

ROCKIN' THE BOAT  
ONA RENEGADE ISLE:

TAIWAN'S DRIVE TO  
INDEPENDENCE

By Janice McKendrick

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ABSTRACT

ROCKIN' THE BOAT ON A  
RENEGADE ISLE: TAIWAN'S  
DRIVE TO INDEPENDENCE

By: Janice McKendrick

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# ABSTRACT:

The current cross-Strait conflict between mainland China and Taiwan (*Formosa*) has the potential to change the face of international politics. After decades of political uncertainty, the Taiwanese government is giving serious consideration to the idea of declaring the island jurisdiction an independent state. Whether or not this political position stems from continued pressure from the People's Republic of China, or whether there are alternative forces at work, the long term consequences of the Taiwanese people gaining their political independence could be potentially destabilizing for both Asia and the remainder of the world. Instead of the island becoming a shining beacon of democracy for mainland China as some international experts had hoped, Taiwan's transition to democracy has created a less than positive political environment between the two powers.<sup>1</sup>

The purpose of this research is to examine the nature of cross-Strait relations between China and Taiwan, and to determine the legitimacy of Taiwan's argument, indeed, its claim for independent status within the context of self-determination and contending approaches to sovereign status within the realm of international law.

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# CHAPTER ONE

## SHIFTING THE BALANCE: SOVEREIGNTY, SECESSION AND STATEHOOD

The struggle for self-determination and sovereignty has never been an easy process for peoples and territories seeking recognition. Although the original intent of the self-determination ideology was to support a collective people's right to govern their own affairs, and by extension obtain autonomy and independence, the practical application of 'newer normative claims' of peoples and territories in the 21<sup>st</sup> century has been far from consistent with this ideology.<sup>2</sup> Indeed, when one considers the complexities surrounding self-determination movements, and the contrasting preoccupations with territorial boundaries, it must also be noted that a people's ability to freely determine their political destiny wholly free of foreign policy entanglements from larger geopolitical stakeholders is limited.<sup>3</sup>

Further, if self-determination is a spin-off from the 19<sup>th</sup> century nationalist movement, a political doctrine that supported the right of ethnic, linguistic and religious minorities to redefine their political existence, then it is easy to understand why the parameters of self-determination offered an equally welcome segue for many peoples seeking political autonomy.<sup>4</sup> Why would it not? Self-determination, at least in principle, gives legitimate credence to the right of all colonial peoples to freely determine their economic, social, political and cultural future.<sup>5</sup> Moreover, given

Moore's position that groups of people who are recognized "as belonging to the same community, acknowledge special obligations to one another, [and] who aspire to political autonomy" eventually do obtain independence, then self-determination is not so much about if it will happen, but more about when.<sup>6</sup>

In the interim, the difficulty that emerges is whether, in a global context, these new actors should have the right to use a back-door means of obtaining political autonomy from the controlling state, without accountability too, or whether the particular peoples asserting their right to independence should also be obligated to mitigate other factors that could negatively impact the remaining original state's ability to function as well.<sup>7</sup> Interestingly, political scientists vary on this point, from viewing "nationalist ideologies as atavistic and destructive" to wholeheartedly supporting "an increasing emphasis on self-determination [that] feeds demands" within a territory.<sup>8</sup>

Still, at the most basic level, self-determination permits nations without state recognition and particular peoples within territorial boundaries to claim the right to be recognized as legitimate players in determining their political future.<sup>9</sup> Defined by attributes such as "ethnicity, language, religion, tradition and culture" the self-determination ideology emerges as a "socio-political movement that defends the rights of peoples" to decide upon their own political destiny.<sup>10</sup> The pressure to change and the nature of political demands are often homogenous and dependent upon each case,

... but what all these movements seem to share is the will to develop their specific culture and language whenever it exists, and the desire to feel represented by the institutions deciding upon their future. The number of people involved in the movement can measure the strength of this type of nationalism; thus



a massive following is more difficult to ignore if the state wants to maintain its credibility as a democratic institution.<sup>11</sup>

Further, self-determination, at least in a theoretical sense, “provides both a criterion and a moral imperative” by which people can be liberated, “breaking down the various localisms of the region, dialect, custom and claims in search of a much more edifying and cohesive society.”<sup>12</sup> Equally, self-determination is able “to challenge the [so-called] nation state as a political institution which, in most cases, has been created to seek the cultural and political homogenization of its citizens.”<sup>13</sup> By contrast, the key components for peoples seeking to legitimize their claims include a heightened consensus for self-determination among the masses as well as public articulations that mimic the sovereignty and self-rule theme in the manner of established states.<sup>14</sup> In addition, there must be a common bond of interest, and among the community a firm belief that a collective peoples’ inherent rights hinge on meaningful identification in a representative, democratic political process.<sup>15</sup>

It is within this context that Buchanan and Moore maintain that the self-determination ideology offers an agreeable option for peoples seeking to maintain a “distinctive cultural heritage and personality.”<sup>16</sup> Likewise, the authors argue that

... self-determination has added powerful justification for the existence of separate nation states and for obligation owed to them rather than to humankind in general. States, now nation states, in aspiration and in the ideology of the system, are deemed legitimate because they embody the exercises of political self-determination; because they allow groups of individuals to give expression to their values, their culture, and their sense of themselves; and because they offer protection to

groups who would otherwise be extremely vulnerable.<sup>17</sup>

Shaw takes this position one step further by contending that self-determination has an integral role to play in the “creation of statehood, preserving the sovereignty and independence of states, [while also] providing a criterion for the resolution of disputes.”<sup>18</sup> This criterion for greater self-rule, according to Brueilly, includes a “determination of the unit of population proper to enjoy [and experience] a government exclusively on its own.”<sup>19</sup>

Miller concurs. He states that whether the source of the self-determination movement emanates from “minority groups who do not see themselves as the national identity of the majority, or regions with intermingled populations identifying with different, adjacent nations,” it is a combination of the characteristics that accompany the self-determination ideology and not any particular element in isolation that has contributed “to peoples collectively coming together in unity.”<sup>20</sup> Of these, the most important, indeed, first and foremost, is the right of people “to be free from oppression and violence” when choosing their future.”<sup>21</sup>

According to Berg, self-determination, like the nationalism movement it evolved from:

...allows people to choose their own form of government within existing borders by overturning a dictatorship or achieving independence from a colonial power. It can mean the right of an ethnic, linguistic or religious group to redefine existing national borders in order to achieve separate national sovereignty. Or it can merely mean the right of an [ideological] group within an existing sovereign state to enjoy a greater degree of autonomy and linguistic

or religious identity, [without achieving] a sovereign state of its own.<sup>22</sup>

In other words, whatever the underlying motive, self-determination offers credibility and legitimacy to the belief that a nation can achieve the ultimate objective of self-rule if permitted to pursue its destiny unrestrained.<sup>23</sup>

On the opposing side, there remain unanswered questions about the emerging and often controversial political situation between the original territory and the particular population within the state asserting their right to independence. For example, there is the question of who will redraw the territorial boundaries?<sup>24</sup> What are the consequences of permitting peoples without states to end a relationship with a former controlling state?<sup>25</sup> Similarly, if the fragmentation of an established state is to be sanctioned by the international community, is this realization of greater autonomy not setting a precedent for conflict, authorizing opposing peoples living within the same society to move in rather ominous and often self-serving directions? Additionally, in an increasingly interdependent world, how does a fragmented state reconcile “political dependence (sometimes involving financial dependence); limited or frequently non-existent access to powers and resources; restricted or virtually no financial powers; and, in many cases, a restraint upon the nation’s capacity to develop and promote its own culture and language” within an already changing geopolitical landscape?<sup>26</sup>

Furthermore, if the end result of a self-determination movement is either independence or integration with a neighboring state, or any other combination of political status freely decided by the people and involving secession, then when do the

sovereign interests of the former state come in?<sup>27</sup> Unresolved and divisive issues such as these only serve to attach an additional level of complexity to self-determination within the global community.<sup>28</sup>

Instead of focusing on what is important; that is, the establishment of a sovereign authority within a territory that preserves peace for the entire political entity inclusive of all peoples while still sustaining the social fabric, more often than not, the dispute leads to political instability, conflict, violence and uncertainty.<sup>29</sup> Clearly then, if self-determination movements are to maintain any credibility on a global scale, “it must at the very least mean that a state has the right to defend itself against those who would disrupt it without due cause.”<sup>30</sup> In this sense, an ethnic, religious or cultural group’s right to determine their own future should not be interpreted as the absolute right to opt for national sovereignty without first having some form of negotiation or discussion with the original remaining state.<sup>31</sup> The exception to the right of self-determination, of course is in those circumstances in which “the authority of the state is itself fatal to those ends it allegedly seeks to promote.”<sup>32</sup> Within this environment then, it is no wonder that numerous negative incongruities surface resulting in political skirmishes between larger powers and smaller neighbors and similarly, between territorial governments and the assorted peoples within a state.

What is more is that in this context, a larger picture emerges, one of existing sovereign states asserting themselves throughout the globe while at the same time, peoples within those states substantiating claims for independence and greater autonomy. Considering that self-determination initially was driven forward by the nationalist ideology, a comprehensive doctrine which “led to a distinctive style of

politics that was not a universal phenomenon but rather a product of European thought,” it is not surprising that the practical application of nationalism in the 20<sup>th</sup> century was linked primarily to European-held colonies.<sup>33</sup> Thus, it was within this political framework that colonially defined territorial units were permitted to freely determine their own political status, a status separate and distinct from the territory or the state authorities responsible for administering it.<sup>34</sup>

In this sense, even though ‘classical nationalism’ drove the self-determination movement forward, contributing to the “constitution and consolidation of the nation state” it did so “through a force of circumstances rather than as a result of deliberate power on the part of any great powers.”<sup>35</sup> This, in itself led to a renewed wave of nation state making in the international arena, with demands for autonomy dramatically changing the face of global politics.<sup>36</sup> Distinct peoples were bringing into being new polities, that were conceived for the most part through a wide range of interpretations, the most prevalent being “what constitutes national identity and discrepancies among the political parties over what content to ascribe to words such as nation and self-determination.”<sup>37</sup> Unquestionably, it is important to stress that self-determination did not mean absolute independence but rather that “self-determination was recognized in international law as a right or process (not of outcome) belonging to peoples and states and not to states or governments.”<sup>38</sup>

Still, the question at hand is what factors led to the self-determination movement and subsequently the United Nations commitment to embody the language in international protocol in the first place? Although again, the experts are

deeply divided on this topic, the one point that is prevalent is the role that nationalism played in influencing decolonization.

Based on a selection of distinctive elements, the fundamentals of nationalism involved the existence of groups that were passionate about their cause and who also exhibited an “explicit and peculiar character; had interests and values that take priority over all other interests, and essentially acted as a nation that was as independent as possible from the larger existing political entity.”<sup>39</sup> Moreover, nationalism was premised “upon the defense of democracy and collective rights, claiming the right to freely develop their nations specifically within a framework of respect and tolerance.”<sup>40</sup> In so doing, the peoples involved in nationalist movements, whether historically, culturally, ethnically, economically, or politically tenable, challenged the legitimacy of the nation state.

The overall objective, according to Smith, was to attain and maintain a cultural identity, a sense of a distinctive cultural heritage, and personality for a given named population.<sup>41</sup> As well, nationalism was allegedly based on an “authentic and unique experience which aimed to regenerate societies by uncovering and releasing their inner rhythms and energies,” a history, if you will, that continuously “promoted the triumphs and struggles of an evolving nation.”<sup>42</sup> Moreover, authorities claim that nationalism was able to “accommodate different kinds of religion, racial, linguistic and cultural elements within its constructs,” and was rooted in the belief that the key to the success of nations “is a balanced and comprehensive institutionalization of roles, expectations and values.”<sup>43</sup> In fact, the evidence indicates that the composition of peoples, *vis-à-vis* nations without states, are primarily made up of “cultural communities showing a

common past, attached to a clearly demarcated territory and wishing to decide upon their political future which lacks a state of their own.”<sup>44</sup> Often, these communities are “situated in the luminal space that lies between people-hood and nation-state-less.”<sup>45</sup> As such, these peoples tend to regard their political status as alien, but also show an uncanny willingness to assert their right to further autonomy within the state, up to and including the right of secession.<sup>46</sup> This predicament regularly leads to the articulation and rewriting of a people’s “origins, trajectory and aspirations,” a revisionist history of sorts that exists after colonialism.<sup>47</sup>

Perhaps, Granatstein understood the historical conception of nationalism best when he cited “a close reciprocal relationship between nationalism and historical memory” as a basis for why the nationalist ideology, even while highly criticized by some social scientists, continues to be sustained.<sup>48</sup> Indeed, nationalism existed because people believed that it existed and similarly had a driven inward desire for it to continue. In fact, it is these collective beliefs that contribute to the ‘common bond and common destiny’ theme that ultimately forms the basis for “shared memories” spurred on

... or at least reinforced by material circumstances, such as a lived experience of political discrimination or economic deprivation. Nationalism inevitably has a temporal dimension between the dead, the living and the unborn.<sup>49</sup>

As such, these specific historical memories culminate, or at least some version of the event “in the creation of nationalism and, even more obviously, in its perpetuation from generation to generation.”<sup>50</sup>

Even so, the right to self-determination by peoples who have experienced colonial, foreign or alien occupation following the end of the First World War means

much more than an historical memory or secession from an existing geographic territory or state. In fact, when self-determination was expanded to include the dissolution of colonial empires within the global context, it was because “most movements seemed to be reactions against the centralization of state, economic or cultural power, and against the remoteness of central authority” that made them “peripheral fragments” in the first place.<sup>51</sup>

As a consequence, an emerging recognition of the pressures for self-determination, if not the ideology itself, served as a framework for the eventual recognition of self-rule in international declarations in the 1940s. Certainly, United States President Woodrow Wilson embraced the rights of all peoples to freely choose the sovereignty under which they would live.<sup>52</sup> He believed, in much the same way that the United Nations and international community would adopt later, that self-determination was a pre-requisite to the enjoyment of all fundamental human rights and freedoms, establishing his Fourteen Points “as the guiding principle for reconstructing Europe in the aftermath of World War II.”<sup>53</sup>

For this reason, a joint declaration known as the August 14, 1941 *Atlantic Charter* later came into being.<sup>54</sup> Signed by United States President Franklin D. Roosevelt and British Prime Minister Winston Churchill, the declaration reconfirmed the earlier Western Allied position that

... desired to see no territorial changes that do not accord with the freely expressed wishes of the people concerned. Although it did not recognize the peoples’ right to decide their destinies either, it nevertheless stressed the need of reckoning with their wishes in effecting territorial changes [and similarly that] their country’s respect the right of all peoples to



choose the form of government under which they will live.<sup>55</sup>

Although in retrospect the Atlantic Charter could not deliver on all of its grandiose promises, it did represent a significant step forward in global affairs.

By the post World War II era, self-determination was not only expanded to include the dissolution of colonial empires but also embodied as the central purpose of the United Nations. In short, the United Nations mandate was created and firmly enshrined in Article 1 of the United Nations Charter to allow the former European colonies that existed before the Second World War to have a meaningful say in their future. Article 1 of the United Nations Charter:

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>56</sup>

General Assembly Resolution 1514 further captured the essence of the United Nations intent within the *Declaration of the Granting of Independence to Colonial Countries and Peoples*, adopted in December 1960. This Declaration reiterated the Charter's Article I position that all peoples have the right to freely determine their political status and to pursue their economic, social and cultural development untrammelled. Indeed, the nature of the language went so far as to indicate that a territory's ability to determine their future was directly linked to all aspects of life including elements such as how the people of that territory choose to live, and also how they allow others to live.<sup>57</sup>

According to Shaw,

...the United Nations [had] based its policy on the proposition that the territory of a colony or other non-self-governing territory has under the Charter a status separate and distinct from the territory of the state administering it and that such status was to exist until the people of that territory had exercised the right to self-determination. Self-determination had also been used in conjunction with the principle of territorial integrity so as to protect the territorial framework of the colonial period in the decolonization process and to prevent a rule permitting secession from independent states from arising.<sup>58</sup>

The authors further argued that self-determination, as an ideological concept had the potential to be developed further, indicating that it could equally apply to sovereign states in various ways including secession, but that this had not, as of yet happened. However, having said that, it should be clear that self-determination was applicable to the

... decolonization of the European empires and thus [provided] the people of such territories with a degree of international personality. The principle of self-determination provides that people obtain their own political autonomy. Such determination may result in varying forms of independence including integration with a neighboring state, free association with an independent state or any other political status.

