feature of Taiwan's history, "its handing over by one foreign power that did not control it to another with no obvious claim to sovereignty."³¹

The Dutch controlled the island until 1662, when Cheng Ch'eng-kung, also known as Koxinga, expelled them.³² Koxinga, a Ming loyalist and military leader, attempted to thwart the Manchus, which eventually led to the establishment of the Ch'ing dynasty.³³ By 1664, however, the Chinese forced Koxinga's armies to retreat to Taiwan. Subsequently, Koxinga's armies turned their

24. See *id.* at 5.

25. See *id.* at 7-8.

26. See *id.* at 8.

27. See *id.*

28. See *id.*

29. See *id.* at 9.

30. See *id.* at 9-10.

31. See *id.* at 8.

32. See JOHN F. COPPER, *TAIWAN: NATION-STATE OR PROVINCE?* 25-26 (1996).

33. See *id.*

wrath upon the Dutch and expelled them from the island.³⁴ From 1662 to 1683, Koxinga ruled Taiwan as the last outpost of the Ming Dynasty.³⁵ In 1683, the Ch'ing attacked Taiwan, defeated the resistance movement, and claimed Taiwan as part of the Chinese Empire.³⁶ Taiwan became part of the Fujian province and was made a Chinese prefecture and military district in 1684.³⁷

The international community did not dispute China's claim of sovereignty over Taiwan until the end of the Sino-Japanese War in 1894-1895.³⁸ China, weak from its continuous internal border disputes as well as the war over Korea (from which it had demanded tributary), was defeated. As a result, Taiwan and the Pescadores were handed over to Japan in 1895, along with various economic concessions in accordance with the Treaty of Shimonoseki.³⁹ Once again, Taiwan changed hands without being consulted, and Taiwan and the Pescadores became Japan's first full-fledged colonies.⁴⁰

Taiwan remained under Japanese rule until the Allied Forces forced the Japanese to surrender the island to the Nationalist government (Kuomintang or KMT) of Taiwan in 1949.⁴¹ The Allied Forces' decision forcing Japan to relinquish its claim to the island territory proved to be the watershed event that laid the foundation for Taiwan's current conundrum.

34. *See id.*

35. *See id.*

36. *See id.*

37. LONG, *supra* note 1, at 13.

38. *See* Ray E. Johnston, *Comments Assessing the International Status of Partitioned Nations: Theories and Findings*, in MULTI-SYSTEM NATIONS AND INTERNATIONAL LAW: THE INTERNATIONAL STATUS OF GERMANY, KOREA AND CHINA 36, 38-39 (Hungdah Chiu & Robert Downen eds., 1981).

39. Treaty of Shimonoseki, Apr. 17, 1895, Japan-P.R.C., art. II, (entered into force May 8, 1895), *available in* TREATIES AND AGREEMENTS WITH AND CONCERNING CHINA 1894-1919, 18-19 (John V. A. MacMurray ed., 1921). The Taiwanese population complained about the cession to Japan and actually declared Taiwan as a republic in the hopes of obtaining assistance from the international community, but to no avail.

40. The Treaty of Shimonoseki permitted any of Taiwan's inhabitants to return to the mainland. *See id.* art. V, at 20. All persons staying on Taiwan automatically became Japanese subjects in 1897. *See id.*

41. The Japanese signed a peace treaty officially ending the war on July 8, 1951. *See Japan to Accept Russian Control of Sakhalin IS.*, MAINICHI DAILY NEWS, Dec. 2, 1996, at 1.

III. TAIWAN'S POLITICAL FRAMEWORK

*White cat, black cat: what does it matter as long as it catches mice?*⁴²

The political framework under which Taiwan currently operates, originated with the influx of Nationalist forces in the early 1940's. At that time, the Nationalist government that controlled China, led by Generalissimo Chiang Kai-shek, was entangled in a civil war against its former ally, the Chinese Communist Party led by Mao Tse-tung.⁴³ By 1945, Taiwan had come under the KMT's control. Although Taiwan was still considered a colony of Japan, the Nationalist party established itself as the governing body of Taiwan.⁴⁴

In December of 1949, after two decades of civil war, the Kuomintang were driven from the mainland and forced to retreat to Taiwan.⁴⁵ Despite its ouster from control of the mainland, the KMT refused to acknowledge defeat by the Communists, and continued to declare itself as the legitimate government of all China. Chiang gathered his remaining forces in Taiwan and established a supposed "interim" capital of China in Taipei.⁴⁶

Along with the Nationalist forces, an estimated two million Kuomintang refugees fled to Taiwan. Japan, meanwhile, occupied with its misfortune of losing World War II, had no energy or resources to either repel or oust the influx of Chinese from the mainland.

Another critical factor in Japan's loss of control over Taiwan was the Allied Forces' decision to divest Japan of territories that it had seized from its neighboring countries.⁴⁷ The Allied Forces required Japan to relinquish control of its Taiwan and Pescadores territories.⁴⁸ This objective was declared at the Cairo Conference in December of 1943 and later affirmed in the 1945 Potsdam

42. Orville Schell, Deng Xiaoping, August 22, 1904 - February 19, 1997; Deng's Revolution, NEWSWEEK, Mar. 3, 1997, at 20.

43. See *id.*

44. See generally CHINA: SEVENTY YEARS AFTER THE HSIN-HAI REVOLUTION (Hungdah Chiu & Shao-Chuan Leng eds., 1984).

45. See *id.*

46. See *id.*

47. See ALAN M. WACHMAN, TAIWAN: NATIONAL IDENTITY AND DEMOCRATIZATION 7 (1994).

48. See *id.*

Proclamation.⁴⁹ On October 25, 1945, Japan surrendered Taiwan to the Kuomintang government in Taipei.⁵⁰

Prior to Japan's surrender, Taiwan had been subject to Japanese rule for over forty years.⁵¹ The decision to "hand over" Taiwan to the Kuomintang was made without consulting the island's inhabitants—those who had lived on the island prior to the Kuomintang's arrival. Once again, the tiny island changed owners without prior consultation of its inhabitants.

Many of the Taiwanese initially welcomed the arrival of the Kuomintang, seeing it as their liberator from the long and often harsh Japanese rule.⁵² Upon their arrival, the KMT imposed its governmental structure (imported from China) to replace the Japanese law. Soon after the establishment of the Nationalist government, however, the Taiwanese found the KMT rule to be even harsher and more brutal than the Japanese regime, and often arbitrary and inconsistent in its application of the law.⁵³

During the first fifteen months of the KMT's rule, Taiwan's intellectual elite were targeted, arrested, and often beaten.⁵⁴ Anyone suspected of conspiring or befriending the Japanese was under suspicion.⁵⁵ The KMT quickly suppressed any resistance by the

49. *See id.*

50. *See id.*

51. *See id.* at 6. The length of Japan's occupation of Taiwan created unique societal and linguistic idiosyncrasies. For example, the author's oldest living aunt learned Japanese as her primary language. She learned to speak Taiwanese only from conversations held with family members. *See id.* at 8 (noting that the Japanese forced the Taiwanese to learn Japanese in lieu of the Taiwanese language).

52. *See* COPPER, *supra* note 32, at 34-47.

53. *See generally* THE FUTURE OF TAIWAN: A DIFFERENCE OF OPINION (Victor H. Li ed., 1980) (containing several participants at conference relaying stories of the KMT's harsh and unjust treatment to native Taiwanese).

54. The treatment of the Taiwanese was left completely to the discretion of the KMT police forces. Taiwanese were subsequently abused, terrorized, jailed and tortured without trial or redress by the legal system for the slightest or perceived connections to the Japanese. The KMT police, at its discretion, also executed many Taiwanese without trial. The author's own maternal grandfather, who had held some amount of sway as a local leader in the Pescadores during the Japanese rule of Taiwan, was arrested, interrogated, and thrown into prison without trial for approximately a week. Likewise, the author's fraternal grandmother and uncle (who was only a year old at the time) were also arrested and thrown in jail without trial for purchasing previously Japanese-owned property. They were held in jail for approximately six weeks before the KMT forces, considering the baby's age, granted leniency and released them. *See* Chang & Lim, *supra* note 22, at 412-16.

55. *See* COPPER, *supra* note 32, at 34.

Taiwanese, who felt betrayed by their supposed liberators.⁵⁶ The KMT established a policy mandating that Mandarin Chinese be taught in schools and that it be used to conduct business, despite the fact that the majority of Taiwanese could not speak Mandarin. Subsequently, Taiwan was placed under martial law, which remained in place until 1987.⁵⁷

The KMT justified the imposition of martial law as part of their continued "fight" against the Communist government and need to focus their efforts to invade the mainland to recover their power. Martial law also provided the means through which the KMT could continue its oppression of the native Taiwanese population under the aegis of an "emergency" created by the KMT's overarching pursuit of preparing to invade and recapture the mainland.

Another result of the KMT's imposition of martial law was that the bureaucrats from China, who were forced into exile in Taiwan by Mao's troops, were able to retain power.⁵⁸ The KMT politicians claimed that retention of their legislative positions maintained order and provided continuity to the KMT's mission of recovering the mainland. They also justified their retention of power as legitimization of the KMT's claim of being a continuous and functioning government. Accordingly, the KMT was able to avoid holding elections which might otherwise have diluted its political power. Consequently, Taiwan's political system was a one-party system for nearly forty years. The KMT criminalized and dealt harshly with attempts to create other political parties displays

56. See *id.* The feelings of rebellion and resistance to KMT rule on the Taiwanese finally erupted into civil disobedience throughout the entire island in 1947. On February 28th of that year, the police caught an old Taiwanese woman selling black-market cigarettes by the police. She was beaten severely and killed. Bystanders, observing the incident turned into an angry mob which threatened the police officers. In turn, the officers fired into the crowd, killing four people and injuring countless others. See *id.* at 35. The Taiwanese arose *en masse* to protest the event, which became known as the infamous "2-28 Incident." In response, approximately 5000 armed troops were brought in from the mainland to quell the disturbance. It is estimated that anywhere from 10,000 to 20,000 (depending on the source of statistics) unarmed Taiwanese were massacred, including the majority of Taiwan's local leaders, artists and intelligentsia. See *id.* at 36. The 2-28 Incident was rarely mentioned in ensuing decades. It was not until 48 years later in 1995 when President Lee Teng-hui (himself Taiwanese) issued a formal apology on behalf of the government. See *id.*

57. The KMT's governance over Taiwan was rife with abuse and oppression of the Taiwanese. Martial law was employed as a method of suppressing Taiwanese "rebels." See 4 ENCYCLOPEDIA OF ASIAN HISTORY, *supra* note 2, at 53.

58. See WACHMAN, *supra* note 47, at 11.

of support for the Communists or any government other than the KMT, and any discussion of Taiwan independence.⁵⁹

Following the KMT's defeat by the Communist Chinese, the majority of the international community continued to recognize the KMT as the legal government of China.⁶⁰ For nearly twenty-two years, the KMT's delegation to the United Nations represented China in both the United Nations General Assembly and the Security Council.⁶¹ Western powers, in particular the United States, supported the KMT's position as the legitimate government of China. The United States recognized the value the KMT had within the context of the Cold War. The KMT's delegation to the United Nations, however, was strenuously contested by the PRC.

Following Japan's surrender of Taiwan to the KMT after World War II, a delegation from Taiwan represented China in the United Nations for twenty-two years. As the "China" representative to the United Nations, Taiwan had maintained a seat in the General Assembly, as well as a permanent seat on the Security Council. On October 25, 1971, however, the PRC replaced Taiwan and was seated in the U.N. China seat. Seventy-six countries voted in favor of Taiwan's ouster, with seventeen abstaining and thirty-five voting against the ouster.⁶² This step marked the international community's recognition of the Communist Chinese as the legitimate representative government of China.⁶³ The PRC interpreted this event as yet another indicator legitimizing its claim of sovereignty over Taiwan.⁶⁴

As discussed *infra*, however, Resolution 2758, which enabled the switch, only determined that the PRC, not the KMT, was China's legitimate government and, therefore, should be China's representative to the United Nations. The Resolution did *not* determine whether the PRC's representation of China included representation of Taiwan.⁶⁵ Thus, Resolution 2758, while resolving

59. The KMT's martial law on Taiwan was not lifted until 1987. See Sean Cooney, *Why Taiwan is not Hong Kong: A Review of the PRC's, "One Country Two Systems" More for Reunification with Taiwan*, 6 PAC. RIM L. & POL'Y J. 497, 518-19 (1997).

60. See U.S. Dept. of State Report on Diplomatic Relations of the Republic of China and the People's Republic of China, *available in* 11 I.L.M. 571 (1972).

61. See COPPER, *supra* note 32, at 145.

62. See PETER R. BAEHR & LEON GORDENKER, *THE UNITED NATIONS IN THE 1990s* 45 (1992).

63. See Chang, *supra* note 22, at 394.

64. See Part IV.A.1, 2.

65. See Lee, *supra* note 13, at 351; Chang & Lim, *supra* note 22. Both articles note

the issue of China's representation, left the determination of Taiwan's representation unclear.

Resolution 2758 forced the KMT to relinquish its U.N. seat. The KMT, however, continued to govern and exercise total control over Taiwan as it had prior to the Resolution's passage.

In defiance of the martial law imposed upon Taiwan, the Democratic Progressive Party (DPP) was formed in September of 1986.⁶⁶ Confronting the KMT, the DPP openly advocated independence for Taiwan. Despite the illegality of the DPP's formation, the KMT took no action against it,⁶⁷ and the DPP ran as a political party in the December 1986 elections.⁶⁸ Thus, the 1986 elections represented the first two-party elections held at the national level in any Chinese nation. Martial law was finally lifted in 1987.⁶⁹ One year later, Lee Teng-Hui, a native Taiwanese, became President of Taiwan.⁷⁰ Lee was the first native Taiwanese to hold an influential political position within the KMT governmental structure since its establishment in 1949.

By 1989, a multi-party system had emerged. Thirty-eight political parties participated in the 1989 elections, and 75% of voters turned out for the election. An observer commented that the election was "the first open, free, fair election ever conducted in Chinese history."⁷¹ In 1991, the National Assembly held elections, followed by Legislative Yuan elections a year later.⁷² By 1993, the Taiwanese were on their way to establishing a truly democratic government. In March 1996, Taiwan held a popular election for State President, the first ever in Chinese history. Today, other countries in East Asia see Taiwan as a role model for democratization, even while Taiwan's own international status remains uncertain.⁷³

the failure of Resolution 2758 to address the issue of Taiwan's representation.

66. See Piero Tozzi, *Constitutional Reform On Taiwan: Fulfilling a Chinese Notion of Democratic Sovereignty?*, 64 FORDHAM L. REV. 1193, 1240 (1995).

67. See Cooney, *supra* note 58, at 518-19.

68. See Michael E. Mangelson, *Taiwan Re-recognized: A Model for Taiwan's Future Global Status*, 1992 B.Y.U.L. REV. 231, 251 (1992).