Self-determination also has a role within the context of the creation of statehood, preserving the sovereignty and independence of states, in providing criteria for the resolution of disputes, and in the area of the permanent sovereignty of states over natural resources.<sup>59</sup>

This may explain why the “new sovereignty game,” as it became known during the Cold War era “consisted of a regime regulating the emergence of new

states, the criteria of self determination and the conditions for international recognition.”<sup>60</sup> In this international milieu, the regime is essentially the “set of rules, norms and procedures around which the expectations of actors converge in a certain issue area.”<sup>61</sup>

It was clear that many of the ideological concepts embodied in the ideal of self-determination and decolonization were having an impact. So much so, that a random sampling of peoples to have achieved statehood and self-rule by the 1960s, in one form or another included: Iceland in 1944; Indonesia in 1945; the Philippines in 1946; India in 1947; Burma, Ceylon, Israel, the Korean People’s Democratic Republic in 1948; Libya in 1951; Laos and Cambodia in 1954; Morocco and Tunisia in 1956; Ghana and Malaya in 1957, and Guinea in 1958.<sup>62</sup> By the 1960s, the Cameroon Republic, the Republic of Togo, the Federation of Mali, the Malagasy Republic, the Congo Republic, the Somali Republic, the Republic of Niger, the Republic of Upper Volta, the Republic of the Ivory Coast, the Republic of Chad, the Central African Republic, the Gabonese Republic, Senegal, the Federation of Nigeria and the Islamic Republic of Mauritania had become recognized states with the Sierra Leon, Tanganyika, Western Samoa, the People’s Democratic Republic of Algeria, Rwanda and the Kingdom of Burundi, Jamaica, Trinidad, Tobago and Uganda.<sup>63</sup>

From this perspective then, what remains from the doctrine of self-determination, according to Kedourie, is an affirmation that men and women do “have the right to stand on their differences from others, be these differences

what they may, fancied or real, important or not, and to make of these differences their first political principle.”<sup>64</sup>

However, it should also be noted that not all political conflicts leading to self-determination emanated strictly from a geographical, historical, economic or political perspective. Any one of these contributing factors could, either singularly or collectively, serve as the impetus for self-determination. Certainly, amidst the paradoxes of self-determination – “the formal termination of colonization as it was defined in the 1960s and 70s, the number of claims arising from foreign domination, the one hundred plus minority groups around the globe who are currently asserting their right to self-determination, and the fact that most of the claims today are based on internal self-determination,” the dilemma is in finding an overarching body of language, acceptable to competing interests in the international community that not only encompasses the historical and political situations of the past, but also acknowledges the needs of current states and minority peoples who are only now, in the 21<sup>st</sup> century, beginning to heighten their political ambitions and consciousness.<sup>65</sup>

Indeed, such is the case of Taiwan, an island jurisdiction whose political awareness has only recently come to fruition. In this jurisdictional example, it isn’t so much a matter of whether the Taiwanese want to determine their own destiny as it is a question of when the collective voices of the people that constitute a people’s desire for self-determination, will finally be heard.

Clearly, the answer in the majority of self-determination movements to date is to resolve ‘the dual and contradictory pressures’ between the original

territorial authorities and the people resident within. But barring this solution in the Taiwan Strait, and without alternative resolutions in sight, the overriding principal is to ensure that all people have a political system of governance that responds both positively and effectively from a societal perspective.

Unfortunately, as social scientists and historians have pointed out time and again, when it comes to the “notorious and difficult to define and apply” world of self-determination, the more one becomes familiar with the nationalist and self-determination ideologies, the more one recognizes that the doctrine of self-determination is itself “one of those exceptional goals that can be neither defined nor opposed.”<sup>66</sup>

## CHAPTER 2

### COMPLEXITY OR AMBIGUITY?

### THE 'TWO-CHINA' DILEMMA

Situated in the China Sea off the southeastern coast of China, Taiwan is an island jurisdiction made up of more than twenty offshore islands, the largest being Quemoy, Matsu and the Pescadores. The state views itself, and is seen by other international players, as one of the most economically viable democracies in the world. With a population of nearly 23 million people, the island has “undergone a heralded transition from an underdeveloped country to economic dynamo, and from an authoritarian state to an emerging democracy” in a relatively short time.<sup>67</sup> Taiwan, as a ‘can-do’ island entity has a strong record of economic development and prosperity, which ultimately, supports the Taiwanese people in strengthening the legitimacy of their desire for sovereignty and democracy.<sup>68</sup> Although the situation that Taiwan finds itself in today is not entirely unique, particularly given the diverse range of self-determination movements around the globe, it is fair to say that this is the closest that the people of Taiwan have come to asserting their desire for political independence and jurisdictional recognition. Increasingly, the people of Taiwan do not believe that China has a legitimate claim on their future, nor are the people of Taiwan willing to accept that they do not have the right to determine their political destiny.

The People's Republic of China's perspective is that Taiwan has been an integral part of historical China since ancient times. The PRC maintains that the united status of Taiwan and China is confirmed by an abundance of historical facts and legal documents. China refuses to concede to Taiwan's independence aspirations, believing firmly in the reunification of China and the island's status as a province.

Conversely, Taiwan claims that the island is already an independent, sovereign country and that the Republic of China (ROC), Taiwan's official name, has retained this political status since 1912. Political observers further argue that China's decision to not become actively involved in the political and economic affairs of the island after 1949 may have strongly contributed to Taiwan's particular understanding of who is in charge. Combining this with the historical record that demonstrates sovereign-like independence, intermingled with the many misconceptions and allegations regarding Taiwan's current de-facto position, only serves to further confirm the Taiwanese government's position that the 'one-China' principle does not apply.<sup>69</sup>

In spite of the two contrary political views, one point is clear. If territorial integrity, economic viability, cultural and social identity were the sole prerequisites for claiming a nation's ultimate destiny in the 21st century, there would not even be a need for this discussion. Taiwan would already be an internationally recognized sovereign nation.

In light of the most recent events that have transpired in the Taiwan Strait between the People's Republic of China and the Government of Taiwan, the passing

of an anti-secession law by the PRC, and the fact that “Taiwan exists today as a nation that dares not speak its name,” the cross-Strait conflict can no longer be relegated to the back burner.<sup>70</sup> Indeed, with both sides of the Taiwan Strait at a critical historical juncture, and the world view preferring a status-quo option over the island territory’s right to self-determination, the question of ‘who controls Taiwan’ needs to be resolved once and for all.



# CHAPTER 3

## JUNCTURES AND TRANSITIONS:

### TAIWAN'S STORY

Overcoming political challenges in the face of adversity is an historical reality that the people of Taiwan have come to know only too well. Since ancient times, Austronesia aboriginals and native Taiwanese have continually resisted the encroachment of Chinese colonists and foreigners in their ancestral lands. During the *Three Kingdoms* period, for example, when the island jurisdiction had been formally recognized as *Yizhou* or *Liuqui*, and well into the 3<sup>rd</sup> and 7<sup>th</sup> century, thousands of Chinese were sent to occupy and control Taiwan by the *State of Wu* and the *Sui Dynasty*. Moreover, Chinese mainland authorities claimed to have exercised absolute jurisdiction over Taiwan when the *Song* and *Ming Dynasties* set up garrisons on Penghu Island (Pescadores) during the mid-12<sup>th</sup> and 16<sup>th</sup> centuries.<sup>71</sup> The first hint of a European presence came in the 15<sup>th</sup> century when Portuguese traders began to extend their influence toward Asia.

Viewing Taiwan, the Portuguese named the offshore island *Ilha Formosa*, which translated means 'Beautiful Island'. But unbeknownst to the Portuguese, Taiwan was far from the illusory paradise envisioned by the sailors. Already Chinese and Japanese pirates, known as *Wok'ou* had resorted to using the islands as a fortress against mainland government forces, a situation that led to Taiwan earning a reputation "as a dreadful, barbaric region spread with pestilence."<sup>72</sup>

The Portuguese were not the only traders of European descent to venture eastward. By 1622, Dutch forces had also arrived, setting out to establish the Dutch East India Company and similar trade connections within the Asian region. Recognizing the Taiwanese location as central to trade markets in Asia, the Dutch colonial masters established their presence by seizing all private lands on the island and leasing it back to the Aborigine natives and Han farmers.

When Spanish traders began trading in Asia, their first move was to seize control of northern Taiwan from the Dutch. Initially, the Dutch tried to defend themselves from the Spanish, but soon realized the futility of their position.<sup>73</sup> Instead, the Dutch concentrated their settlement building efforts on the Taiwanese south. The Spanish occupation, however, was short lived. By 1642, the Spanish had left the island of its own accord, leaving northern Taiwan in the hands of the Dutch once again.<sup>74</sup>

However, similar to ancient times in Taiwan, colonial rule by the Dutch was embroiled in conflict. Riots and mass uprisings by native groups occurred, resulting in large massacres of primarily Aboriginal residents. An uprising led by farmer *Kue Huai-yit* on September 7, 1652 is only one of many prime examples.<sup>75</sup>

Reverend Campbell, author of *Formosa Under the Dutch*, summarized the Taiwan situation in the following fashion.

By 1662, Ming loyalists had driven out the Dutch and occupied the south. These loyalists who had chosen Taiwan hoped to use Taiwan as a base to retake the mainland. The Dutch still traded in the area and considered the possibility of retaking the island.

The Japanese had become isolationist and retreated to their country. The Spanish had decided to operate from the Philippines. Pirate groups still existed and their chameleon like ability to shift back and forth between pirates and traders made them tolerated. [Throughout] ... the aborigines begrudgingly shared the island with all as long as the aliens did not encroach too much on their territory.<sup>76</sup>

But the turmoil between the native islanders and foreigners did not end there. By the mid-1660s, according to Campbell, *General Cheng Ch'eng-kung* defeated the Dutch in Taiwan after efforts to overthrow *Manchu* rule in China failed.<sup>77</sup> This marked yet another period of Chinese occupation in Taiwan, *Amoi* (Amoy) and *Kimoi* (Quemoy) islands. Ironically, the circumstances, whereby Cheng planned to use Taiwan as a base for recovering the Ming Dynasty in China, was very similar to the scenario that the *KMT Nationalists* would find themselves in centuries later when they were forced to flee to Taiwan after the Communist People's Republic of China took over Beijing.<sup>78</sup> The difference between the former and the latter was that the former Cheng government's only objective was to restore the Ming Dynasty on the mainland. There was never any intention to set up a kingdom on Taiwan. For Cheng, the temporary setback was supposed to be just that - brief, transitory, and short-lived.

But as time passed, it became obvious that the efforts to overthrow the Manchu rule in China proved fruitless. As a result, Cheng Ch'eng-kung and his troops were forced to retire to the islands of Amoi and Kimoi in 1661. Han immigrants resident on Taiwan, whose hatred toward the Dutch intensified after the Kuo Huai-yit Incident, welcomed Cheng's troops wholeheartedly. Certainly, the fact that Cheng's troops forced the Dutch to leave, marking the end of thirty-eight years of Dutch rule in Taiwan, was welcomed.<sup>79</sup>

However, recognizing that Cheng was destined to settle as a government in exile, Cheng Jing encouraged mainland residents from the coastal provinces to move to Taiwan to assist with development plans on the island. This was not an easy task since Taiwan, by the seventeenth century, had garnered the reputation of being nothing more than an isolated island full of “pirates, escaped convicts, deserters and ruffians.”<sup>80</sup> Needless to say, as a consequence of the island’s notorious reputation, the prevailing attitude of immigrant Chinese mainlanders was to drive the so-called ‘savage’ Taiwanese aborigines back into the highest mountains if they could not be killed otherwise.<sup>81</sup>

Following Cheng Jing’s death, Manchu became the new ruler of Taiwan, Penghu, Amoi and Kimoi. An imperial order was issued making Taiwan an official territory of the Ch’ing Dynasty on May 27, 1684. Although the Manchu in mainland Peking eventually ruled Taiwan for over two hundred years, the regime continued to be less than enthusiastic about developing the island jurisdiction. In other words, the rationale behind China retaining Taiwan had more to do with preventing the island from becoming a further haven for criminal activity or alternatively, a strategic base for foreign governments. However, civil actions by the Taiwanese Aborigines on the island told a very different story.

Continued neglect by the Ch’ing administration led to even more riots and killing in Taiwan. In 1721, the *Rebellion of Chu Yit-gui* spread throughout the island in just seven days. The *Rebellion of Lin Song-wen* in 1786, the *Rebellion of Ch’ung Ta’tien* in 1787, and the *Rebellion of Ts’ai Chien* in 1806 soon followed, to name a few. In 1854, the Americans signed a treaty with Japan that authorized the United States to utilize Taiwan as a trade center, but it did little to prevent the *Dai Tiao-chun*

(*Dai Chaochun*) *Uprising* in 1862.<sup>82</sup> If anything, this insurgency, like so many before it, only served to further confirm the evidence arising from a review of the literature of Taiwan's history. That is, that in the two hundred and twelve years of Ch'ing rule, one major rebellion was launched by Taiwanese islanders at least every five years with one minor riot occurring every three years.<sup>83</sup>

The first turning point for Taiwan as a jurisdiction was the *Sino Franco War* in 1884, when the French attacked the north of Taiwan and succeeded in seizing and controlling Penghu (Pescadores) in March 1885. Although the occupation actually resulted in a cease-fire and French forces vacating Penghu Island, it also led to the emperor of China, *Emperor Guanxu* formally declaring Taiwan a full province of China, independent from Fukien. This explains why, up until 1886, it could be credibly argued that the historic and political events that had separated the island and mainland and set the two on different paths, provided a meaningful rationale for their continued separation. However, when Taiwan was declared a full province of China between the years of 1886 and 1895, Taiwan's status changed. It is for this reason that experts refer to this decade as the only time in history when mainland China actually controlled the Taiwan jurisdiction.<sup>84</sup>

With China's ceding in the *Sino-Japanese War* and the *Treaty of Shimonoseki* came a second and more significant change. This explains why political observers are quick to regard this historical period as a major milestone in Taiwanese history. Signed on April 17, 1895, the Ch'ing government acknowledged that the secession of Taiwan was inevitable. Although Taiwan was still important strategically, particularly from a

military point of view, the Chinese found the island province difficult to defend.