69. See Lin, *supra* note 58, at 772.

70. President Chiang Ching-Kuo (Chiang Kai-Shek's son) died in 1988 at the age of 74. See Tozzi, *supra* note 62, at 1239. Although Chiang designated Lee as his successor, serious power struggles arose within the KMT. *Id.*

71. Ts'ai Ling and Ramon H. Myers, *Winds of Democracy: The 1989 Elections*, in ASIAN SURVEY 360 (1990).

72. See WACHMAN, *supra* note 47, at 11.

73. See *Taiwan: Now for the Rest of the Banquet*, THE ECONOMIST, July 12, 1997, at 36.

IV. TAIWAN SHOULD BE ACCORDED STATEHOOD AND ALL THE APPURTENANCES THERETO

*Every Nation which governs itself, under whatever form, and which does not depend on any other Nation, is a sovereign State. Its rights are, in the natural order, the same as those of every other State. Such is the character of the moral persons who live together in a society established by nature and subject to the law of Nations. To give a Nation the right to a definite position in this great society, it need only be truly sovereign and independent. It must govern itself by its own authority and its own laws.*⁷⁴

A. Taiwan Fulfills the Criteria for Statehood

The traditional requirements for statehood, as set forth in the 1933 Montevideo Convention, are: (1) a defined territory; (2) a permanent population; (3) an effective government; and (4) the capacity to enter into relations with other states.⁷⁵ While the Montevideo Convention is technically binding only upon its signatories, the formulation for statehood as set forth therein has been generally accepted throughout the international community.⁷⁶ Taiwan adequately fulfills all of these classic criteria for statehood.⁷⁷ Additionally, while democratic governance was recently advocated as

74. See E. de Vattel, *Le Droit des Gens, ou principes de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains* I, ch. I, § 4 (James Brown Scott ed., 1758).

75. See Convention on the Rights and Duties of States, art. 1, 49 Stat. 3097, 165 L.N.T.S. 25 (signed at Montevideo, Uruguay Dec. 26 1933) [hereinafter Montevideo Convention]; see also RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201 (1987).

76. See generally Nii Lante Wallace-Bruce, CLAIMS TO STATEHOOD IN INTERNATIONAL LAW 51 (1994).

77. It is undisputed that Taiwan meets the four criteria set forth in the Montevideo Convention. See, e.g., Attix, *supra* note 14, at 366-68 (setting forth brief summary of Taiwan's fulfillment of traditional criteria for statehood). This Article, therefore, does not present a comprehensive discussion on how Taiwan meets the statehood criteria.

A peripheral issue sometimes arises regarding the first criteria of a defined territory. As noted above, China refuses to relinquish its claim of sovereignty over Taiwan. Pre-existing claims as to the territory of a would-be State, however, do not prevent qualification for statehood. For example, prior and continuing claims of territorial ownership for which statehood is being claimed have commonly been raised within the context of the disputed territory's quest for admission to the United Nations. Presumably, so long as Taiwan disputes China's claim, the issue remains unresolved. See JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 37-38 (1979) (noting that such claims existed in the case of Israel, Kuwait and Mauritania, and that these countries are seen as nation-states despite claims made to challenge the respective territories). "The only requirement is that the State must consist of a certain coherent territory effectively governed." *Id.* at 40.

a non-traditional fifth requirement of establishing statehood, Taiwan has met this requirement through the establishment of a democratic political system in 1993.⁷⁸

The criteria set forth in the Montevideo Convention are admittedly neither exhaustive nor exclusive. Under any analysis, however, Taiwan has all the attributes of a nation state, except for explicit recognition from the international community. Taiwan has also fulfilled a few additional indicators of independent statehood which are discussed below. These indicators bolster Taiwan's entitlement to recognition as a sovereign nation-state.

1. State Responsibility

State responsibility is another strong indicator of statehood and sovereignty. If Taiwan were part of China, then China would be liable for Taiwan's actions under international law. Historically, however, the governing body of Taiwan has consistently been held accountable for the actions of the island's inhabitants.⁷⁹

In early 1996, six Taiwanese sailors from the merchant container ship *Maersk Dubai* were arrested in Nova Scotia, Canada.⁸⁰ The six men, all officers, were accused of murdering three Romanian stowaways on the high seas. This incident became the focal point of a diplomatic tussle between Canada, Romania, China, and Taiwan over who had jurisdiction over the matter.⁸¹

Canada initially sought to extradite the officers to Romania, with which it has an extradition treaty.⁸² Taiwan, however, opposed the extradition attempts and offered instead to prosecute

78. See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46, 55 (1992); see also M. Kelly Malone, *The Rights of Newly Emerging Democratic States Prior to International Recognition and the Serbo-Croatian Conflict*, 6 TEMP. INT'L & COMP. L.J. 81, 86 n.27 (1992) (citing J.E.S. Fawcett, *Security Council Resolutions on Rhodesia*, 41 BRIT. Y.B. INT'L L. 103, 112 (1965-66)) (adding fifth requirement for establishing statehood as "the right of every citizen to participate in the government.").

79. For example, China refused to assume responsibility for the massacre of shipwrecked Japanese who were killed by Taiwanese in 1874. See Chang & Lim, *supra* note 22, at 418.

80. *Canada to Release Crewmen: Taiwan Promises Thorough Prosecution of Six "Maersk Dubai" Officers*, CHINA NEWS, March 20, 1997, available in LEXIS, News Library, China News (Taiwan) File [hereinafter *Canada to Release Crewmen*].

81. See *id.*

82. No extradition treaty exists between Canada and Taiwan. See *Officers to Return to Taiwan for Trial*, TRAFFIC WORLD, Mar 24, 1997, available in LEXIS, News Library, International Section, Traffic World File. Canada's extradition treaty with Romania, however, encompasses only offenses committed on Romanian soil. The alleged murders had taken place on the high seas on a ship registered in Taiwan. See *id.*

the men in Taipei.⁸³ Meanwhile, the PRC attempted to intervene, claiming sovereignty over both the men and the case.⁸⁴ An official representative of China declared, "Taiwan is part of China and is an integral part of its territory, so we have the jurisdiction The Taiwanese government has no part to play."⁸⁵ This official emphasized that extradition could take place only between two sovereign states, not "between a province of a country and another country."⁸⁶

Despite China's position, the Nova Scotia Supreme Court decided to return the men to Taiwan to stand trial there.⁸⁷ Taiwan hailed the decision, noting that "[t]he decision not only complies with international laws and practices, but also shows Canada's respect for our judicial system."⁸⁸

The *Maersk Dubai* case illustrates the ambiguity created by Taiwan's indeterminate status within the international community. Nevertheless, the statements issued by the Chinese officials are accurate: under international law, one sovereign state cannot extradite an individual to anything other than another sovereign state. If Taiwan did not hold the attributes of a nation-state independent and apart from China, the officers could not have been released from the Canadian courts to stand trial in Taiwan.

2. Trade and Economic Power

It is indisputable that trade and economic power largely define relations between members of the international community. The spectacular growth of Taiwan's trading base demonstrates that it cannot be easily dismissed in the trade arena.⁸⁹ Attendant with Taiwan's explosive economic progress over the past four decades have been extensive improvements in Taiwan's political, social, educational, and health spheres. These advancements have

83. *Canada to Release Crewmen*, *supra* note 80.

84. See Steve MacLeod, *China Claims Jurisdiction*, CALGARY HERALD, Jan. 31, 1997, available in LEXIS, News Library, News (Canadian Press) File.