Indeed, as former Taiwanese President Lee argued,

For people living on Taiwan, who are constantly told by the authorities that their roots are in China, it is important to know that it was China that 100 years ago gave up Taiwan – forever.<sup>85</sup>

It is equally notable that at the same time, in an attempt to free the island from foreigners once and for all and to prevent Taiwan from falling into foreign control, the Taiwanese Aborigines and Han immigrants unanimously proclaimed their own *Declaration of Independence* as the Republic of Taiwan on May 23, 1895. The Taiwanese position was that independence and the right to determine their islands' own political destiny was theirs to affirm. Putting out a call for action, the Declaration, in part, stated that,

... the Japanese have been high-handed, trying to annex our Taiwan. Now that the Japanese are coming, the situation is extremely urgent. If we surrender to the enemy, our homeland shall fall into the barbarian hands. We have already conferred with various countries, and upon our independence we shall certainly gain their support. All residents devoted to Taiwan do not wish to give up and serve the enemy, and would rather die in battle. A decision is made unanimously to become an independent *Democratic Republic*.<sup>86</sup>

It was clear that the Taiwanese islanders had become “imbued with intense national consciousness. Not only were these incidents indicative of rich layers of national consciousness, these rebellions and uprisings which spanned four centuries

had another common trait, the quality of the old, feudal-era revolutions aiming to change the world.”<sup>87</sup>

Unfortunately, the first ever Republic in Asia, lasted a total of 148 days. It collapsed after failing to obtain international recognition and support for the Taiwanese plight. For observers, this was yet another failed attempt by Taiwanese islanders to refuse to go along with imposed colonialism from outside invaders. As author Kerr writes,

... the tragedy of the *Formosans* (Taiwanese) was that their island lay not far enough away from the continent to make the separation permanent and their frontier life secure from interference. The island was too small to be independent, and too big and too rich to be ignored.<sup>88</sup>

Despite the strong resistance from the aborigines and Han immigrants in the south of Taiwan, the Japanese experienced little difficulty in conquering Taipei, Keelung and Tansiu. In the end, after months of repeated insurgencies and riots between Taiwanese islanders and the Japanese, the Japanese forces finally won the right to occupy Taiwan.

Still, by 1897, the uprisings instigated by native Han and Taiwanese continued. Frustrated, the Japanese became determined to reduce the numerous resistance movements in both the flatlands and the mountainous regions. An *Evacuation Regulation of the Residents of Taiwan and Penghu Islands* (Pescadores) was enacted, a legal option that provided a means for all residents of Taiwan who wished to leave, regardless of their residency status, to relocate to another jurisdiction.<sup>89</sup> Unfortunately, from the Japanese perspective, only a small percentage of Taiwanese left, an indication

of the sentiments many native islanders had for their island. Within the same period, over 32,000 alleged bandits were executed by the Japanese, and a stronger military and police force assembled to suppress further civil unrest.<sup>90</sup> By 1910, the Japanese Empire had begun to push for the assimilation of the population as a method for eliminating ethnic self-identification.<sup>91</sup>

The dilemma for the Japanese was that the situation did not improve as time passed. Waves of protest against Japanese colonial rule were prevalent across the island. The language barrier between the native Taiwanese and the Japanese masters only added to the confusion. Since the majority of Taiwanese, including the aborigines, Fukien and Hakka immigrants did not speak Chinese; it meant translation interpreters were necessary for even the most basic communication.

As the island state of affairs worsened, the Governor of Taiwan gained widespread notoriety as the island's *Bumpkin Emperor*.<sup>92</sup> Even though his authority over the island jurisdiction was supreme, and he was able to utilize whatever legal or military action that was necessary to bring political situations under control, the Japanese still could not reduce the number of Taiwanese uprisings. Other notable resistance movements on the island included the *Peipu Incident in 1907*, the *Wuchong Uprising in 1911* against the Qing Dynasty, the *Lin-kipo Incident in 1912* and the *Lo-foksheng Incident*, led by *Yu Cheng-fong*, *Kan Teng* and *Lo Chung* in 1913.<sup>93</sup> It was not until the 1915 *Seraian Incident*, when over 900 island residents were executed, that the much needed impetus for a legal, political and social movement began to unfold.<sup>94</sup> Anti-Japanese demonstrations and labour strikes were soon the norm in Taiwan, including the infamous *May 4<sup>th</sup> Movement of 1919*. Resistance groups continued to



organize forming the Taiwanese Assimilation Society and later the *Enlightenment Society*. In both organizations, the primary mandate was to improve and advance the Taiwanese position internationally while pursuing equal treatment with the Japanese locally.<sup>95</sup>

In 1921, the *Taiwan Culture Society*, pushing for a more representative government within the Taiwan jurisdiction, presented a petition outlining a list of grievances to the Japanese authorities. Next, the *Taiwan People's Party*, under the leadership of *Chiang Wei-sui* was soon formed and although the political party was suppressed, the movement led to the *Federation of Taiwan Local Self Government*.<sup>96</sup>

This was only the beginning. Mountain aborigine tribes in Taiwan launched regular attacks against the Central Mountain Range Japanese police forces in the early 1930s, leading the Japanese to implement a prohibition order that prevented the aboriginal tribes from assembling together. For the most part, the laws that the Japanese colonial masters were enacting in the Taiwan jurisdiction emanated from an extension of the homeland policy in Japan. Although it took some time, as of 1923, the administrative legal structure that was implemented in Taiwan, including civil and commercial codes were primarily those same laws already in existence in Japan.<sup>97</sup>

Even so, the Taiwanese continued to oppose Japanese colonization of their island territory. The irony was that, the more the Japanese attempted to oppress the Taiwanese into submission, the stronger the Taiwanese determination and their resistance to imposed occupation became. Observers, including a Japanese chief civil

administrator of the Taiwan Governor's office likened the colonial situation to that a flatfish.

It's impossible to change eyes of a flatfish into those of a sea Bream. The eyes of sea bream neatly grow on both sides of the head, because biologically it is necessary. In politics, this is also an important point. So when I ruled Taiwan, first of all I thoroughly and scientifically investigated the old customary systems of the island, and governed according to the conditions of the people. Those fellows who did not understand this and tried to import and suddenly apply the Japanese laws and systems in Taiwan, were just like trying to change the flatfish's eyes into sea breams eyes; they were a bunch of fellows who did not know the real politics.<sup>98</sup>

Clearly, the Japanese did not understand the nature of the island political culture. With Japan's surrender looming on the horizon, the United States, the Republic of China Nationalists and Great Britain jointly signed the *Cairo Declaration* at a summit meeting on November 27, 1943.<sup>99</sup> Here, United States President Roosevelt, Chinese Generalissimo Chiang Kai-shek and British Prime Minister Winston Churchill reaffirmed the Allied position, declaring that the Second World War was to contain and penalize the aggression of Japan.

It was one of the earliest signs that the Allied Powers were concerned about peace in the Asian region, while also offering Chiang Kai-shek an inducement to force Japan to give back the territories Japan had originally taken from the Chinese. These geographical areas specifically included Manchuria, Taiwan, and the Pescadores.

By 1945, Japanese colonial rule had ended and Chiang Kai-shek's Nationalists gained international recognition as the governing authority for all of mainland China, becoming one of the founding members of the United Nations organization. Japanese colonial rule ended. The terms defining the Japanese surrender culminated in the July 26, 1945 *Potsdam Declaration* which reiterated the policy on Japanese territorial sovereignty as set out in the terms of the *Cairo Declaration* of 1943.<sup>100</sup>

But in turning over Taiwan to the Republic of China, it is important to note that “the United States acted on the presumption that its postwar policy in East Asia would be founded upon the cooperation with a strong, united China.”<sup>101</sup> The details of the *Potsdam Declaration* conferred that Japan should be given an opportunity to end irresponsible militarism and in so doing, work toward a new order of world peace. Essentially then, Taiwan's post-war history began with the surrender of Japan.

Granted, the repatriation of the Japanese on October 25, 1945 permitted Chiang Kai-shek's Kuomintang (KMT) Nationalist forces to occupy the Taiwan jurisdiction as a recovered province of China.<sup>102</sup> But it offered very little resolution in terms of the continued conflicts and political strife between Taiwanese islanders and foreign invaders. Although Taiwanese islanders were grateful for the liberation from fifty years of Japanese colonial rule, it situated the island in the middle of a fierce struggle for power between the Republic of China (ROC) Nationalists and mainland PRC Communists. As a consequence, islanders were left wondering whether the replacement of the Japanese colonial enemy of yesterday by the Chinese motherland was a better proposition.<sup>103</sup> Still, after half a century of oppression by the Japanese, any change, including a return of Taiwan to mainland China, was welcome.

In Formosan eyes, however, and as a result of the *Cairo* and *Potsdam* Declarations, the defeat of Japan and liberation of Formosa were perceived to be American accomplishments and not a victory by the Chinese. As such, Formosans expected that henceforth, the island would govern its own affairs, electing representatives for the National Central Government in Nanking. Unfortunately, the aspirations of the Taiwanese failed to materialize. If anything, the opposing political objectives between the island Formosans and mainland China officials were escalating.

In a memorandum dated April 18, 1947 sent to Generalissimo Chiang Kai-shek from the United States Ambassador to China, John Leighton Stuart articulated some of the political struggles of the Taiwanese people as they unfolded in 1946.<sup>104</sup> The criticisms included a patronage system that excluded the Formosan Taiwanese from holding government offices, and

...the legal necessity to place all confiscated Japanese properties and enterprises under Government control. As an island people, Formosan had been sensitive to overseas trade, but after the Japanese surrender, they anticipated the reestablishment and expansion of seaborne commerce. These new measures seemed, to the Formosans, not only a threat to return them to a subservient position they had suffered under the Japanese, but to threaten to destroy the very means to create wealth within the island.<sup>105</sup>

The February 28 Incident of 1947 only served to strengthen this sentiment when armed *Monopoly Bureau* agents and special police forces fatally beat a female cigarette vendor for allegedly selling untaxed cigarettes.<sup>106</sup> In short, it proved to be yet another case of severe oppression of the Taiwanese people by the Kuomintang (KMT)

government. What really complicated the February 28 Incident was that it triggered a series of attacks against Taiwanese intellectuals, “whom the KMT authorities unilaterally labeled Communists.”<sup>107</sup> Needless to say, this only led to further clashes between the islanders and the Nationalists resulting in a continued state of societal chaos, and “widespread indiscriminate killing.”<sup>108</sup>

Moreover, other major transitions were inevitable. After only four years of political power on the mainland, the Chinese Communists had gained control of all of China from the Kuomintang Nationalist government under Chiang Kai-shek, forcing the ROC to relocate the capital of the Republic of China to Taiwan. Following the civil war, the People’s Republic of China (PRC) established the sole, legal government of China in Peking, essentially ending the historic status of the Republic of China, at least on the mainland on October 1, 1949. Even so, the political aspirations of the KMT remained optimistic. For the next fifty years, the Taiwanese were governed by the one-party, authoritarian ROC Nationalist regime that had fled mainland China. In keeping with the KMT’s claim that the ROC was the governing authority for all of China, the political institutions that were established “were kept alive in suspended animation on Taiwan. Over 80 percent of the parliamentary seats [in Taiwan] were filled by representatives elected on the mainland in 1947.”<sup>109</sup> From time to time, an occasional anti-Chiang independence movement would arise on the island, bringing the issue of Taiwanese independence again to the forefront, but to no avail. The Taiwanese soon discovered that the Chinese ROC Nationalists from the mainland could be as equally barbarian as the former Japanese colonists.<sup>110</sup>

About the same time, Britain established formal ties with Peking leading to a decision by the Nationalist ROC government in Taiwan to break ambassadorial relations with the United Kingdom. The United States, on the other hand, preferred to adopt a “wait until the dust settled” approach before formulating any new foreign policies toward a Communist controlled China whose former alliances included the Soviet Union.<sup>111</sup>

Nevertheless, Chiang Kai-shek, with his presidency reaffirmed in Taipei, continued moving forward. Since the ROC government had never relinquished its claim to be the legitimate government of China, it was able to set up in Taiwan a *National Assembly*, *Legislative Yuan* and the *Control Yuan* in accordance with the ROC Constitution and government structure adopted on the mainland in 1946. This authorized the ROC Nationalists to impose an indefinite extension of the *Temporary Provisions of the Constitution* in an effort to protect the government from both those internal and external forces who openly resented foreign domination.<sup>112</sup>

Again, the severe hostility between mainlanders resident in Taiwan and the native Taiwanese continued to escalate. While the mainlanders maintained that the ROC government was the legitimate government for all of China, the Taiwanese struggled for recognized political separatism and autonomy. Although in retrospect, the “continued external threats to Taiwan compelled mainlanders and Taiwanese to cooperate in the face of the common peril, it also resulted at times in the implementation of excessive controls by both the KMT and the security agents which tended to heighten political strain.”<sup>113</sup> The Nationalists assumed, quite wrongfully of course that the Taiwanese, accustomed to authoritarian and military rule under the

Japanese, would not be adverse to the imposition of martial law. Needless to say, the ROC officials were clearly misguided.

Despite numerous prosecutions, civil uprisings and riots continued to plague the Nationalist authorities internally in Taiwan. At the same time, the mainland was becoming clearly upset over continued Nationalist claims that the ROC was the legitimate government for all of China. Before long, and in response to the ROC rhetoric, Chinese Communist forces began launching an artillery bombardment of the Taiwanese island of Quemoy, the second largest island held by the Republic of China.<sup>114</sup> This occurred in September 1954.

With bombs dropping in the Taiwan Strait, it did not take long for the United States to sign a *Mutual Defense Treaty* with the Republic of China in Washington DC on December 2, 1954, promising to support Taiwan against military aggression.<sup>115</sup> Essentially, Article 7 stated that the United States agreed to provide the necessary military support to defend Taiwan and the Pescadores against foreign aggressive invasion.<sup>116</sup> Although the *People's Republic of China* initially claimed that the reason for the military action was in direct response to the recent establishment of trading posts on Quemoy and Matsu by Taiwanese authorities, *Zhou Enlai*, the People's Republic of China Foreign Affairs Minister was at the same time quoted as stating that the only real option for liberating Taiwan, apart from reunification was through military warfare.<sup>117</sup> Although Zhou En-lai was quick to retract his comments and to reiterate the Chinese Communist position, that is, to resolve the question of Taiwan through peaceful means, he also accused the United States government of conspiring

with the Taiwanese to either create ‘two-Chinas’ or a ‘one-China-one Taiwan’ system.<sup>118</sup>

For decades, the tug-of-war continued. Chiang Kai-shek asserted the concept of mainland recovery, while openly rejecting either a negotiated compromise with the People’s Republic of China or a separate status for Taiwan. Despite the rhetoric, Chiang Kai-shek’s claim did not reflect the political realities of the China-Taiwan situation or even for that matter the wishes of Taiwanese islanders.

This became clear when in the late 1960s and 1970s a number of countries began to recognize the PRC in Beijing without formally accepting the Beijing claim to sovereignty over Taiwan. First, the Japanese severed diplomatic relations with the Taiwanese-based ROC Nationalists. The Canadian government began a similar transformation, shortly after the swearing in of Prime Minister Pierre Elliott Trudeau in 1968.<sup>119</sup> By the time American President Richard Nixon announced his visit to Beijing in the 1970s, it was evident that a significant change in United States foreign policy toward the People’s Republic of China was imminent.