85. See *id.* (quoting Xie Xiaoyan, an embassy official with the Chinese Embassy in Ottawa).

86. See *id.*

87. See *Taiwan Hails Canada's Return of Murder Suspects*, REUTERS, Mar. 19, 1997, available in LEXIS, News Library, News file.

88. *Id.* (quoting Taiwan's Foreign Ministry spokesman Peter Cheng).

89. See, e.g., Chi-Ming Hou, *Toward Taiwan's Full Participation in the Global System*, in *THE CHINESE AND THEIR FUTURE: BEIJING, TAIPEI AND HONG KONG* (Zhiling Lin & Thomas W. Robinson eds., 1994).

strengthened Taiwan's internal structure, allowing Taiwan to contribute to the stability and growth of the global economy.⁹⁰

In comparison to the rest of the world (including mainland China), Taiwan has the twentieth largest economy, the eighteenth largest GNP, the fourteenth largest trade economy and the seventh highest level of foreign investment. It has its own foreign currency, the New Taiwan dollar, tied to the U.S. dollar.⁹¹ The Taiwan government negotiates its own trade deals with other nations, including the United States, independent of the PRC. While China currently lags decades behind in numerous respects, Taiwan has built and supports an institutional framework for a thriving market economy.

In most, if not all, aspects of trade and economy, Taiwan operates as a separate and sovereign nation-state apart from mainland China.

3. Governmental Sovereignty and Independence

Independent of any external governing body, Taiwan's government does the following: enacts legislation and rules of order which govern Taiwan, conducts and controls Taiwan's foreign affairs and policies, oversees and authorizes negotiation and entry into international agreements, enacts and enforces Taiwan's immigration policies, and makes all decisions relating to the common health and welfare of the island's inhabitants. The PRC has no input into the drafting or implementation of any of these policies or decisions. The reality is that the government on Taiwan operates completely independent of the PRC, which it could not do if the PRC exercised *de facto* sovereignty over Taiwan.

4. Membership in Various ILOs and NGOs

Membership in either international governmental organizations (IGOs) or international non-governmental organizations (NGOs) is not dispositive of determining whether an international entity has acquired the status of statehood. Nevertheless, membership in such organizations serves as a strong indicator of the recognition accorded to that entity by the international commu-

90. See generally Y. DOLLY HWANG, *THE RISE OF A NEW WORLD ECONOMIC POWER: POSTWAR TAIWAN* (1991).

91. See *id.* at 99 (discussing development of Taiwan's financial system and monetary policies).

nity.⁹²

Taiwan sought membership in a number of IGOs, particularly those in which membership garners diplomatic leverage. The PRC, however, successfully blocked Taiwan's entrance into many of these organizations.⁹³ Despite the efforts of the Chinese government, Taiwan has nevertheless successfully achieved membership in several IGOs.⁹⁴ Taiwan recently submitted an application for membership in the World Trade Organization, separate and apart from mainland China.⁹⁵

Despite the PRC's protests, Taiwan has been more successful in its search for membership in a number of sporting, scientific, humanitarian, and cultural NGOs.⁹⁶ Since 1994, when it declared that it would no longer compete with the PRC in seeking to represent China, Taiwan has sought membership to IGOs and NGOs, in its own right.

B. The Principle of Self-Determination

The disparity between Taiwan and China regarding their respective roles and responsibilities in the global community compli-

92. See, e.g., David O. Lloyd, *Succession, Secession, and State Membership in the United Nations*, 26 N.Y.U.J. INT'L L. & POL. 761, 766 (1994) (discussing recognition of statehood through membership in United Nations); see also Michael C. Davis, *The Concept of Statehood and the Status of Taiwan*, 4 J. CHINESE L. 135 (1990) (discussing possible interpretations of Taiwan's membership in various IGOs and NGOs with regard to the status of Taiwan).

93. See G. CHAN, CHINA AND INTERNATIONAL ORGANIZATIONS, PARTICIPATION IN NON-GOVERNMENTAL ORGANIZATIONS SINCE 1971, at 159, 160 (1989).

94. For example, Taiwan joined the Asian Development Bank (ADB) in 1966 as a founding member and remained a member following the PRC's acceptance as a separate member. See *id.* at 160.

95. China opposes Taiwan's membership to the WTO, but cannot completely block Taiwan's membership application because China does not yet belong to the WTO. Resorting to the political arena, China demanded that the WTO admit China prior to admitting Taiwan. Interview with Ambassador Charlene Barshefsky (November 1995). Taiwan, meanwhile, is not insensitive to the implications of its application for WTO membership. In its application to the WTO under Article 33 of the General Agreement on Tariffs and Trade (GATT) Charter, Taiwan applied under the name of "the Customs Territory of Taiwan, Penghu, Kinmen and Matsu," demonstrating that it was not seeking a political or symbolic advantage in its application. See Mou-shih Ding, *Relations Between the United States and the Republic of China*, in THE ROLE OF THE REPUBLIC OF CHINA IN THE INTERNATIONAL COMMUNITY 55 (Ray S. Cline ed., 1991).

96. Those organizations and institutions, do not consider Taiwan to be synonymous with China. Instead, these organizations refer to Taiwan by various designations as "Taiwan, China," or "Chinese Taipei," distinguishing it from the PRC. See Michael C. Davis, *The Concept of Statehood and the Status of Taiwan*, 4 J. CHINESE L. 135, 141-42 (1990).

cates the Taiwan-China dilemma. For example, discussions regarding the Taiwan issue inevitably lead to the question of whether the people of Taiwan are Chinese or Taiwanese. Moreover, far-reaching ramifications result when both the historical and ongoing discussions regarding the Taiwan issue consist of numerous references to it as a matter "the Chinese people" must resolve.

People of Chinese descent comprise the vast majority of the Taiwanese population. Many of their ancestors immigrated to Taiwan during the 17th, 18th, and 19th centuries from the southeastern Chinese provinces of Fujian and Guandong.⁹⁷ The Dutch, Portuguese, and Japanese settlers who, at various points in history maintained ports and colonies throughout Taiwan, intermingled with the these immigrants through marriage. Thus, "Taiwanese" usually refers to the generations of island dwellers who inhabited Taiwan prior to the influx of the Kuomintang. They constitute approximately 85% of Taiwan's population.

This set of circumstances regarding ethnic identification gives rise to consideration of whether the principle of self-determination applies to the situation existing between Taiwan and China. Self-determination is premised on "the right of a people to declare and establish its own sovereign state freely."⁹⁸ Until 1993, the native Taiwanese population has been subject to either military occupation or rule by a foreign governing power without choice. Being denied participation in determining the fate of their home island has greatly contributed to the current indeterminate status of Taiwan's international personality. Allowing the native Taiwanese to exercise control would help rectify the exclusionary practices to which foreign governments have subjected the Taiwanese.

Traditionally, self-determination was interpreted narrowly, referring to the right of peoples who were forced to submit to foreign colonizing powers to seek their own political destinies.⁹⁹ Recently, however, the concept of self-determination has been interpreted more broadly. For example, self-determination now

97. In addition, small numbers of aboriginal peoples still exist today in Taiwan, mostly in pockets of reserved land (such as Wu-Lai). They rely on tourist trade and both Taiwanese and foreign curiosity regarding aboriginal customs, song and dance. These people account for less than one percent of the current Taiwanese population. See LONG, *supra* note 1, at 3.

98. Chang & Lim, *supra* note 22, at 399.

99. The concept of self-determination has its inception in a moral mandate directed at decolonizing European and Japanese colonies during the period following World War II. See Franck, *supra* note 78, at 54.

arguably includes a claim for independence by minority ethnic, religious and/or linguistic groups subordinated by a dominant population and who seek political and actual autonomy.