As a clear confirmation of the changing international opinions at the time, the ROC was expelled from the 26th Conference of the United Nations General Assembly on October 25, 1971, paving the way for the PRC authorities in Beijing to gain official international recognition and a permanent seat in the United Nations.<sup>120</sup> On February 28, 1972, *The Shanghai Communiqué*, agreed upon by United States President Richard Nixon, Communist Party of China Chairman Mao Ts-tung and China Premier Chou En-lai acknowledged that the PRC should become the lawful government of China



including Taiwan.<sup>121</sup> However, within a discussion that primarily focused on Sino-United States relations and world affairs, neither the PRC nor the United States side discussed a concrete timetable for unification, leaving it up to the two sides of the Taiwan Strait to negotiate. Similarly, the United States

... acknowledged that all Chinese on either side of the Taiwan Strait maintain there is but 'one-China' and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves. With this prospect in mind, it affirms the ultimate objective of the withdrawal of all U.S. forces and military installations from Taiwan. In the meantime, it will progressively reduce its forces and military installations on Taiwan as the tension in the area diminishes.<sup>122</sup>

The fact that the United States chose not to formally recognize Chinese sovereignty over Taiwan makes it an important annotation in history. Nonetheless, regardless of the U.S. foreign policy position, assuming that the Taiwanese were willing to adhere to China's reunification plan in any format would be assuming too much. Certainly, the momentum for Taiwan's right to self-determination had begun to take hold by the mid-1970s. Having witnessed the political turmoil on the mainland,

... the death of *Chou En-lai*, the downfall of *Tang Hsiao-ping*, the rioting in *Tien An Men* square and disturbances elsewhere in China, the death of *Mao Tse-tung*, the arrest of the gang of four, the rise of *Hua Kuo-feng*, and the resurgence of *Teng Hsiao-ping* – this kaleidoscopic procession of events had attracted enormous attention [and] the ability of the PRC leaders to project an image of stability and progress weakened.<sup>123</sup>

When the *Ilha Formosa Incident* in December 1979 turned into a bloody confrontation between demonstrators and police on International Human Rights Day, it was clear that the lifting of martial law and the emergence of truly democratic principles could not arrive soon enough.<sup>124</sup>

The founding of the Democratic Progressive Party (DPP) in Taiwan provided the impetus to push a new round of democratic ideals forward, “defying martial law and the Kuomintang, one-party authoritarian rule” that existed opting instead for a new era of democracy in Taiwan.<sup>125</sup> Since 1986, the DPP moved a number of constitutional principles to the forefront of the political arena, including social and justice for all citizens, free speech, free press, and the freedom of association. The party representatives were also successful in promoting democratic reforms such as the removal of martial law in 1987, the implementation of parliamentary general elections in 1992 and the direct election of the president in 1996.<sup>126</sup>

But while the internally Taiwanese enacted democratic principles of governance and constitutional freedoms for all island citizens, including the Taiwanese aborigines, externally cross-Strait relations with mainland China deteriorated. In fact, Chinese tensions ran so high during the first democratic election in 1996 that the mainland Chinese military began a missile-launching campaign in the hope that it would act as a deterrent against support for the independence movement in Taiwan.<sup>127</sup> The Chinese actions failed miserably. Not only did the United States send the Seventh Fleet into the Taiwan Strait, but also the threats proved ineffective in persuading the Taiwanese people to relent on their democratic convictions. One election later, Taiwan underwent its first peaceful transfer of power from a ruling ROC Nationalist Party to the

Democratic Progressive Party. In the subsequent electoral race, the DPP once again defeated the Nationalist Party in a national election.

Throughout the political campaign, then DPP candidate Chen Shui-bian “posed as the champion of a proud, successful nation” pushing forward his rationale for supporting “an election referendum designed to garner support against Chinese military aggression while gauging public support for Taiwan’s independent status.”<sup>128</sup> Mainland China was infuriated by the rhetorical speech-making. In fact, the current political debate today is so volatile that China, which views the actions of Taiwan “as acts of defiance against Beijing,” has vowed to use excessive military force if necessary to prevent Taiwan’s rise to statehood.<sup>129</sup> It is known that China has positioned over 900 missiles toward Taiwan.

In March 2005, the stakes were raised dramatically. China enacted an anti-secession, anti-separation law that makes the secession of Taiwan an illegal act under the domestic legislation of the *People’s Republic of China*.<sup>130</sup> This new legislation means that the Chinese state and military leadership can decide at any time to take non-peaceful means against Taiwan. Moreover, the bill is not only expected to provide China with a legal basis for establishing itself as the supreme authority over cross-Strait relations without any prior consultation with vested interests within the region, but also is expected to define “the meaning, scope and legal consequences of anti-separatist activities [while also] explicitly stipulating which actions and conditions would constitute *de facto* independence and thus separation from the mainland.”<sup>131</sup> Further, from a legal standpoint, China is essentially granting itself the power to initiate military action should Taiwan declare independence.

Similarly, the law adopted at the Third Session of the Tenth National People's Congress in China on March 14, 2005 recognized that there is only one-China.<sup>132</sup> The law restated China's position that both the mainland and Taiwan belong to China, and that the state would never allow the Taiwan independence secessionist forces to separate from China under any circumstances. Again, China's perspective is that Taiwan has been an integral part of China since ancient times, and as such, China refuses to concede to Taiwan's democratic independence aspirations. In sum, China believes firmly in the reunification of China and the island's political status as a province of the mainland.

Conversely, President Chen, representing the Government of Taiwan affirmed the Taiwanese position. From Chen's perspective, the Taiwanese do not want to rejoin China under Beijing's 'one country, two systems' formula. Taiwanese government officials refuse to accept any unilateral decision on its future that is made through non-peaceful means, including economic sanctions, embargo, unilateral legislation or intervention on Taiwan's internal affairs.<sup>133</sup> Similarly, Taiwan will not accept any political, cultural, economic or social decisions apart from those decisions made by the Taiwanese.

It is within this context that Chen refers to this latest political maneuver by mainland China as a unilateral change of the *status quo* political understanding that exists internationally. Further, the enactment of an anti-secession law is perceived as a contributing factor to a situation that can only be interpreted by observers as an absolutely unnecessary escalation of tension.<sup>134</sup> Chen further stated that the PRC anti-secession legislation seriously infringes on the dominion and democratic rights of

Taiwan. It is for this reason that the Taiwan Solidarity Union began urging the Taiwanese people to relinquish their confrontational thinking about the pan-green and pan-blue party positions to unite politically against mainland China's belligerent and bullying attitudes.<sup>135</sup>

Moreover, in drafting a Taiwanese anti-annexation law designed to counteract China's anti-separation law and committed to resolving cross-Strait relations, Chen stated the following:

1. After 1949, the Republic of China and the People's Republic of China have been two separate entities and the two have no jurisdictions over each other. This is the fact that has existed for 55 years and has become the status quo across the Taiwan Strait. Peaceful coexistence should be a common goal between the two, rather than forceful annexation of upsetting the status quo without any peaceful negotiation.
2. China, through enacting the law, as the name of the law entails, defines the current status as unified and that it has jurisdiction over Taiwan. In doing so, China unilaterally changes the status quo.
3. In enacting the law, China defines that the only tolerable outcome of the cross-Strait negotiation is unification, and any outcome other than unification is subject to punishment.
4. In enacting the law, China defines itself as the sole lawmaker in the cross-Strait interaction.
5. In enacting the law, China defines itself as the sole law enforcer in the settlement of any disputes between the two.
6. In enacting the law, China defines itself as the sole law enforcer of the outcome of its own unilateral arbitration.
7. In enacting the law, China makes it more explicit than ever in the use of force against Taiwan as the law will legalize the use of force.<sup>136</sup>

The emerging dilemma, as Chen fully recognizes, is the international community's indifference to China's hostility. The fact that

a major reaction from geopolitical players has not occurred only serves to further signal to China that it can do whatever it wants to Taiwan, including the use of military aggression. For this reason, Chen states repeatedly that the international community needs to pay attention to the following points:

1. The international community has not said anything to China when China responded with vicious attacks to Taiwan's goodwill.
2. The international community has not said anything to China when China tried to suffocate Taiwan internationally.
3. The international community has not said anything to China when China continues to impose the "one-China" principle on Taiwan when the principle is a clear attempt to unilaterally change the status quo.
4. The international community has not expressed explicit concern or opposition to China's military buildup, as missile and submarine deployment has become the most serious threat to the region's peace and stability.
5. The international community in general has not said no to China when China was about to enact the anti-separation law.<sup>137</sup>

It is within this context that Taiwan's proposed anti-annexation legislation offers an indication of just how serious Taiwan is taking this latest attempt by mainland China to force Taiwan to recognize the one-China principle. The legislation stipulates that "if any invasion or annexation action is detected, the president [of Taiwan] is entitled to launch a defensive referendum to voice a protest and to inform the Legislative Yuan to take applicable actions, including termination of all

interaction with China.”<sup>138</sup> Consequently, the Taiwanese government is rescinding and amending all legislation that suggests reunification with China is a possible option. For the record, recent polls among the Taiwanese show that nearly 83% of the population expressed their opposition to the enactment of an anti-separation law in December 2004.<sup>139</sup> Since then, Taiwanese government has repeatedly stated that Taiwan and China are ruled separately. The Taiwanese request that mainland China end its opposition to any country that maintains political or economical relations with Taiwan as an independent state.<sup>140</sup>

Regardless of the eventual outcome of the cross-Strait deliberations, according to Chen, “reform is like an advancing locomotive. As soon as the wheels stop turning, the motive power weakens and the components even begin to become corrupted.”<sup>141</sup> For the Taiwanese people who support the DPP platform, the long road leading to eventual democratic freedoms and political independence is worth pursuing.

In this context, an explanation may help to explain why Taiwan cannot only be presented as a classic Wilsonian case of a people struggling for self-determination. It represents, in fact, “a series of problems as fascinating to the social pathologist as their incidence and outcome may be distressing to the humanitarian.”<sup>142</sup>



The world can only hope that a peaceful resolution to two apparently intransigent positions can be found. Stranger things have happened.

## CHAPTER 4

### TAIWAN'S INFERNAL BATTLE

### FOR INDEPENDENCE

Without question, the historical events and transitions that have led to the current political conflict between China and Taiwan have culminated in what is known in international circles today as the Taiwan Question, a potentially destabilizing factor in the Asia-Pacific region. Indeed, so intense are cross-Strait relations that at times, political observers believe the escalating rhetoric only serves to increase the risk to global peace and international security.<sup>143</sup> It is for this reason that a timely resolution to the political differences that exist between Taiwan and the mainland is desired.

For the People's Republic of China, the only viable option to the longstanding Taiwan question is 'reunification' under the guise of a 'one country-two systems' formula. China's position is that there is only 'one-China' with Taiwan being recognized as an official and integral province of the mainland. China maintains that there never will be two separate Chinas or a resolution that authorizes an independent sovereign Taiwan. The government for all of China including Taiwan is located in Beijing, meaning that self-determination for Taiwan is not an option, not now, nor in fact at any time in the future.

Indeed, reunification, according to the PRC was confirmed in the joint communiqué issued at Shanghai on February 27, 1972, at the end of U.S. President Richard Nixon's visit to China.<sup>144</sup> As such, the reunification policy continues to form the basis of the cross-Strait conflict today. The underlying premise of China's position on Taiwan's future remains unchanged since the Nationalists ROC ceased to be the legitimate government of China in 1949.<sup>145</sup> That is,

... the Government of the People's Republic of China is the sole legal government of China; Taiwan is a province of China which has long been returned to the motherland; the liberation of Taiwan is China's internal affair in which no other country has the right to interfere.<sup>146</sup>

According to the PRC, this mainland Chinese position has been reaffirmed repeatedly. In 1979, for example, the Standing Committee of the National People's Congress of the People's Republic of China pledged to their compatriots in Taiwan that the mainland government would respect the island's status quo in settlement negotiations. The same message was later delivered by the late Chairman Ye Jianying of the Standing Committee in the 1970s and then by Chinese leader Deng Xiaoping a decade later. A similar offer was made by General Secretary Jiang Zemin of the Chinese Communist Party Central Committee in the 1990s but still, to no avail. Throughout, the status of Taiwan remains the

crucial question, not only obstructing the normalization of relations within the global community at large, but also failing to reach a positive resolution in cross-Strait relations in Asia. Even in the 1970s,

... the Chinese leaders, caught in the infernal spiral of the battle for succession, clearly announced that the liberation or reintegration of Formosa with the mother country was the responsibility of Peking alone. In other words, China's position meant that China had no intention of giving up Taiwan, even if it meant threatening re-conquest. Similarly, it would be naïve to believe that China did not recognize the fact that the island could be more profitably left as an autonomous entity than swallowed up in China's insufficiencies.<sup>147</sup>

This may explain why mainland China is still willing to argue that Taiwan could and would benefit as a special administrative unit of China, enjoying

... a high degree of autonomy, retaining its own administrative and legislative powers, an independent judiciary and the right of adjudication on the island. Similarly, under the proposed Chinese provisions, Taiwan [could] continue to run its own party, political, military, economic and financial affairs.<sup>148</sup>

Moreover, according to China's standing offer, Taiwan could still retain the signing authority needed to enter into commercial and cultural agreements with foreign countries as it had since World War II, without penalty from mainland authorities.<sup>149</sup>

The only contingent to the above proposals is that the Taiwan Question had to be resolved unilaterally within the parameters of a one-China policy, without external intervention or interference from the global community. In this regard, the PRC argues that the current socio-economic system on both sides of the Strait could co-exist, in a spirit of cooperation while also collectively facilitating and experiencing economic prosperity throughout the Asia region, and beyond.

Conversely, Taiwan, while readily admitting that “ethnically and culturally Taiwan may be said to be Chinese,” the course of events that have transpired between the two powers since ancient times has “set the island and the mainland on different paths, providing a rationale for their current continued separation.”<sup>150</sup> In this context, from a historical perspective, Taiwan claims that the island has never been an integral part of the political entity known as the People’s Republic of China. Therefore, when the ROC makes the claim that it has always been the legitimate recognized government of Taiwan, having established its claim to govern the island in 1949, it is because this is and has been the essence of the political situation.

The difficulty that has arisen today, at least in terms of global relations, is in convincing the international community that Taiwan is what it claims to be – “an independent, de-facto state, governed by a government democratically elected by the island citizens under the

Republic of China jurisdiction.”<sup>151</sup> Certainly, in part, Taiwan’s remarkable transition from a dictatorship to a democracy and its ability to conduct its political and economic affairs independent from China has contributed to the global perceptions that exist today.

The other element that requires careful consideration is that Taiwan was a de jure part of Japan when the Republic of China was established on the mainland in 1912. During this time, an association with the Chinese Nationalist Republic, either in principle or in practice, was virtually non-existent.

So, when Taiwan was turned over to the Republic of China after the Second World War, it only made sense for the “the United States [to act] on the assumption that its postwar policy in East Asia would be founded on mutual cooperation with a strong, united China.”<sup>152</sup> Although the unexpected conquest of China by Communists forced the Republic of China to relocate to Taiwan, changing the original game plan dramatically, it also raised serious foreign policy concerns for the United States who would have to defend Taiwan in the event of a war.

To complicate matters further, Taiwanese supporters of Taiwan independence dispute China’s claims. The Taiwanese argue that not only was the Cairo Declaration an unsigned press communiqué but also that “the Instrument of Surrender of Japan in 1895 was no more than an armistice, a *Modus Vivendi* in nature.”<sup>153</sup> It is for this reason that the

Taiwanese rely heavily on the 1951 Treaty of San Francisco and the 1952 Treaty of Taipei as the legal foundation for their current de facto status.<sup>154</sup> The rationale is based on the same principles of self-determination that had been applied to European colonial territories, which “detached [themselves] from enemy states as a result of the Second World War, [their status] confirmed by Articles 76 and 77 of the United Nations Charter.”<sup>155</sup>

Moreover, by the 1980s, the original Nationalist ROC government plan to recover the mainland by force had largely been dismissed from the ROC agenda in favour of strengthening the local Taiwanese democratic movement. In fact, it was only after President Lee Teng-hui came to power that the political cross-Strait conflict began to percolate again, particularly when he eliminated the four decades of martial law that the Taiwanese citizens had been subjected to since 1949.<sup>156</sup> Needless to say, that without the threat of martial law in Taiwan, the fundamental principles of democracy had begun to take root, albeit slowly, essentially leading the way to the island’s democratization.<sup>157</sup>

In anticipation of a society reflective of democratic values, President Lee and the governing political parties in Taiwan began to approve a variety of far-reaching resolutions. These changes included the establishment of an independent Republic of Taiwan, constitutional amendments that included referendums decided by electoral consensus

and a majority will of the people, and an extension of all the fundamental rights and privileges normally associated with a democratic society.<sup>158</sup> Even though calls for island independence were still being denounced by party leaders on both sides of the Strait, neither side could prevent President Lee Teng-hui's unanticipated announcement, claiming that the Republic of China government, located in Taiwan, would no longer challenge the authority of the People's Republic of China on the mainland.<sup>159</sup> As time evolved, it was obvious that the lifting of martial law was having an impact on island affairs. Indeed, it was becoming abundantly clear to mainland Chinese officials that the island province was headed in a political direction inconsistent with their own territorial and political agenda.