A number of international instruments recognize the validity of self-determination.¹⁰⁰ For example, the International Court of Justice has expressly affirmed it.¹⁰¹ Likewise, a number of General Assembly resolutions, while having no direct legal binding nature, also validate the right to self-determination. For example, Resolution 2160 (XXI) affirmed that:

Any forcible action, direct or indirect, which deprives people under foreign domination of their right to self-determination and freedom and independence and of their right to determine freely their political status and pursue their economic, social and cultural development constitutes a violation of the Charter of the United Nations. Accordingly, the "use of force to deprive peoples of their national identity, . . . constitutes a violation of their inalienable rights and the principle of non-intervention."¹⁰²

As previously discussed, upon its arrival in Taiwan in the 1940's, the KMT treated the native Taiwanese harshly and subjected them to political suppression.¹⁰³ Prior to the KMT's arrival, various foreign powers, including the Portuguese, Dutch and Japanese had subjected Taiwan to colonial occupation and rule.¹⁰⁴ Once the KMT took control, it ruled the Taiwanese with an iron fist for over forty years. The KMT excluded the Taiwanese from political participation, and subjected the Taiwanese to numerous human rights violations based on their ethnicity, and their social and political group membership.¹⁰⁵ Moreover, the KMT perse-

100. See, e.g., Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 138-39, U.N. Doc. A/4684 (1960). The Charter of the United Nations also expressly mentions "self-determination" twice: first, in Article I(2) setting forth "respect for the principle of equal rights and self-determination of peoples" as one of the purposes of the United Nations; second, in Article 55, where the same language is set forth as one of the general objectives of the United Nations in the areas of social and economic development and respect for human rights. U.N. CHARTER arts. 1(2), 55.

101. *Namibia Opinion*, 1971 I.C.J. Rep. 6, 31; *Western Sahara Case*, 1975 I.C.J. 12, 31-3.

102. G.A. Res. 2160, U.N. GAOR, 21st Sess., 1482d plen. mtg., Supp. No. 16, at 4, U.N. Doc. A/6316 (1966).

103. See discussion *supra* Part II.

104. See discussion *supra* Part I.

105. See, e.g., Ming-Min Peng, *Political Offenses in Taiwan: Laws and Problems*, 47 CHINA Q. 471-74 (1971); Tak-Wing Ngo, *Civil Society and Political Liberalization in Tai-*

cuted the Taiwanese for speaking in their native tongues. The KMT mandated that the Taiwanese speak and learn only the KMT's imported language, Mandarin Chinese, which was the only language permitted to be taught in schools and used in transacting business.¹⁰⁶ International law recognizes discrimination and persecution based upon ethnolinguistic differences as a violation of human rights.¹⁰⁷

Today, the Taiwanese people have overcome these barriers, including adoption of a democratic governance. Given the international community's recognition of the validity of the right of self-determination and its applicability to this situation, Taiwan should be permitted to exercise its right of self-determination and to decide its own destiny.

C. Taiwan's "Quasi-declaration" of Independence

The creation of states in the international arena is traditionally accompanied by a declaration of independence by the entity seeking statehood. In Taiwan's case, such an official declaration has not been made. The PRC argues that the absence of such a declaration by Taiwan signifies Taiwan's acquiescence to the PRC's position. The PRC's position is that determination of Taiwan's fate is an internal matter to be decided by the Chinese and that eventual reunification of Taiwan with China is inevitable.

That Taiwan has not yet made such an express claim of independence and thus forced the issue is understandable. Assuming that Taiwan desired to seek independence as a sovereign nation, one major reason for the absence of such a declaration could be the Kuomintang. While severely weakened compared to its

wan, 25 BULL. CONCERNED ASIAN SCHOLARS 4, 5 (1993) ("By repressing political identities, and by denying freedom of speech, association, and other civil and political rights, the ruling party tried to destroy self-organized and autonomously defined political spaces, substituting for them a state-controlled public arena.").

106. The majority of the native Taiwanese spoke a dialect known as Hoklo, while a smaller sub-group of Taiwanese spoke another dialect known as Hakka. The aboriginal peoples likewise had their own languages which were different from both Hoklo and Hakka and are presumed to have arisen from a different linguistic base than either of the other two. Although there is evidence to support that both Hoklo and Hakka originated as dialects of the Chinese language, from a purely linguistic point of view, Hoklo and Hakka are distinct languages from Mandarin. See Chang & Lim, *supra* note 22, at 414.

107. See *id.* at 414-15. "For example, South Africa for a long time faced UN censure because of its state policy of discrimination against the black majority population. One manifestation of apartheid was discrimination based on language, in violation of a fundamental freedom affirmed by the UN Charter." *Id.* (footnotes omitted).

strength at the time of its takeover of the island, the Kuomintang still holds most of the power in Taiwan.¹⁰⁸ The KMT justified its iron rule over Taiwan (including forty years of martial law) and centered its political stance upon its claim of sovereignty over both Taiwan *and* China. The KMT saw itself in the midst of a civil war with China, the outcome of which would result in the reunification of both countries.

A second, even more powerful and obvious reason for the absence of such a declaration by the Taiwanese, is the justifiable fear of invasion by the PRC.¹⁰⁹ China has made clear that it will not hesitate to use force in order to enforce its claim of sovereignty over the island.

In light of these circumstances, it is reasonable to look to Taiwan's conduct, even absent an express declaration of independence, to determine Taiwan's position regarding its international status. Taiwan's behavior since the establishment of its democratic government indicates the island's movement towards acquiring independence. Nonetheless, Taiwan understandably would prefer to do so without raising the direct ire and armed wrath of its territorial neighbor, China.

1. In General

The KMT has made a series of unwise strategic decisions which have contributed to Taiwan's inability to gain recognition as sovereign nation.¹¹⁰ A strong argument exists, however, that the KMT does not speak for the majority of the island's population, the so-called native Taiwanese. With the emergence of Taiwan's democratic government, it is clear that the fundamental change which Taiwan has undergone in the past decade demands a reassessment of Taiwan's position in the international community. Moreover, a re-examination of the evidence regarding the *de facto*

108. While the KMT does retain control over Taiwan's governing bodies, the effects of the DPP and the Taiwan independence movement are obvious. The hard line against any sort of action which would undermine the KMT's claim to be the legitimate government of all China steadily eroded over time. In May of 1991, President Lee Teng-hui (who is a member of the KMT) expressly denounced Taiwan's claim to have sovereignty over China. Furthermore, while the KMT has not embraced the independence movement in Taiwan, it has moved to the center sufficiently enough that a splinter group made up of die-hard "old liners" has formed and named itself the New Party.

109. See discussion *infra* Part IV.B.

110. See, e.g., *supra* note 117 and accompanying text (discussing the KMT's discussion to challenge the PRC for representation of China, rather than accepting proposal to have both China and Taiwan recognized by the United Nations).

status of Taiwan's international personality must be done.

In 1988, Taiwan altered its foreign policy approach towards international recognition. Taiwan previously had mirrored the PRC's efforts in demanding that other countries recognize either the KMT or the PRC. Taiwan has changed this position. No longer does Taiwan require any declaration of acknowledgment or recognition of Taiwan's international status.¹¹¹ Rather, Taiwan now welcomes unconditionally any state willing to recognize Taiwan.

In 1991, Taiwan informally recognized the PRC. In 1994, Taiwan officially announced that it would no longer seek to represent China in the international community. Moreover, Taiwan seeks membership in both NGOs and IGOs, and engages in behavior that indicates its desire for recognition, with the omission only of an outright declaration of the island's sovereignty.