Still, the Legislative Yuan in Taiwan continued to approve constitutional and legislative amendments, reducing the power of the National Assembly and limiting the terms of the Presidential and elected National Assembly members from six year to four.<sup>160</sup> Additionally, the direct popular election of provincial governors and magistrates by the electorate was approved. From this point forward, political changes in Taiwan were inevitable. The establishment of a KMT splinter party, known as the Chinese New Party carried a mandate that would force the KMT to communicate directly with the PRC. At the same time, the media was becoming more diligent and transparent in their reporting techniques, and the government of Taiwan was becoming a multi-party



democracy that cherished freedom of the press, freedom of religion and freedom of speech.

In 1999, President Lee Teng-hui proposed a 'two state' theory, which acknowledged the shared diplomatic, cultural and historical roots of the PRC and the ROC, but nonetheless considered Taiwan and the mainland to be separate states.<sup>161</sup> Two years later, newly elected President Chen Shui-bian went further in his address, acknowledging that Taiwan is indeed a Republic of China, but nonetheless as an independent sovereign state.<sup>162</sup> Without a doubt, these sovereign alternatives remained unacceptable to mainland Chinese authorities. Indeed, the Chinese PRC, still vying for a cross-Strait resolution threatened to use force to preserve Taiwan's status as a province of China, should it proclaim its independence as the Republic of Taiwan.<sup>163</sup>

In recent years, while opinion polls within Taiwan show a steady increase in islanders who identify themselves as 'Taiwanese only,' Taiwan's recognition on an international level continues to be impeded by the PRC, which has adamantly blocked any participation by Taiwan as a member state in global umbrella organizations.<sup>164</sup> China's aggressive tactics and its adamant opposition to maintaining relations with any country that recognizes Taiwan as an independent state are clearly more evident since the millennium year.<sup>165</sup>

Through constant political pressure and heavy international lobbying, the People's Republic of China has blocked Taiwan from having official diplomatic ties with almost every country in the world. If a country wants to do business with China, it must [first] denounce Taiwan and remove its embassy. The PRC is blocking Taiwan from having a seat in the United Nations, and prevents the Taiwanese from even the right to fly their own flag in the Olympic Games. The PRC wants to take over Taiwan, and is claiming that the recent example of Hong Kong will set the stage for eventual reunification. The Taiwanese have never once been a part of the People's Republic of China and there is little interest among the Taiwanese in joining the Communist mainland.<sup>166</sup>

Much to the disappointment of the Taiwanese, many of the internationally recognized countries around the world have succumbed to pressure from the PRC. A number of states have shifted their political allegiances from Taipei to Beijing. In fact, political observers point to the multitude of new strategic alliances that have been negotiated recently between China and island states, archipelagic sovereign jurisdictions and sub-national islands in the Pacific, Caribbean and the Bay of Bengal.<sup>167</sup> Whether this '*Yuan diplomacy*' strategy is simply a new ploy to protect China's long-term military and economic interests, one point remains. Island territories all over the southern hemisphere are being targeted and courted by Beijing's growing presence and monetary influence, with the exception of Taiwan. Not only does this suggest that China wants superpower status by "building the greatest asymmetric superpower the

world has ever seen [but] that the autocracies of the developing world” can form a strong alliance.<sup>168</sup> This shifting balance of power, particularly if the newly formed alliances include failed and fragile island states, represents a willingness for islands to assume a subordinate status to Beijing. That is of course, with the exception of Taiwan.

As former President Lee alluded, Taiwan can only become a free open society “...when people equip themselves with modern values, a rational way of thinking, and a democratic mindset ... Our goal is to make Taiwan a new centre of Chinese culture, built on the principles of freedom, democracy and internationalism.”<sup>169</sup> Moreover, the author states that what is seen

... in Taiwan today is, in a sense, the result of implementing reform ideas from the 1920s and early 1930s. For the past decade or so, we have enjoyed stable economic and social development, and in the process we have gradually been able to cast off the fetters of tradition. Through extensive social and political reforms, Taiwanese society has achieved a new level of maturity. Needless to say, we still have a long way to go before we can approach our ideals through further reform. But I am convinced that the road we have taken is the right one, and that our achievements demonstrate that the revitalization of Chinese culture is indeed possible.<sup>170</sup>

Unfortunately, the inability to reach a satisfactory cross-Strait resolution and the subsequent postponing of the Taiwan Question may result in calamitous consequences particularly for neighbouring states in the Asian region. Even though both sides of the Taiwan Strait are on the record as stating that neither side wants a war, both sides have adopted political posturing that runs contrary to a negotiated settlement. It is from this perspective, coupled with the belief that the people of Taiwan are entitled to decide for themselves what their final destination will be, that the struggles associated with self-determination and the quest for international recognition needs to be addressed. Similarly, within this same context, the international community needs to recognize that if Taiwan has existed and acted as a separate political entity for the last half a century, then the only remedy that is really outstanding, at least for the Taiwanese, is to change Taiwan's de-facto status into a legally acceptable de jure status.<sup>171</sup>

## CHAPTER 5

### CONSTITUTIONAL CONTRADICTIONS: WHERE TO FROM HERE?

Seeking reconciliation through a formalized constitution has not been conducive to improving relations between the two sides of the Taiwan Strait either. In spite of Taiwanese society achieving a new level of political maturity over the last fifty years, questions still arise about how a government whose “corruption and inefficiency” could permit the Chinese Communist Party to not only conquer their mainland stronghold but also “manage to establish effective control and to gain a wide degree of popular acceptance in Taiwan” over time?<sup>172</sup> Undoubtedly, from a historical perspective, it was the original ROC government who was primarily responsible for allowing the Mao-ist China to exist in the first place, and in this sense, matters to the Taiwanese, particularly in the progress and aftermath that has transpired in cross-Strait relations.

Further, the question for today is how to reconcile two opposing political positions in the face of the People’s Republic of China’s ‘one-China’ claims and the corresponding Republic of China rebuttal that the ‘Republic of China is Taiwan, and Taiwan is the Republic of China’.<sup>173</sup> Equally relevant, in the context of this ongoing debate is how one deciphers the paradox that arises amidst the contradictions emerging from

this unique 'one country, two constitutions' scenario. Most certainly, constitutions are designed to embody the fundamental principles of the state while guaranteeing certain inherent rights and privileges to its citizens. Unfortunately, constitutions are not adequately situated to referee the differences between two Chinese states, even when inter-state or worse, a global war may be the eventual outcome.

Surely, with regard to cross-Strait relations, the Constitution of the People's Republic of China, adopted on December 4, 1982, almost forty years after the approval of the Republic of China Constitution in Nanking in 1946 should have, at the very least prioritized political negotiations and stability in the Taiwan Strait.<sup>174</sup> But apart from a small constitutional reference about incorporating and making the compatriots of Taiwan a part of mainland China's obligation, the PRC Constitution offers very little substance as to how these duties and commitments will in fact be delivered. What the PRC Constitution did do was clearly define democracy from a Chinese socialist perspective, basing its constitutional values primarily on Marxism, Leninism and Mao's thought.

#### I. Constitution of the People's Republic of China:<sup>175</sup>

As a unitary, multinational state and recognized as the world's most populous nation, the country is geographically divided into 22 provinces, five autonomous regions, four municipalities, and two special

administrative regions. Its governing structure includes the National People's Congress (NPC), the highest organ of the state and the Standing Committee is a permanent body of the NPC. The government is further divided into the State Council, the executive body responsible for the state administration and the People's Court functions as the judicial organ of the state. The PRC Constitution protects the rights and interests of minority nationalities, including 56 recognized ethnicities, by prohibiting discrimination and oppression against minorities. Article 35 of the PRC Constitution states that: "all citizens of the PRC enjoy freedom of speech, freedom of the press, freedom of assembly, freedom of association, freedom of procession and freedom of demonstration."<sup>176</sup>

The key to understanding the People's Republic of China is found primarily in the preamble of the Constitution. It is within this text that mainland China's identity is linked to 'the country's' earth shaking historical changes, its splendid culture and glorious revolutionary tradition."<sup>177</sup> It is also here that mainland China maintains that the Communist Party in 1949 was only fulfilling an earlier vision when it seized control of Nanking. That is, the Communists were completing "the historical task of overthrowing imperialism, feudalism and bureaucratic capitalism."<sup>178</sup> The PRC constitutional mandate then, was to perfect the Chinese ideal of socialism while "still incorporating the quintessence of Chinese characteristics."<sup>179</sup>

However, in reality, the political transitions that unfolded in

China over the next four decades continued to be extremely repressive in nature and the Chinese socialist model akin to what many social scientists and political observers today would call an authoritarian, centralized socialist state. Even though the PRC Constitution refers to “the victory of China’s new democratic revolution and the successes of the socialist cause under the guidance of Marxism-Leninism in Mao Zedong Thought for China’s progress in turning China into a socialist country with a high level of culture and democracy,” in actuality these are only ideological words and not the societal realities that are prevalent throughout much of mainland China.<sup>180</sup>

The same rhetoric applies to China’s long-term vision of socialist modernization and the motherland’s reunification with Taiwan as China’s 23<sup>rd</sup> province. Indeed, the PRC Constitution may be written in a spirit and language that supports both self-determination and the socio-political culture of Taiwan, particularly the constitutional section declaring that “it is the lofty duty of the entire Chinese people including any compatriots in Taiwan, to accomplish the great task of reunifying the motherland” but again, in reality, the model for self-determination, or in this situation, reunification is framed solely from a PRC perspective.<sup>181</sup>

Further, China’s Constitution may state that it fully recognizes “sovereignty and territorial integrity, mutual non-aggression, non-interference in the internal affairs of other jurisdictions, equality and mutual benefit, peaceful co-existence in developing diplomatic relations



and economic cultural exchanges with other countries,” but again, particularly in the example of Taiwan, these only exist within the confines of a socialist PRC system and the Five Principles of Mutual Respect.<sup>182</sup>

As well, even though Article 28 confirms that actions that “endanger public security and disrupt the socialist economy are suppressed as treasonable [along with] other counter-revolutionary activities” and in the same context, mainland China “opposes imperialism, hegemonism and colonialism,” the reality is that Mainland China’s version of democracy, as stated in the PRC constitution does not resemble the traditional Western model of democracy.<sup>183</sup> In fact, the mainland state has regularly resorted to authoritarian and dictatorial methods to deal with challenges to its political rule, suppressing public protests and organizations that it considers a threat to its governing authority.

Although there have been several amendments to the PRC Constitution passed during recent NPC sessions, the most crucial in terms of the socialist agenda is Amendment Two, approved on March 29, 1993. Prior to this amendment, the nation’s mission was to concentrate its effort on socialist modernization inclusive of a high level of culture and democracy. This has not changed. What is noticeable, however, is that after the amendment passed, China’s socialist vision was expanded to include “reform and opening to the outside, steadily [improving] socialist

institutions, developing socialist democracy, improving the socialist legal system and working hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a socialist country with prosperity and power, democracy and culture.”<sup>184</sup>

In other words, China’s future objective, and, some might be quick to suggest, China’s sole objective, is to concentrate its efforts on social and economic modernization. By 1999, a subsequent amendment approved by the 9<sup>th</sup> National People’s Congress at its 2<sup>nd</sup> session, added the Deng Xiaoping Theory as a guide toward further advancing the socialist agenda. When the Fourth Amendment was approved on March 14, 2004, it was clear that China’s mission was to strengthen the state’s ability to impose a state of emergency in certain autonomous regions, provinces and municipalities within the Chinese jurisdiction while similarly enhancing the PRC role and authority in international affairs.

## II. Republic of China (Taiwan) Constitution.<sup>185</sup>

In contrast, the Republic of China (Taiwan) Constitution was adopted on December 25, 1946 by the National Constituent Assembly convened in Nanking. It was promulgated by the National Government on January 1, 1947. In essence, the ROC Constitution “embodies the ideal of sovereignty of the people, guarantees human rights and freedoms, provides for a central government with five branches and a local self-

government system, ensures a balanced division of powers between the central and local governments and stipulates fundamental policies.”<sup>186</sup>

In terms of mandate, the ROC Constitution is based primarily on the teachings bequeathed by Dr. Sun Yat-sen, a Chinese revolutionary who played a significant role in the overthrow of the Qing Dynasty and also a founder of the Kuomintang. The Constitution is founded upon the Three Principles of the People which “guarantees freedom of speech, teaching, writing and publication; freedom of religious belief; and freedom of assembly and association.”<sup>187</sup> The National Assembly is responsible for exercising the political rights on behalf of the Taiwanese citizenry, including those duties associated with constitutional amendments and referendums. In contrast to the governing structure instituted by the PRC four decades later, an elected president currently serves as the Chief of State as well and exercises all of the necessary State powers and authority as defined by the Constitution.

There are five arms of government in Taiwan: the executive, legislative, judiciary, examination and control. The Executive Yuan is the highest administrative organ of the state and is responsible to the Legislative Yuan which is composed of members elected by the people. The powers are separated according to national, provincial and municipal jurisdictions. If a constitutional matter is not specifically defined in Article 107, 108, 109 or 110 of the ROC constitution, it falls within the jurisdiction believed to be most applicable.

In the face of the Chinese Communist threat, the National Assembly on April 18, 1948 added a set of Temporary Provisions to the Constitution that remained in effect during the Period of Communist Rebellion. Promulgated by the National Government, the Temporary Provisions were designed to enhance presidential power during the emergency period of communist uprising, while also providing a means for government to ignore Article 47, which restricted the terms of the president and vice-president to two-year terms. In essence, it was these provisions that led to the installation of martial law in Taiwan that then, ironically, became the impetus for democratization of the island jurisdiction when martial law was lifted.

Since then, Taiwan's push for constitutional reform, declared by authorities to be absolutely necessary "if Taiwan is to continue to be a modern nation and survive the effects of globalization," will only occur after a majority consensus is reached among the electorate.<sup>188</sup> In this sense, the Taiwanese government position is that should Taiwan eventually pursue an option of self-rule and a level of autonomy, it would be a bottom-up decision unilaterally agreed upon by the people of Taiwan and not, as the case would be in mainland China, an imposed political decision rendered by the government. To this end, President Chen has vowed to hold a referendum in 2006 that will address democratic and constitutional reforms, such as government structure, civil rights and economic principles.<sup>189</sup> Although the first round of constitutional

revisions is not expected to incorporate measures that might lead to the establishment of a politically and legally independent Taiwan, the revisions “are expected to include the abolition of the National Assembly, transferring that anachronistic body’s powers of constitutional amendment to the public via referendum.”<sup>190</sup>

However, despite relative constitutional success on the island, neither of the opposing camps has been able to use its adopted constitutional measures and diplomatic language to prevent the continual tug-of-war between the ideologues and the pragmatists, “those who placed their prime emphasis on the goal of recovering the China mainland and those who favored concentrating on the development of Taiwan.”<sup>191</sup> In fact, part of the problem was that the distinction between the ideologues and pragmatists was not always black and white. In fact,

... the pragmatists did not openly reject the goal of mainland recovery; they argued that the best hope of achieving this goal was to develop and modernize Taiwan as rapidly as possible in order to improve its capability to serve as a base for the future recovery of the mainland, rather than divert attention and resources to quixotic attempts to act before the time was ripe.<sup>192</sup>

Conversely,

the ideologues did not oppose the development of Taiwan, but deprecated allowing it to detract from the struggle of the PRC. Both groups strongly opposed accepting domination from

Peking; yet they all were staunch Chinese Nationalists, deeply influenced by China's long history as a unified state, who found it difficult to conceive of the permanent separation from Taiwan.<sup>193</sup>

The key point to remember in analyzing the political circumstances surrounding the adoption of Taiwan's Constitution is that the Republic of China, currently administrating the island jurisdiction is not the same ROC which adopted the Constitution in Nan-king in 1946. At that time, the ROC Nationalists were the only recognized government for all of China. Taiwan came about as a result of the retreat of defeated KMT Nationalists and was only formed by the ROC in 1949 after the government of Chiang Kai-shek was forced to leave mainland China. Although Chiang remained optimistic that the KMT Nationalists would rule mainland China once again, and that it was the sole government of China, it did not happen.