2. Taiwan's Quest for Admission to the United Nations

Taiwan finds itself excluded from membership in the United Nations, which many scholars consider the seminal international organization. While lack of membership in the U.N. does not deprive a state of its sovereignty, U.N. membership signifies recognition of an entity's international status as a nation-state by the international community.¹¹²

In 1993, Taiwan directly applied for membership to the United Nations.¹¹³ The PRC strenuously objected to Taiwan's application, and blocked the application from being included on the daily agenda of the General Assembly for discussion and a possible vote. In 1994, the PRC again blocked Taiwan's application for membership to the United Nations.¹¹⁴

111. See Lee, *supra* note 13, at 354; Davis, note *supra* 92, at 323.

112. See Lloyd, *supra* note 92, at 766-67 (1994). "In most cases, acceptance by the United Nations indicates that a new state has come into being, and that the international system will treat the new entity as a state." *Id.* The classic exception to this principle is Switzerland, whose sovereignty is undisputed despite its non-membership in the United Nations. See *id.*

113. See *supra* note 10. Request to include the Republic of China U.N. Membership Issue in the Agenda of the 48th Sess. of the UNGA, U.N. GAOR, 48th Sess., Annex 4, at 4, U.N. Doc. A/48/191 (1993), reprinted in 11 CHINESE Y.B. INT'L L. & AFF. 261-65 (1991-1992). The issue of Taiwan separately applying for membership to the U.N. emerged in 1986 when the DPP was established. As part of its opening attack against the KMT, the DPP openly advocated U.N. membership for Taiwan. For further discussion of Taiwan's bid for U.N. membership, see Chang & Lim, *supra* note 22.

114. See *id.*

Pursuant to the Charter of the United Nations, only states may apply for membership to the U.N..¹¹⁵ The Charter further mandates that the Security Council must approve any membership vote by the General Assembly.¹¹⁶ Even assuming that the General Assembly approved Taiwan's membership to the U.N., China could veto this vote because it retains a permanent seat on the Security Council.¹¹⁷ Thus, while Taiwan has probably not abandoned its quest for U.N. membership, it is unlikely that Taiwan's bid for membership will be successful in the near term.¹¹⁸

Nevertheless, the failure to obtain recognition from the United Nations as a sovereign nation does not eliminate Taiwan's claim to sovereignty. A refusal of individual nations or an international organization to recognize an emerging state "[does] not mean that it is not a state, nor is the international system barred from recognizing it as such."¹¹⁹ Regardless of Taiwan's success in acquiring recognition as a sovereign state via inclusion in the United Nations, its application for U.N. membership represents Taiwan's attempt to be recognized as a nation-state separate and distinct from China.¹²⁰ Therefore, given China's threat of force if Taiwan actually declares independence, Taiwan's behavior should be seen as the equivalent of a declaration of independence.¹²¹

C. "White cat, black cat"

Taiwan undisputedly has the power and authority to act, and has acted for more than the past four decades, as an independent political entity. Taiwan clearly looks, acts, and functions like a

115. U.N. CHARTER arts. 3, 4.

116. *See id.* art. 4.

117. Former U.N. Secretary General Boutros Boutros-Ghali's statement that "there is only one China . . . we refuse any contact, direct or indirect, with Taiwan," indicates that China's presence on the Security Council may not be the only obstacle that Taiwan faces in its quest for U.N. membership. *U.N. Adheres to One China Position: U.N. Chief, XINHUA NEWS AGENCY*, (Sept. 5, 1994), available in LEXIS, AsiaPC Library, Xinhua File.

118. This situation is ironic considering that, in the years preceding Taiwan's ouster from the China seat in the United Nations, many U.N. member states, including the United States, Canada, Italy and Saudi Arabia, sought to have both Taiwan and the PRC represented in the United Nations. Both governments rejected this compromise, resulting in Taiwan's complete exclusion from the U.N. when its delegation was removed in October of 1971. *See generally* Chang & Lim, *supra* note 65.

119. Lloyd, *supra* note 92, at 766.

120. Pursuant to the Charter of the United Nations, only states can become members. *See* U.N. CHARTER arts. 3, 4.

121. *See* Lee, *supra* note 13, at 381-82.

sovereign nation according to the common indicators of statehood.¹²² Taiwan has expressed its desire for independence by its conduct. Taiwan might have already explicitly sought recognition as a nation-state from other nations had China not refused to relinquish its claim of sovereignty over the island and threatened to use force against Taiwan to enforce that claim.

But for China's claim of sovereignty over Taiwan, Taiwan's route to statehood (if it desired it) would be unobstructed. For China's position to be justifiable, however, its claim to sovereignty over Taiwan must, at a minimum, be legitimate. As the next section of this Article discusses, the validity of China's claim is far from clear.

V. CHINA'S CLAIM TO SOVEREIGNTY OVER TAIWAN

*How can any system of law admit that right is based on might? This is what is involved if in the relations between States international law accepts that the stronger nation may impose its terms on the weaker nation by war or by threat of force.*¹²³

The PRC asserts that it should exercise indisputable sovereignty over Taiwan, and that Taiwan's sovereignty is a matter of "internal affairs" not subject to international law.¹²⁴ The PRC's position ignores the undetermined status of the legal ownership of Taiwan, as well as contrary indications supporting Taiwan's independence from China.¹²⁵ Particularly in light of principles of self-determination and democratic governance, resolution of Taiwan's international personality and future should not and cannot rest upon China's unilateral assertion of sovereignty over Taiwan and its people.

Nevertheless, the PRC continues to insist that Taiwan remains part of China and to use coercive tactics in its maneuvering. For example, the PRC, in extending diplomatic relations with other countries, demands that those countries recognize Beijing as the sole legitimate government of China and recognize China's claim

122. See, e.g., THE ROLE OF THE REPUBLIC OF CHINA IN THE INTERNATIONAL COMMUNITY, at v-vi (Ray S. Cline ed., 1991). "By all standards of statehood, [Taiwan] is an independent self-governing nation with an inherent right of self-defense." *Id.*

123. J.A.S. GRENVILLE, THE MAJOR INTERNATIONAL TREATIES 1914-1973: A HISTORY AND GUIDE WITH TEXTS 13 (1974).

124. See *Envoy to UN Reiterates China's Position on Taiwan Question*, BBC SUMMARY OF WORLD BROADCASTS, July 25, 1996, available in LEXIS, News Library, Curnws file.

125. See *supra* Part III.A, B.

of sovereignty over Taiwan.¹²⁶

A. China's White Paper on Taiwan

On August 31, 1993, the PRC issued a White Paper on Taiwan, entitled "The Taiwan Question and Reunification of China" (White Paper).¹²⁷ In the White Paper, the PRC articulated its rationale for why Taiwan does not constitute a sovereign nation independent from China and provided numerous justifications for its legitimacy to govern Taiwan.¹²⁸ To date, the White Paper represents the PRC's most comprehensive statement regarding its position on Taiwan's status.¹²⁹ Throughout the White Paper, the PRC reiterates its position that the Taiwan question is a purely internal and domestic matter.¹³⁰

The primary assertions set forth in the White Paper are as follows:

1. The Shimonoseki Treaty of 1895 was rendered null and void by China's declaration of war against Japan in 1941.
2. The 1943 Cairo Declaration stated that territories stolen from China, including Taiwan and the Pescadores, should be restored to China.
3. The 1945 Potsdam Proclamation affirmed the terms of the 1943 Cairo Declaration.
4. In its 1945 instrument of surrender, Japan agreed to carry out the terms of the Potsdam Proclamation.
5. On October 25, 1945, the Japanese surrendered Taiwan to

126. The language incorporated into the text of the governing agreements between China and those countries, however, varies widely. A strong case can be made that the majority of those governments which have diplomatic ties with the PRC carefully word their agreements so that the issue of Taiwan remains undetermined. See Lee, *supra* note 13, at 357-60 (analyzing the language contained in the agreements of 123 countries with established diplomatic ties to the PRC and concluding that there are potentially as many as 111 states which are noncommittal regarding the PRC's claim of sovereignty over Taiwan).