Even so, throughout the presidential reign of Chiang Kai-shek from 1950-1975, the ROC Constitution, adopted earlier in Nanjing remained intact, becoming the eventual guiding foundation for the Nationalist government in Taiwan. Needless to say, it was from this point forward that the international arena was left to deal with the ultimate paradox; that is, the ultimate destiny of two-Chinas.

It is for this reason that a careful reading of Sovereignty, Old and New: Another Look at Taiwan's International Legal Status, written by

Feinerman, is crucial. More and more, “the inability to find Taiwan’s de jure statehood has led to newer thinking of Taiwan in its de facto status, one that recognizes that the ROC constitution has provided the [necessary] structure for continuous and autonomous government in Taiwan,” and which is an imperative to Taiwan’s continued democratic, sovereign status.<sup>194</sup> In fact, despite the conflicting rhetoric, the reality is that Taiwan has existed as a sovereign, independent country for more than fifty years.

President Chen Shui-bian, the current President of Taiwan situated the fundamental nature of this argument in a presentation he made at a 2002 conference in Tokyo. “With Taiwan and China on each side of the Strait, each side is a country. Our Taiwan is not something that belongs to someone else. Our Taiwan is not someone else’s local government. Our Taiwan is not someone else’s province.”<sup>195</sup>

Regardless of the opposing perspectives, one critical point remains. The Chinese Communist Party on the mainland has failed miserably in matters of diplomacy. Instead of resolving the cross-strait issue in an orderly and peaceful manner, reaffirming the objective of promoting better relations, the PRC has continued to “work up irrational and xenophobic feelings, by denouncing splittist criminals and reactionaries in Taiwan, in the traditional Communist rhetorical manner.”<sup>196</sup> In fact, if the international community were to combine the rhetoric with the

myriad of contradictions that emanates from both sides of the Strait, it would become painstakingly obvious, very quickly, that constitutions are only as good as the governments they represent. In this situation, the road traveled toward peaceful negotiations still has a long way to go.



## CHAPTER 6

### LEGITIMATE ASPIRATIONS:

### THE PARADOX OF CHOICE

Thankfully, not all political and societal conflicts between island jurisdictions and the corresponding mainland take as long to negotiate a solution as the Taiwan-China conflict. Normally, from the perspective of self-interest alone, states recognize the need to settle disputes through peaceful means and in such a manner that does not jeopardize international peace, security and justice. Accordingly, states will, as a measure of good faith, refrain from taking action that might aggravate a situation to such a degree as to endanger the maintenance of international peace and security. Rather, states opt for a means of “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or any other peaceful means of choice agreed to in advance by the parties” that will result in a satisfactory resolution.<sup>197</sup>

Moreover, within the framework of international law, and ever cognizant of the purposes and principles of the United Nations, states are expected to respect each other’s identity and individuality as well as all the constitutional rights inherent in, and encompassed by, each state’s

sovereignty. These rights normally include the right to judicial equality, territorial integrity and political independence.<sup>198</sup> It is in this spirit of cooperation and compromise that political entities, regardless of their status or autonomy continue to seek a mutually agreed way to settle disputes peacefully, without resorting to armed intervention, or for that matter, even the threat of armed intervention. This is not to suggest that, like Taiwan, many of the world's small islands have not found themselves on the front line of the global struggle at one time or another. The difference is that most geographic territories have achieved some form of political stability within the realm of their island status.

Unfortunately, the handling of the China-Taiwan conflict over the last century has not been as successful. In this situation, in terms of Taiwan's long-term interests, contenders arguing for Taiwan's right to determine their own destiny have been few and far between, at least from the international community.<sup>199</sup> Besides the United States, who has repeatedly defended Taiwan interests in the past, and less than thirty other countries that have declared open recognition of Taiwan as a state, there have been few geo-political players willing to intervene in the cross-Strait conflict.<sup>200</sup> Certainly, up until now, the United Nations fails the test.

Further, in terms of public opinion, the most favoured resolution dominating international circles today is for both sides of the Taiwan Strait to simply retain the status quo.<sup>201</sup> This stance would prevent rash

military moves by both parties while still leaving open a door for future negotiation and intervention by international global players.

Monk claims that the “strategic awkwardness” of the one-China resolution has placed China in as an “intractable strategic conundrum.”<sup>202</sup>

So long as [China] insists that Taiwan accede to reunification, it risks frustration at best, disaster at worst. Every step it takes to try to shift the odds in its favor risks hardening both Taiwanese obduracy and American support for Taiwan. Indeed, it risks confronting in armed conflict its three largest trading partners: the United States, Japan and Taiwan. Its search for asymmetric advantage is ripe with the prospect of miscalculation and war. By the calculation of its military strategists, therefore, China appears to be damned if it does act and damned if it does not. Meanwhile, no single issue is so likely to aggravate Sino-US tensions as a prolonged and escalated stand-off over Taiwan. Under these circumstances regional states [and the international community] look on with unease and look for ways to avoid getting caught in the cross-fire.<sup>203</sup>

Other global strategists concur. The status quo option is the only preferred solution at this time. That is, to leave Taiwan’s status the way it is, as a *de facto* independent state, without making a formal declaration of independence, or amending the constitution on matters pertaining to Taiwan’s national identity or sovereignty. The irony that arises is that the circumstances that originally “led Taiwan away from the commitment to reunification with China was the deliberate decision of then President

Chiang to move down the path of democratization and to enfranchise a legitimate opposition: the Democratic Progressive Party.”<sup>204</sup>

This has led to a flowering of civil society and democratic politics in Taiwan of a kind never known before in China. There has also been a legitimization of long-suppressed Taiwanese aspirations to independence from China. These aspirations have their roots in the deep historical past, as well as in the effects of half a century of Japanese colonial rule. They were deepened by resentment of Guomindang [Kuomintang Nationalist (KMT)] corruption and repression in the 1940s and 1950s, rejection of Communism in the 1960s and 1970s, as Mao Zedong spread chaos and ruin in China and revulsion from the repressive practices of the current regime in China in the 1980s and 1990s.<sup>205</sup>

The obvious difficulty is that, for all intents and purposes, any cross-Strait resolutions offered by mainland China, including a firm commitment to retaining the status quo in communications, may be too late. Clearly, the unwillingness of the PRC to negotiate an acceptable resolution without resorting to threats of using military force is a prime example.

This may explain why, the second option of reunification by military force has been proposed. But, this option, as one can well imagine,

...has not fared any better. Surely, in condoning China's continued military threats, the worldwide community would be at odds, particularly in

relation to fulfilling their own mandate of promoting 'peaceful negotiations' between states. Most states would reject being dragged into a "Cold-War style between two opposing camps in Asia" particularly when China is not necessarily expanding beyond its own borders, or exporting its ideology to threaten the governments of its neighbors.

From the United States perspective, and "despite its overwhelming muscles, the United States has its own Achilles heel. China can focus its total resources against one or very few specific targets (because it has no security obligations outside its borders). The United States, however, has a lot of global obligations, "hot spots", rivalries and rogue states to watch out for. These obligations tap on US resources steadily and increasingly heavily, more than others."<sup>206</sup>

Even so, China still insists that in order to maintain political stability within the region, it has no alternative but to create the illusory appearance of singling out and bullying the Taiwanese electorate into submission. To do otherwise, China fears that Taiwan could openly declare its sovereign independence without any discussion of its political intentions with the motherland. Certainly, the "growing sentiment to push the envelope on independence" in Taiwan suggests that at some point, the mainland "will have to take action to compel Taiwan to back away from independence" and at least begin to move toward the goal of reunification.<sup>207</sup>

Ironically, as it currently stands, China's tactics, including launching missiles into the Taiwan Strait during electoral voting periods have had the opposite effect on the island populace.<sup>208</sup> In fact, recent election results in Taiwan prove that Chinese

attempts to bully the Taiwanese electorate have backfired, contributing to exactly the outcome they were intended to deter; victories at the polls first for Lee Tenghui, in 1996, and then for Chen Shui-bian in 2000. They also strengthened anti-Chinese feeling in the United States and deepened the likelihood that Taiwan would be militarily supported by the United States in a crisis. The consequences has been the stalling of cross-Strait dialogue and frustrated rhetoric coming out of China about its determination to achieve reunification whatever it takes and refusal to rule out the use of force. Since the use of force would clearly be stoutly resisted and could have seriously adverse and even disastrous consequences for China, this seems to leave Chinese policy in something very close to a dead end.<sup>209</sup>

Rather than establishing meaningful communications as a way of preserving and enhancing the unity message, China has instead set the stage for the collapse of long-term relations across the Strait. Again, this is a no-win situation for China.

*Neutrality*, as the third public policy proposition being floated by social scientists is equally challenging.<sup>210</sup> Although *neutrality* holds a very specific meaning in international relations, and countries pursuing a *neutral* stance are

often divided according to Swiss or Irish categories of neutrality, in Taiwan's case, it would mean strengthening the Taiwanese Constitution "to exemplify the resolute voice of the Taiwanese people, giving due course to the [people's] consensus belief that national security and the people's fundamental rights" are paramount.<sup>211</sup> Further, under the international criteria for neutrality, the principles of peace and friendly cooperation among nations would essentially eliminate Taiwan's authority to initiate a war except in its defense against external aggressors. Therefore, military action in any form would be opposed on the basis that as "a permanent, neutral state, and along with other states, [Taiwan would] endeavour to accomplish regional and global harmony, and peaceful co-existence of all men. Undeniably, to envision Taiwan as a permanent neutral state is an idealistic stand. It is however, a fundamental goal of Taiwan's continuing democratic reforms," an objective that already includes, for the most part, the principles of non-war peace, rights to self-determination, rights to self-preservation and the legitimization of international society.<sup>212</sup> As such, the expression of a formal neutrality position by Taiwan would gain the country the recognition and legitimacy that it requires but through already established international law.

Also, by pursuing a formally recognized position of neutrality, it would serve as an admission that the current diplomatic strategies between Taiwan and the mainland are in a state of disarray, and thus, may also imply that a conciliatory ruling or legal intervention from geopolitical players is not necessary. However, therein, lies the problem.

Unless policy makers in China can be persuaded that [alternative courses] of action is to their overwhelming advantage, they will quite understandably cling to the view that it is simply an invitation to accept defeat and humiliation. As long as that mentality rules in China – and no one should underestimate its sincerity or tenacity – China not only will take the step but could resort to irrational and dangerous escalation of the confrontation across the straits, out of what Tom Christensen astutely calls political desperation.<sup>213</sup>

It should be further noted, in terms of China's position, that while Beijing maintains that the PRC only "...seeks a very nominal obeisance from Taiwan, under the so-called 'one-country, two-systems' formula, its conduct..." in other neighboring regions suggests otherwise.<sup>214</sup> In Hong Kong, for example, the transfer of the former British jurisdiction to the People's Republic of China in 1997, under a 'one-country, two-systems' formula has come under intense fire by Hong Kong residents. "Demanding political change in a city where the chief executive is handpicked by an election committee loyal to Beijing and less than half the legislature is directly elected," has led to the residents of Hong Kong are demanding that their democratic rights be reinstated.<sup>215</sup>

Under The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Hong Kong "could theoretically enjoy full democracy in 2008. But the constitution also states that Beijing has the final say over any electoral changes, and many residents are watching to see how China



interprets the Basic Law.”<sup>216</sup> When Beijing officials declared that they intended to push forward Hong Kong’s political development, but “only when the ‘actual situation’ permitted, and only according to a gradual and orderly process,” it served as a catalyst for repeated street demonstrations and civil protests.<sup>217</sup> At the same time, polls reveal that less than half of the people interviewed by the University of Hong Kong trust Beijing.

A similar conflict with China continues in the Tibet region. Once a fully independent country, the country remains embroiled in an intense dispute with the PRC over the legitimacy of the Chinese governance of Tibet. Since 1959, the former Dalai Lama has maintained a government in exile in northern India. Even though the former government leader ‘claims’ to retain sovereignty over historic Tibet, the People’s Republic of China refutes their position. The PRC claims that Tibet has not been an independent country since the conquest of Mongol Yuan Dynasty in 1279-1368, nor has any other authority since exercised sovereignty over the territory.<sup>218</sup>

Needless to say, in governing Tibet, mainland China has done very little in terms of improving diplomatic relations. Even the recent visit of Chinese Premier Wen Jiabao to New Delhi, suggesting that India and China are willing to collectively reach an agreement on the governance of Tibet in return for increasing bilateral trade with China, constitutes nothing more than “slow and pragmatic progress” designed to “reduce tension, and avoid large-scale military operations in border regions.”<sup>219</sup>

Still, despite the oratory, the fact that China continues to improve its military forces, “transitioning from Mao’s concept of a land army to one of a modern military force capable of deploying its naval ships globally,” constitutes cause for concern.<sup>220</sup> Under the circumstances, it is striking that in all three conflicts -- the Tibetan autonomous movement, Hong Kong’s determination to regain a fully democratic electoral system and Taiwan’s willingness to move forward with constitutional changes in 2006 – not only serves as a thorn in the side of the Beijing leadership, but that ‘China’ is the common denominator in their combined struggles.<sup>221</sup> All the same, these unresolved disputes offer an added dimension and perhaps, even an added risk to global peace and cross-Strait relations.

It is on these grounds that waiting indefinitely for international intercession is not a viable option. The delicate balancing act, or ‘strategic ambiguity’ as Carpenter calls it, is that the leaders in Taipei and Beijing may read the situation in exactly the opposite way that observers would hope. For example,

Taiwanese leaders may assume that they have an ironclad guarantee [of military protection and support from the United States] and, therefore, they can be rather provocative and push the envelope on independence. Whereas, in Beijing, as China’s military grows, they may assume that the United States commitment to defend Taiwan is really a bluff and that the United States wouldn’t risk war with China over Taiwan.<sup>222</sup>

What's more, since the Taiwanese do not have the benefit of the of international law serving as a framework for negotiation, mediation or compromise, and up until now, the Taiwanese have not had an acceptable mechanism or recourse to formal international organizations to seek justice, or at the very least, engage in a discussion on issues pertaining to Taiwan, mainland China has not been pressured or put in a position whereby it must recognize the established norms of international law which exist independently of formal non-membership. Neither have there been any attempts by the international community to implement measures that guarantee that both sides of the Taiwan Strait are acting in good faith. Indeed, the fact that China has not resorted to excessive military force to bring Taiwan under its control does not mean that it will not do so in the future.<sup>223</sup>

In an effort to overcome the barriers established by the People's Republic of China in the international arena, and as a counter to continued accusations that Taiwan is increasingly asserting its sovereignty, the island government has no alternative but to reform its age-old constitution developed by the mainland Nationalists more than fifty years before. In amending its constitution, Taiwan needs to reiterate to the world at large that the current governing Republic of China in Taiwan is not the same ROC which accepted Japanese surrender in 1945. What is more, the ruling authorities that existed in Taiwan in 1949 were given mandates by two very different pools of constituencies: one is the

Chinese electorate on the mainland and the other is the Taiwanese constituency in the island jurisdiction.