127. Taiwan Affairs Office & Information Office State Council, *The Taiwan Question and Reunification of China* (Beijing 1993) (in English) [hereinafter White Paper]. For Taiwan's countering commentary to the PRC's release of the White Paper see *There is no "Taiwan Question" There is Only a "China Question": Views on the Chinese Communists' White Paper, "The Taiwan Question and Reunification of China"* 1-14 (Mainland Affairs Council, Republic of China ed., 1993).

128. White Paper, *supra* note 127.

129. See, e.g., Lee, *supra* note 13, at 354-55.

130. See White Paper, *supra* note 127.

the Chinese government in Taiwan. Under Chinese law, Taiwan was restored to China on that day.

6. Over 157 countries maintain official diplomatic relations with China, and recognize that there is only one China, that the PRC is the sole legitimate government of China, and that Taiwan constitutes a part of China.

7. United Nations General Assembly Resolution 2758 (XXVI) resolved the question of China's sovereignty over Taiwan.¹³¹

The PRC's assertions, however, contain numerous flaws and material omissions that render its claim of sovereignty over Taiwan meaningless.

1. China's Geographical and Historical Claim

China's geographical claim of sovereignty over Taiwan, established in 1684 when Taiwan became a prefecture and military district of Fujian province, came into dispute when Taiwan was ceded to Japan pursuant to the 1895 Treaty of Shimonoseki.¹³² The island remained under the full custody and control of Japan until the Allied Forces forced Japan to relinquish Taiwan and the Pescadores at the end of World War II.¹³³ China never participated in the efforts to wrest ownership of Taiwan from Japan. From 1895 to the present, the PRC has never exercised any control or sovereignty over the territory of Taiwan.

Therefore, any Chinese claim of ownership must arise from the international instruments which forced Japan to surrender Taiwan. The Japanese forces surrendered to the island's governmental forces in 1945.¹³⁴ As a condition of its surrender, Japan unconditionally relinquished its claim to Taiwan.¹³⁵ While Japan expressly relinquished its claim to Taiwan and to the Pescadores, it did not state to whom it relinquished its claim.¹³⁶ The Japanese forces surrendered themselves directly to the Nationalist govern-

131. *Id.*

132. See Encyclopedia of Asian History, *supra* note 2, at 52.

133. This decision was declared in the 1943 Cairo Declaration and affirmed in the 1945 Potsdam Proclamation. See Part III.

134. THE FUTURE OF TAIWAN: A DIFFERENCE OF OPINION, (Victor H. Li, ed. 1980).

135. The PRC did not participate in any of these negotiations, and it was not a signatory to any of the operative instruments. See Soong, *supra* note 13, at 353.

136. Japan also did not express to whom it relinquished Taiwan and the Pescadores in the separate peace treaty entered into between Japan and the KMT the next year. See Lee, *supra* note 13, at 353.

ment in Taipei, not to the PRC.¹³⁷

2. U.N. Resolution 2758

The U.N. Resolution 2758, which established the PRC as the legitimate representative of China in the United Nations, did not address the Taiwan issue.¹³⁸ The PRC government, nevertheless, claims the resolution represents more "proof" of the legitimacy of its claims over Taiwan.¹³⁹

The reality, however, is that the PRC has never exercised *de facto* control or jurisdiction over Taiwan.¹⁴⁰ At least two scholars have propounded that, in the absence of *de facto* possession or control, "state domestic jurisdiction cannot be invoked" in the context of Taiwan and China.¹⁴¹

3. Who speaks for the Chinese people?

Until recently, the majority of Taiwan's inhabitants were excluded from the political process and discriminated against on the basis of ethnic and linguistic differences. In addition, prior to the KMT, foreign governments occupied Taiwan, subjecting the Taiwanese to their rule and subjugation. These experiences undermine the PRC's claim that it speaks for "all Chinese," that all Chinese agree that Taiwan is part of China, and that Taiwan must be reunified with mainland China.¹⁴²

Therefore, in light of the recent democratization of Taiwan, accepting the current Taiwanese government's position on its independence is more in keeping with principles of international law.

137. See generally *id.* at 371-74. The PRC has never had, nor has it ever gained or exercised, control over the territory of Taiwan. See *id.*

138. See Section IV.D.; see also Li, *supra* note 134.

139. Lee, *supra* note 13, at 355.

140. See *id.* at 356. One scholar has even opined the KMT's martial rule over Taiwan from 1945 to 1951 should be categorized as a military occupation. See *id.*

141. Chang & Lim, *supra* note 65, at 419 (quoting the International Court of Justice's statement in the *Aaland Islands Case* that "[t]ransition from a *de facto* situation to a normal situation *de jure* cannot be considered as one confined entirely within the domestic jurisdiction of a State.").

142. Recent surveys indicate that only five percent of Taiwanese favor swift reunification. See *Taiwan: Now for the Rest of the Banquet*, THE ECONOMIST, July 12, 1997, at 38 [hereinafter *Taiwan: Now*].

B. China's Illegal Use of Aggressive Acts and Coercion

Because of its sheer size and diplomatic leverage, the PRC's tactics against Taiwan's efforts to define its own international identity creates an unequal playing field.¹⁴³ Nations, including the United States, are particularly reluctant to criticize the PRC about the Taiwan issue because they are unwilling to jeopardize the stability of their political and economic relations with China.¹⁴⁴

Furthermore, the PRC braces its claim of sovereignty over Taiwan with illegal threats of force.¹⁴⁵ For example, in July and August of 1995, timed to coincide with several important scheduled elections in Taiwan, China began conducting a series of military exercises in the Taiwan Straits, located between Taiwan and Mainland China. Some of the exercises included launching missiles within a few miles of Taiwan's perimeter. Consequently, Taiwan's armed forces were put on alert. China conducted additional exercises in the Taiwan Straits in March of 1996. In response, the United States sent warships from its Seventh Fleet into the Taiwan Straits, which helped avert any further provocation from either side.

The PRC also engages in diplomatic warfare against Taiwanese relations. Using its political and economic leverage, China demands that any country desiring to enter into diplomatic relations with it must cut off ties with Taiwan. China also requires that these countries recognize the PRC as the sole legitimate government of China, and to acknowledge China's claim of sovereignty over Taiwan. The PRC's demands forced many nations to examine and adjust their diplomatic positions to appease the PRC.¹⁴⁶ The PRC's position on this issue has forced nations to become involved in extended discussions over the wording of diplomatic instruments to satisfy the PRC's demands while not entirely severing

143. A parallel can be drawn between China's and Taiwan's position to unequal treaties. In accordance with the Vienna Convention on the Law of Treaties, treaties which have been "imposed" or forced upon weaker parties are considered null and void as a result of the inequality existing between the parties to that treaty. See, e.g., INGRID DELUPIS, *INTERNATIONAL LAW AND THE INDEPENDENT STATE* 142 (1987) (discussing voidability of unequal treaties and repudiation of treaties established under force).

144. See, e.g., Morton I. Abramowitz, *How to Think About China*, NEWSWEEK, June 16, 1997, at 43.

145. The United Nations prohibits the use of force except as mandated by the Security Council or in self-defense. See U.N. CHARTER ch. VII, art. 51.