The fact that the end of the civil war in 1949 left in place two sovereign governments in China, one in mainland China and the other in the island of Taiwan: that these two governments were different and separate political systems, the system of the People's Republic of China in mainland China and the system of the Republic of China in Taiwan; and that during the next fifty years, both governments had claimed to be the legitimate government for the whole of China is critical.<sup>224</sup>

Correspondingly, since the ROC Constitution was drafted and enacted on mainland China in the 1940s and consequently imported to the island, the Taiwanese islanders did not have any meaningful opportunity to express their collective opinions on the political framework that was imposed upon them.<sup>225</sup> Nor have the Taiwanese been able to address the fallacies of a constitution that permitted the imposition of martial law under the *Temporary Regulations in Effect during the Period of the Suppression of the Communist Rebellion*.<sup>226</sup> That is, of course, until recently when the political environment on the island “matured enough to allow the Taiwanese to cast ballots in [the island’s first electoral] referendum.”<sup>227</sup>

Hence, and irrespective of the PRC position whereby China’s latest actions liken it to a country intent on building a huge war machine against Taiwan, President Chen still intends to move forward with a

referendum on constitutional amendments to the ROC constitution in 2006.<sup>228</sup> His position is that since constitutions exist for the people and are not designed for the self-interests of an individual or party, then

... the most important meaning of a constitutional re-engineering project lies not only in the change in the constitutional system, but even more in the process of melding a consensus among all the people and as a common experience in democratic principles.<sup>229</sup>

It is against this backdrop that Taiwan's ambiguous status, "a product of half a century of changing international and cross-Strait circumstances," and one that has resulted in the island becoming a completely effective polity in its own right, but yet still remaining on the front line of a global struggle after fifty years, should never "be expected to feel much gratitude for Beijing offering to let it keep what it already has."<sup>230</sup>

# CHAPTER 7

## A WORLD OF

### INTERNATIONAL QUANDARIES

For most states or minority groups asserting their right to determine their own destiny, international covenants have been “wholly sufficient in influencing and mediating disputes” among nations. As Carolan points out, international law may not bring about a satisfactory settlement

... in every question, especially where the law may be ambiguous on a given issue. Neither has there been a period of time whereby a consensus on international law has been reached unilaterally, with the exception of the territorial integrity argument. It does suggest, however, that even the most powerful states feel obligated to invoke international [legal] principles in explaining their behaviour, [and therefore] it should be concluded that international law is powerful, relevant, and has a role to play in resolving disputes among nations.<sup>231</sup>

Still, regardless of how relevant international law may be for other states and minority peoples, it has offered little relief in finding a satisfactory resolution to the Taiwan-China conflict. Perhaps, this stems

from the rationale offered by Wei, who states that the reasons for not studying the Republic of China on Taiwan are two-fold:

The first can be attributed to the seemingly overwhelming presence of Communist China in international politics, the huge size of mainland China and its population, their development of nuclear weaponry and missiles and their support of people's wars of national liberation in underdeveloped areas have rendered any achievements or impact made by the ROC in international politics insignificant in the eyes of most Western observers.

A second reason for the lack of serious studies of the ROC seems to lie in the prejudice of certain political scientists against the Chinese Nationalists. This is a carryover of the disillusionment and resultant resentment caused by the failures of the Chinese Nationalist on the Chinese mainland before 1949. For many of the 'old China hands' having this kind of prejudice, the ROC is the political regime of a lost cause and hence, does not warrant further investigation.

In the eyes of these Chinese experts, the ROC is a remnant of an ancient regime that sooner or later will either be absorbed by Communist China or become an independent nation. So why should they bother to analyze a political system with such a precarious existence?<sup>232</sup>

Whether the international community of states that occupy the globe today have adopted a similar stance is unknown. What is known is that in many island jurisdictions caught in similar territorial conflicts;

where century-old disputes have stalled self-rule and autonomy; where the question of jurisdiction is an issue; where population groups have coalesced into ethnically homogenous populations; where calls for separation from legitimized governing authorities are the norm; where the identity and historical experiences have been denied even though the homeland has been reinvented over and over; or where the collective is more like an 'isopormorphic bonding' of people and place; where an island is geographically separate and distinct from the mainland; [the international community has intervened.]<sup>233</sup>



## CHAPTER 8

### SINGING THE SONG:

### REUNIFICATION

In order to facilitate a better understanding of the China-Taiwan conflict, it is important to recognize that the key to understanding mainland China's position in cross-strait relations is revealed in the subsequent declarations and events following the Japanese occupation and surrender of Taiwan at the end of the Second World War. Although the Chinese are quick to claim ownership of the island jurisdiction dating back to Chinese antiquity, the more prevalent arguments in cross-Strait relations today tend to focus on the original ceding of Taiwan by the Chinese to the Japanese in 1895, and similarly, the reverse exchange of territory as part of the Japanese settlement terms fifty years later. Definitely, the Chinese argue that the terms of the *Cairo Declaration*, agreed upon by the Allies during World War II in anticipation of a Japanese surrender, established a firm legal basis for including Taiwan and the Pescadores as a province of China.<sup>234</sup>

To briefly recap, the mainland Chinese maintain that when the collective meeting with leaders of the United States, Britain and China took place, the purpose was to devise an action plan that would not only shape the Asian Pacific after the Second World War but would ensure the prompt transfer of the Formosan jurisdiction to China as part of the impending Japanese surrender.<sup>235</sup>

When Japan announced its unconditional surrender on August 15, 1945, military officials from the Republic of China, based in mainland Peking at the time were dispatched to Taiwan to assist with the transfer of power. The jurisdictional land base in question included all of the territories that were previously ceded to Japan in perpetuity in 1895, or as the PRC continues to allege, all of the territories that Japan had ‘stolen’ from them such as Manchuria, Formosa and the Pescadores.<sup>236</sup>

Further, mainland China argues that, collectively, the *Cairo Declaration* in 1943, agreed upon by the British, the United States and China; the *Potsdam Declaration* in 1945, in which the Soviet Union also signed on as a signatory; *Resolution 2758* of the United Nations General Assembly adopted in 1971 and the Communiqués establishing diplomatic relations between the political powers offered all the evidence necessary to prove that there is only “one-China” and that Taiwan is an integral part of that China.<sup>237</sup> Even today, the argument is a central component of cross-Strait negotiations.

Taiwan has been an inseparable part of China’s territory since antiquity. Both the 1943 Cairo Declaration and the 1945 Potsdam Declaration have reaffirmed in unequivocal terms China’s sovereignty over Taiwan as a matter of international law. There is but ‘one-China’ in the world and the Government of the People’s Republic of China is the sole, legal government representing the whole of China. This is an objective reality that cannot be changed by anybody. To date more than 160 countries in the world have diplomatic relations with China. They all recognize the ‘one-China’ principle, and they all recognize that Taiwan is a part of China.<sup>238</sup>

Whether the Japanese recognized the ‘one-China’ principle at the time is irrelevant for as soon as Japan had signed the *Instrument of Surrender* on September 2, 1945, the Chinese declared this Act as further

evidence of the Japanese acceptance of the contents contained within the various declarations.<sup>239</sup>

Unbeknownst to the Chinese however, the American intent at the time of the drafting of the Cairo Declaration was twofold; first, the arrangement made at Cairo was intended to satisfy Chinese claims that Taiwan was a “lost province;” and second, it would “establish a temporary Allied trusteeship between the Chinese, British and American authorities during which time the Formosans could prepare themselves for a plebiscite to determine their ultimate political fate.”<sup>240</sup> In turning Taiwan over to the Republic of China, it was clear that the United States was acting on the supposition that its post-war foreign policy of *containment* in Asia would be based on close cooperation with Chinese constituents on both sides of the Taiwan Strait. Americans were already aware of the strategic military importance of retaining Taiwan, but also recognized the dilemma the Taiwanese faced in attempting to secure a permanent separation and a destiny free from outside political interference.<sup>241</sup>

The second complexity for Formosans was that this change of political administration and governance from the Japanese oppressors to mainland Chinese occurred without any prior consultation or communication with Taiwanese islanders beforehand. Not only were the Taiwanese unprepared for this new occupation of their island, but much

to their disappointment, this new military regime under the Chinese was remarkably similar to the previous military regime under the Japanese.<sup>242</sup> The primary difference between the two powers was that the fifty years of 'efficient' Japanese colonial rule was replaced by armies of inefficient "bedraggled, undisciplined Nationalist garrison forces" who "ruthlessly, corruptly, and avariciously imposed its regime" on Taiwan.<sup>243</sup> In addition, as the threat by Mao Zedong's Communist forces against the Nationalist government in mainland Nanking heightened, the KMT were not about to tolerate further dissention and civil unrest among the Taiwanese islanders as well.<sup>244</sup>

In this context, Gold's description of the political scene in Taiwan after the Second World War is pertinent. His position is that Taiwan was "economically, politically and culturally yanked out of the Japanese orbit and appended to China in another colonial relationship" without warning, or without any opportunity to object.<sup>245</sup> By the late 1940s, the political situation had become so volatile and embroiled in conflict that it was not a change in government that the Formosans wanted, but rather "an end to the ruthless exploitation [of their island] by their Nationalist brothers."<sup>246</sup> Amidst the chaos, or perhaps more aptly put, in spite of the chaos, the Taiwanese still believed that there was an opportunity for Formosa to still become a recognized province of China. However, the volatile societal conditions on the island, coupled with the fact that many of the Governor's forces were corrupt, was at odds with that ambition.

By the time the Communists had seized control of mainland Peking in 1949, all of the best laid Allied plans were lost.<sup>247</sup> The Kuomintang Nationalists were forced to flee to Taiwan and attempt to govern mainland China from this island redoubt. Instead of Formosan islanders securing political representation that would serve the island's interests in the National Central Government at Nanking, millions of Taiwanese were immediately subjected to an economic and political system of monopolization and oppression.<sup>248</sup> For example, the Taiwanese experienced the first unprecedented rice shortage under the Nationalist regime. Not only did incidents such as this lead Taiwanese islanders to believe that Roosevelt, Churchill and Chiang "treated the island like a piece of real estate when formulating agreements concerning Taiwan" but that the analogy used in international circles was that the threesome went so far as to "divide up the bearskin before the bear was dead."<sup>249</sup> This was only the beginning.

Having taken over mainland China, the PRC was setting the foundation for the establishment of mainland China as a recognized contender and force within the international community.<sup>250</sup> For the Formosans, the best option, and perhaps the only option, given the emerging circumstances was continued American military support. But it was evident that even American support of Taiwan was wavering.

It was not until the Korean War that the United States took on a substantial role as Taiwan's protector

...signing a mutual defense pact, supplying Taiwan with aid and arms, and stationing significant forces on the island. This was the genesis of the Taiwan Question, as the United States, the United Nations, and most of the non-Communist world recognized the Republic of China as the official government of all China, withholding any sort of recognition from the PRC. As a result of this foreign policy position, there were two Chinas: the Republic of China located on Taiwan and the People's Republic of China, located on the mainland.<sup>251</sup>

Needless to say, this new situation offered few assurances toward reducing political tensions within the Asian region.

Following the split with the Soviet Union in the 1950s, mainland China formally legitimized their position, including the enactment of the Five Principles of Peaceful Coexistence.<sup>252</sup> In short, the Principles essentially supported the notion that sovereign nations should respect the political status of other nations and not interfere in their internal domestic affairs. However, in reality, what was really happening is that China was making every effort to undermine the right to self-determination doctrine, albeit subtly. The inference of course, was that Formosa belonged to China, and as such, no other international player or state had the right to



interfere with China-Taiwan relations. Fortunately for Taiwan, not all nations were on the same page.

In fact, when the terms and conditions of mainland China's position were relayed to Prime Minister Winston Churchill, one of the signatories to both the *Cairo* and *Potsdam Declarations*, he quickly rejected the argument. He stated quite adamantly that in fact the future of Taiwan was "now an international problem and the question of sovereignty was left undetermined by the Japanese peace treaty."<sup>253</sup> He reaffirmed that the *Cairo Declaration* was merely a statement of common purpose among Allied Forces, intended to establish a temporary Allied trusteeship between the Chinese, British and American authorities while political decisions concerning Taiwan's future could be rendered.<sup>254</sup>

For international players conscious of the repercussions of an unresolved China-Taiwan conflict, Britain's stance may have seemed somewhat ambiguous, particularly since the dialogue concerning the *Cairo Declaration* was taking place at the same time that the United Kingdom was endorsing an open invitation to mainland Chinese Communists to participate in the United Nations Security Council.<sup>255</sup> To Churchill however, this offer simply signified his government's sincere commitment toward seeking a peaceful solution for cross-Straits relations.<sup>256</sup> Again, the Allied powers believed that it was in the best interests of the international community to keep Communist China on-side, particularly given the ambiguity of foreign relations in various regions of the world following the

Second World War. Despite the uncertainty of Formosa's future, the Taiwanese retained their faith in America's sponsorship and support of the island jurisdiction in world affairs, and the longstanding promise from the United States to protect Formosa in times of conflict. The Taiwanese argued that

...prior to the Nationalist government accepting the instruments of surrender on behalf of Allied Forces at the end of the Second World War, Taiwan was a Japanese colony. [Since] the *San Francisco Peace Treaty* did not clarify Taiwan's sovereignty, and [since] the United States, the United Kingdom, France and other Allied countries had not yet decided upon Taiwan's sovereignty, Taiwan's sovereignty should be decided upon in accordance with [the international legal principle] of self determination and by the people of Taiwan themselves. No country [could] decide on this for them.<sup>257</sup>

Chen later expanded on the Allied position by stating that

... the shared expectations of the parties to the *Peace Treaty* [ending World War II] were that Taiwan's legal status, though temporarily left undetermined, would be decided at an opportune time in accord with the principles of the *United Nations Charter* – notably the principles of self-determination of peoples and non-use of force in settling territorial or other disputes.<sup>258</sup>

Indeed, Taiwan still claims that General Assembly *Resolution 2758*, the *Restoration of the Lawful Rights of the People's Republic of China* in the United Nations, had nothing to do with the sovereignty and self-rule of Formosa.<sup>259</sup> In the Taiwanese view, China's claim that Taiwan is an integral part of China "was nothing more than a modern edition of the *Munich Agreement of 1938* which betrayed Czechoslovakia for benefits."<sup>260</sup> Likewise, the *Cairo Declaration* and the *Potsdam Proclamation* did not intend to hand over Taiwan to China as mainland China claimed but rather, was a good will gesture to establish a working relationship between each of the Allied stakeholders.<sup>261</sup>

Nonetheless, the People's Republic of China was driven to establish their authority and 'one-China' agenda within the international community. In this context, China was able to convince the global community, even then, that the ROC Nationalists on Taiwan were an

illegitimate and oppressive government. Indeed, the Nationalist garrison forces were so ‘undisciplined’ in their actions against Formosan islanders that some international players, including mainland China, compared the situation in Taiwan in the 1950s to that of the situation in Fukien under Chen Yi in the 1930s.<sup>262</sup> It was clear then by the 1970s that the integrity and reputation of the ROC government in Taiwan was in serious jeopardy.

By 1972, many of the players in the international community were not the only states to exchange allegiances with the PRC. On February 28, President Richard Nixon, in a rare visit by a United States President to mainland China, acknowledged the ‘one-China-two-system’ principle in the *Shanghai Communiqué*, a move that ultimately led to the People’s Republic of China in Beijing to gain the much coveted seat in the United Nations.<sup>263</sup> As a result, the previously recognized Republic of China lost all rights and privileges associated with being a founding member of the United Nations organization and a member of the Security Council, and similarly, all credibility as a legitimate government.<sup>264</sup>

Over time, Taiwan has struggled with the quest for recognition, and to regain the international status the ROC had held since 1949. The dilemma for the Western nations, ever cognizant of international relations and the desire for peace in the post cold war era, hinged on finding a satisfactory resolution for the China-Taiwan conflict. The question at a global level was how to find a reconcilable solution for the existence of 'two Chinas' when both sides of the Taiwan Strait still could only conceive of one.

The other striking elements to surface was mainland China's increasing use of rhetoric that often produced conflicting political views and 'double-speak' perspectives, and similarly, an uncanny ability to sit on the fence.

Strangely, the fears of the Western world that the newly admitted PRC, emerging from the Cultural Revolution, would prove a disruptive force in that international body never materialized. Despite bloody turmoil at home, the PRC remained a rather cautious player on the international stage.

True, it stood with fellow underdeveloped nations on a wide range of issues, from the Law of the Sea to South Africa; but it never really became a threat to established institutions. Circumspect diplomacy rather than international grandstanding became the PRC's accustomed style.