146. One example of how more reluctant nations react is Canada. See discussion *supra* note 15 and accompanying text.

their relations with Taiwan.

China's use of economic and diplomatic coercion to force other states to explicitly deny their recognition of Taiwan is illegal. International law provides that states may not infringe on another state's sovereignty by forcing or coercing that state to engage in actions against its will. Moreover, China's threat to use force against Taiwan if it declares its independence is an act of aggression which contravenes the principles of international law.

VI. THE UNITED STATES' POSITION ON TAIWAN

*According to what is probably still the predominant view in the literature of international law, recognition of States is not a matter governed by law but a question of policy.*¹⁴⁷

United States foreign policy toward Taiwan has been instrumental in determining Taiwan's past, current, and future status and treatment within the international community.¹⁴⁸

The U.S. had a paramount interest in protecting Taiwan during the early years of the Cold War because of the island's strategic geographical position. Taiwan's location allowed the U.S. to effect its policy in extending and establishing the U.S. presence in the Asian arena to confront Communist forces, *viz.*, the U.S.S.R. and China. During this period, the U.S. was a staunch ally and supporter of Taiwan.¹⁴⁹

As time passed, however, U.S. foreign policy shifted to reflect the inclusion of the PRC in the international community.¹⁵⁰ The initiation of diplomatic overtures by President Richard Nixon in 1971 undermined Taiwan's precarious position.¹⁵¹ On October 25, 1971, the General Assembly voted on what delegation would rep-

147. HERSH LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 1 (1947).

148. Comprehensive treatment of the relationship between the United States, China and Taiwan is beyond the scope of this article. For an in-depth analysis and discussion of this subject, see Stephen Lee, *American Policy Toward Taiwan: The Issue of De Facto and De Jure Status of Taiwan and Sovereignty*, 2 BUFF. J. INT'L L. 323 (1995-96). See generally LUNG-CHU CHEN & HAROLD D. LASSWELL, *FORMOSA, CHINA, AND THE UNITED NATIONS* (1967).

149. For instance, the United States protected the KMT's possession of the China seat in the United Nations for nearly twenty-two years, blocking the issue of Chinese representation from being presented to the General Assembly. The U.S. delegation classified the China issue as an "important matter" which required a two-thirds majority vote in the General Assembly to be placed on the U.N. agenda for discussion. See Baehr & Gordenker, *supra* note 62, at 45.

150. See *id.*

151. See *id.*

resent China in the United Nations. As a result, the PRC was seated in the United Nations.¹⁵²

In 1972, then-U.S. President Richard M. Nixon signed the Shanghai Communiqué, which stated:

The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and Taiwan is a part of China. The United States does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves.¹⁵³

The 1978 Communiqué on the Establishment of Diplomatic Relations between the U.S. and the PRC, negotiated by President Jimmy Carter, provides that:

The United States of America and the People's Republic of China have agreed to recognize each other and to establish diplomatic relations as of January 1, 1979. The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.¹⁵⁴

On January 1, 1979, the United States withdrew its recognition of the Kuomintang as the official government of China, and transferred that recognition to the PRC on the mainland.¹⁵⁵ At the same time, however, the United States enacted the Taiwan Relations Act (TRA).¹⁵⁶ The TRA effectively allows the United States to treat Taiwan as a state regardless of the withdrawal of recognition of Taiwan as the representative government of China.¹⁵⁷ Despite Taiwan's de-recognition, however, United States courts continued to recognize and enforce aspects of Tai-

152. *See id.*

153. *See* U.S.-People's Republic of China: Joint Communiqué, Feb. 28, 1972, 11 ILM 443, 445 (1972).

154. *Id.* at 445.

155. *See id.*

156. Pub. L. No. 96-8, 93 Stat. 14 (1979). For discussion of the Taiwan Relations Act (TRA), *see* Lori Damrosch, *The Taiwan Relations Act After Ten Years*, 3 J. CHIN. L. 157 (1989).

157. *See* J. Terry Emerson, *ROC's International Position and the Taiwan Relations Act in THE ROLE OF THE REPUBLIC OF CHINA IN THE INTERNATIONAL COMMUNITY* 83, 85 (Ray S. Cline ed. 1991) "[T]he TRA has given Taiwan a political identity for purposes of U.S. law in which the right of free Chinese to self-government within the institutions of a modern civil society are affirmed, recognized, and secured." *Id.*

wan's sovereignty in applying international law.¹⁵⁸ Despite the absence of official diplomatic relations, the United States maintains "unofficial" relations with Taiwan through its American Institute in Taiwan, which mirrors the official diplomatic channels existing between the United States and other countries.¹⁵⁹

Not surprisingly, some believe that the TRA essentially constitutes "a complex tool that enables the United States to stay involved on both sides of the Taiwan Strait while leaving Taiwan worried whether it will be abandoned."¹⁶⁰ Given the U.S. position in the global community and its acknowledged bargaining strength, the United States must reconsider its current policy towards both China and Taiwan. The international community undoubtedly will look to the U.S. in any efforts to resolve the Taiwan issue.

VII. CONCLUSION

Taiwan is already a *de facto* sovereign nation. It has been denied actual recognition, however, as a result of both the confusion created by the historical acceptance that the KMT spoke on behalf of the Taiwanese people, the ambiguity of the stance taken by the KMT that Taiwan also adopted the "one China" policy, and by China's consistent (albeit unjustified) refusal to relinquish its claim of sovereignty over Taiwan.

Today, Taiwan has come into its own identity while struggling to assert its international personality. By a number of indicators, Taiwan is seeking outright independence for which it has labored long and hard, and which it deserves. Nevertheless, it is still denied the opportunity to openly declare its sovereignty, as a result of the illegal and coercive tactics exercised by China in both threatening to use military force if Taiwan declared its independence and threatening to cut off access to China's markets to those countries which express support for Taiwan's position.

158. See, e.g., *Chang v. Northwestern Hospital*, 506 F. Supp. 975 (N.D. Ill. 1980); *Millen Industries v. CCNAA*, 855 F.2d 879 (D.C. Cir. 1988); *United States v. 594,464 Pounds of Salmon*, 871 F.2d 824 (9th Cir. 1989); *New York Chinese TV Programs v. U.E. Enterprises*, No. 88 CIV.4170 (S.D.N.Y., March 8, 1989). Likewise, courts of other nations have also striven to resolve issues regarding the legitimacy of Taiwan's sovereignty against China's. See *supra* Part IV.A.1 (discussing the *Maersk Dubai* case).

159. The American Institute in Taiwan is staffed by foreign civil officers "on leave" who are granted essentially the same rights to which they would be entitled if they were on official assignment elsewhere in the world. Taiwan maintains a reciprocal office in the United States, the Taipei Economic and Cultural Representative Office.

160. Davis, *supra* note 92, at 148.

Clearly, this situation cannot last forever;¹⁶¹ Taiwan cannot acquire its deserved recognition as a nation-state unless it is given the express support from the international community. This support must be initiated from the rest of the world, ideally led by the United States, as Taiwan can do no more. The world must also explicitly state that any use of force by the PRC to enforce its claim of sovereignty over Taiwan will not be tolerated. If the principles of self-determination, human rights, and democratic governance are to have any meaning, then Taiwan's right to choose and declare independence—if it so desires—should be handed to the Taiwanese people unfettered and with open hands.

161. The urgency of a resolution is clearer in light of the recent handover of Hong Kong to China. Immediately after the handover, Chinese officials remarked that the reunification of Hong Kong was analogous to what would occur with Taiwan. See *Taiwan: Now*, *supra* note 142.