This behavior has not meant that PRC has embraced the international legal order it had earlier denounced and rejected. Indeed, in theoretical writings and in certain specific cases, it has continued to take a strong stand against many international norms.

Yet, the PRC has become rather pragmatic about its positions, realizing that it can face down the 'rules' of international law as easily by ignoring them as by taking principled stands. Its actions with respect to principles it feels strongly about continue, however, to demonstrate significant divergence from the norm.<sup>265</sup>

On a global stage then, the PRC's words either often outweigh their actions or the actions, particularly with regard to the support of democratic ideals, fail to materialize. While there remain numerous United Nations resolutions that have not been ratified by China, it is clear that when it comes to issues that matter, the PRC has demonstrated a capacity to act swiftly and aggressively. In Beijing's world, for example, Taiwan matters.

As such, mainland authorities have revealed a strong propensity to hold their ground on any dispute involving Taiwan. In other words, any negotiations that might resolve the cross-Strait conflict can only begin after Taiwan has agreed to the one-China principle. Until then, any arguments made in favor of Taiwan, even those put forward by the international community, whether legal or otherwise, are not welcome.

## CHAPTER 9

### MEETING OF MINDS

Under the current circumstances, whereby nations desire to access and benefit from China's up-and-coming economy, it is easy to understand how China's position, pragmatic or otherwise, dominates much of the prevailing opinions that have emerged in the international realm. Many of the camps advocate in defense of the Beijing reunification position, and for the most part, at least conceptually, fail to consider alternative viewpoints beyond the one-China perspective. It is for this reason that the counter arguments that follow offer a welcome balance for understanding the complexities surrounding the Taiwan Question.

The first camp, as alluded to many times already and advocated zealously by mainland Chinese officials, is that, without question, Taiwan is a legitimate province of China. As such, mainland China maintains the right to undermine and negate the Republic of China's status as an independent, sovereign state in the international community, and to act as the one and only sovereign authority for Taiwan.<sup>266</sup>

The second opinion emerging from Beijing adopts the position that Taiwan is an inalienable part of mainland China on the basis that almost ninety-eight per cent of the people living in Taiwan are ethnic Han Chinese

and are technically no different in race, ethnic or cultural composition from the permanent population of any other province or political subdivision on the mainland.<sup>267</sup> This national makeup within the island constituency, according to Beijing, only serves as further evidence that the requirement of a '*defined territory*', as it has been recognized in international law is therefore defeated.<sup>268</sup> Jianming Shen agrees. The territory which constitutes Taiwan, while admittedly administered by the authorities in Taiwan, is actually owned by China, and thus legitimately remains under the ownership of the PRC until the Chinese government in Beijing is willing to abandon its claim to sovereignty.<sup>269</sup>

Furthermore, Shen maintains that the international community should not be concerned about Taiwan's de facto exercise and claims of authority over the island jurisdiction. The fact that Taiwan has not become an internationally recognized territory by now should prove once again that Taiwan does not meet the criterion for statehood. Shen concludes that within these contexts, only the PRC government holds absolute sovereignty over Taiwan and therefore, solely retains the legal competence to enter into international relations with other nations.<sup>270</sup>

The third camp Beijing focuses on is the jurisdictional question that emerges from the decades-old claim that the ROC Nationalists, governing from their redoubt on Taiwan were the legitimate government for all of



China. Thankfully, for the most part, this position is a moot point, since the Republic of China no longer takes that stance.

But what if, as Taiwan supporters argue the jurisdictional “test were altered to support a statehood of a Republic of Taiwan” that did not include the territory known as mainland China?<sup>271</sup> The foregoing notwithstanding, then yes, undoubtedly, Taiwan would meet the jurisdictional criteria. Carolan takes the territorial argument one step further. He states that Taiwan’s clearly defined geographical borders, coupled with 23 million residents on the various islands, and the jurisdiction’s ability to enter into agreements with other nations and states offers more than sufficient proof that Taiwan exceeds the legal criteria of statehood in its own right. Likewise, the ROC government meets the principle of ‘*effectiveness*’, which entitles a state to incorporate territory if it controls that territory for a significant period of time.<sup>272</sup>

He disputes the PRC argument that earlier ROC territorial claims that extended to all of China diminish the fact that the ROC actually governed Taiwan since the early 1940s. He maintains that this is so because the Republic of China was established as an independent sovereign state in 1912, long before the PRC was founded on the mainland in 1949. Besides, throughout its history, the People’s Republic of China has never had jurisdiction over the Taiwan area, not even for a day. In this regard, the ROC on Taiwan has never been mainland China’s local government, nor has

Taiwan been privy to the benefits (either economic or social) that such an integral and close political association would render.

Clearly then, from Taiwan's perspective, acceptance of erroneous beliefs such as the one-China concept only serves

... to create further misconceptions in the international community and subsequent difficulties for Taiwan in its economic development, international relations, and even cross-Straits communications. It is, therefore, important for the world to recognize the existence of the Republic of China on Taiwan, as an independent and sovereign state since its founding in 1912.<sup>273</sup>

Therefore, it is for all of the above arguments and counterarguments that a "newer thinking of Taiwan, and its de facto status is seeking possible formalization outside of the current paradigm of statehood."<sup>274</sup> To this end, Yang "proposes an emerging idea of sovereignty, that of democratic sovereignty, [a departure somewhat] from both absolute sovereignty and popular sovereignty in that he lists as requirements democratic governance, a constitutional legal system, and sovereign immunity among other qualifications."<sup>275</sup> In this sense, the proposal is very similar to the characteristics and features already prevalent in island territories.

Be it linguistic, religious or social, the relatively clear boundaries provided by geography often confers upon people living on islands. Small islands

[tend] to be places imbued with democracy and democratic procedures. They tend to be relatively homogeneous, facilitating among their inhabitants a high degree of sympathetic identification with each other and a greater effort to feel others out. Their citizens have greater opportunity to participate in choosing their leaders and in decision-making; there are fewer layers of officialdom and open channels of communication exist between those who govern and those who are governed, resulting in more accountability and responsiveness on the part of governments.<sup>276</sup>

Certainly, the success of the Taiwanese to build a democratic society in the face of competing claims over its sovereignty, where constitutional freedoms are cherished and the will of the people is a priority, is evident from the fact that the islanders have transcended the major social and cultural differences between those whose ancestors were indigenous Aboriginal inhabitants of the island, the early immigrants who came to Taiwan from China and the most recent immigrants. Taiwan has actively enhanced its economic position, finding reassurance in two strong pillars of support: the people of Taiwan, both Han and Aborigines and the ever expanding democracy of Taiwan. Further, Taiwan has an entrenched constitutional legal system and exhibits sovereign characteristics in its relations with other nations around the globe.

Consequently, if the People's Republic of China is to succeed in its objective to win over the Taiwanese, then the mainland needs to embrace

democratic ideals so that at the very least China and Taiwan could parley from the same script. Similarly, mainland China needs to recognize that the best model for the social, economic and political reforms needed in mainland Chinese society can be found in none other than Taiwan. In other words, Taiwan, as an island jurisdiction, can serve as a microcosmic paradigm for China.<sup>277</sup>

Until then and in the interim, if the rhetoric and the actions of the PRC continue to allow the Taiwanese to expand and develop its '*current nameless status*' within the international community, that '*nameless*' status in and of itself seems likely to acquire an increasing measure of legitimacy. Why not? So far nothing else has captured the attention of the global community.

## CHAPTER 10

### CRITICAL PARADIGMS: TESTING THE PREVAILING WINDS

This *nameless* status notwithstanding, Taiwan is exceptional in its determination as an island jurisdiction to retain what it already has. Certainly, the history of the relationship between Taiwan and China shows a strong inclination by the Taiwanese to achieve political and economic independence from the mainland. This, in spite of China's determination to reclaim Taiwan under its reunification policy. Ironically, from an island studies perspective, the Taiwanese' aspirations for independence and state recognition goes against the current norm of island jurisdictions. Indeed, many non-sovereign territories, including the few remnants of colonial islands that remain, are opting for an alternative form of governance to achieve their objectives. As Baldacchino points out, "there hardly appears to be any sentiment for independence among non-sovereign island territories today."<sup>278</sup> East Timor, for example, was the only country to struggle and obtain independence over the last two decades. Other islands, including "the Dutch Antilles (1993 and 1994), Puerto Rico (1993), the U.S. Virgin Islands (1993) and Bermuda (1993) have all rejected independence by huge margins."<sup>279</sup>

In its place, many island territories have decided to pursue some form of sub-national jurisdiction arrangement with their respective mainland counterpart rather than sovereignty, opting instead for a “degree of administrative advantage.”<sup>280</sup> There are several explanations for this phenomenon. First, there are a number of economic and social advantages for islands who maintain a political affiliation with the mainland equivalent.

These benefits include free trade with (and export preference from) the parent country, social welfare assistance, ready access to external capital through special tax concessions, availability of external labor markets through migration, aid-financed infrastructure and communications, higher quality health and educational systems, natural disaster relief, and provision of external defense cost.<sup>281</sup>

Further, within such a relationship, the island is able to use its isolated geographic position as a form of jurisdictional leverage, influencing the larger mainland power to provide the island territory with a special jurisdictional status. As a result, islands are able to enjoy “the best of both worlds.”<sup>282</sup> To this end

... sovereignty and self-determination do not appear to be any longer the obvious trajectories of peoples who see themselves as dispossessed political entities or at the losing end of federalist developments. The articulation of nationalism is becoming jurisdictional but not necessarily sovereign.<sup>283</sup>

It is for these reasons and more, that the current political affiliations between islands and mainland authorities include varying degrees of ‘combined autonomy,’ ‘shared jurisdictions’ and ‘political partnerships.’<sup>284</sup> Rather than an island pursuing independence, and thus assuming full responsibility for its own affairs, many small islands today are “carving out political niches where geography facilitates action while at the same time [circumscribes] the territorial scope of any granted power and privileges.”<sup>285</sup>

Certainly, at a time when “globalization and trade liberalization pose serious challenges to the economic and social stability” of many countries worldwide, small islands, with limited resources and relatively small economies could readily be reduced to the level of a small “village with very finite resources.”<sup>286</sup>

In this context then, as attested to by McElroy and Mahoney, the “political affiliation [between an island and mainland] grants substantial economic advantages to small, non-sovereign, island units” in addition to providing the island jurisdiction with “an ample dose of jurisdictional prerogative” and “administrative autonomy.”<sup>287</sup> As well, it would appear that various

... forms of political relations which combine autonomy [read self-rule] and partnership [read shared-rule], including the following five categories: constitutionally centralized unions; constitutionally decentralized unions; federations; federacies (mainly ex-colonial associations) – dissolvable by

mutual consent; and associated states –  
dissolvable unilaterally

... would certainly offer an abundance of advantages for islands to consider. This may explain why social scientists suggest that, “fortune has smiled on islands, and frequently given them, because of their distinct and convenient geography, correspondingly distinct jurisdictional personality.”<sup>288</sup>

In complete contrast, mounting evidence suggests that Taiwan can, in many ways, at least in terms of the island studies discipline, be likened to the analogy of trying to force a square peg into a round hole. Although admittedly Taiwan is geographically separated from the mainland, the island jurisdiction falls outside of the usual political and constitutional entanglements linked to island territories.

Unquestionably, in terms of jurisdiction and authority, Taiwan is not a constitutionally centralized union like New Zealand, St. Vincent and the Grenadines, or Trinidad and Tobago. Nor can the island be considered part of a constitutionally decentralized union or ‘autonomy within a mainland’ like France’s Corsica, French Polynesia, New Caledonia, Wallis and Futana. Taiwan is not a part of a recognized federation, although mainland China may wish it to be, nor is the island a federacy or associated state like the Cook Islands’ relationship with New Zealand.<sup>289</sup>

Second, Taiwan does not “enjoy and deploy sub-national jurisdictional leverage” as a tool for “the extraction of larger fiscal



transfers or rents from benevolent sponsors.”<sup>290</sup> In contrast, the island jurisdiction is one of the most economically viable democracies in the world. As alluded to earlier, Taiwan, with a population of nearly 23 million people, has transcended many of the economic challenges faced by other island jurisdictions in a relatively short time. Needless to say, Taiwan’s strong record of economic development does not include looking for monetary handouts and remittances from the mainland.

Likewise, Taiwan has not played the sovereignty card as a ploy “for increased constitutional discretion, while notionally remaining a sub-national jurisdiction.”<sup>291</sup> If anything, the “Taiwanese have [repeatedly] risked the wrath of the mainland and the prospect of a deadly military conflict, promised as retribution if they step beyond the guidelines the PRC leadership has laid down as a deterrent.”<sup>292</sup> In this sense, Beijing has always been committed to the use of military force against Taiwan in the event that independence is declared. Although admittedly, much of Taiwan’s ability to freely govern itself relies on the support of the United States, Beijing has never renounced the use of excessive military force against Taiwan.

Still, the fact that the island jurisdiction, in the face of a potential military confrontation with the mainland, continues to provide a justification for separation of the island jurisdiction from the alleged parent country to any state that will listen without confirmed assurances that the United States government would provide military support if

necessary, only serves as further evidence that Taiwan is not willing to accept mainland China's rhetoric as gospel. It also suggests that maximizing jurisdictional benefits in negotiations, a tool that has had relative success in other island jurisdictions, is not necessarily applicable to all island jurisdictions. In fact, in situations such as the Taiwan-China conflict, Bert argues that whatever position Taiwan takes with regard to jurisdictional leverage would be a moot point primarily because

China still thinks in 19<sup>th</sup> century terms of territory, sovereignty and irredentist causes. The most pressing part of its national foreign policy agenda includes the recovery of Taiwan and realization of its claims on the Spratly Islands in the South China Sea, which it claims in its entirety.<sup>293</sup>

In essence then, Beijing still believes that the provinces, including Taiwan owes the motherland obeisance, an assertion that goes far beyond an island and mainland playing jurisdictional games. Indeed, the reason China is building a military war machine like no other is, as Bert points out, a reflection of China's continuing determination "to become a regionally dominant power, if not a major global force."<sup>294</sup>

In this circumstance, and contrary to the assumption that island territories are able to make the most of creative policy initiatives to achieve its means, mainland Beijing holds the upper hand. Indeed, as Sheng Lijun points out, Beijing is willing to go to great lengths to impose its one-China policy on the Taiwanese island jurisdiction. These

measures include the increased application of military pressure on many fronts, fostering newly-formed allegiances “among anti-independence forces in Taiwan; expanding dialogue with all Taiwanese political parties outside the DPP; exerting greater efforts to win over the people; [while] sticking firmly to the ‘one-China’ strategy.”<sup>295</sup> In this way, Beijing is able to apply

... both its economic and political pincers on Taipei. If Taipei accepts the ‘one China’ principle that Beijing demands, the pro-independence force, as well as the ruling DPP, will collapse. If it rejects it, Beijing can use the ‘one-China’ appeal to divide Taiwan politics, and use the rejection to justify maintaining tension across the Taiwan Strait by, for example, refusing to resume the cross-strait dialogue, holding military exercises, and denouncing Taiwan’s leaders for independence. Tension at this moment serves Beijing’s interests to divide Taiwan’s politics and weaken international and domestic confidence on Taiwan’s economy.<sup>296</sup>

Further, by exerting pressure and resorting to a “united front strategy” Beijing does not give the Taiwanese Chen government time to reflect. Instead, the PRC can continue to

... to intensify the current political conflict in Taiwan so as to weaken, divide and even paralyze the DPP. The DPP itself, as Beijing hopes, may be forced to evolve in such a way that contributes to the marginalization of the Taiwan independence movement. If this happens, there is no need for China to use force.

[[Meanwhile, Beijing continues to place] calculated pressure (on the DPP) and [while offering concessions to the political opposition in Taipei.] There are several reasons for this projection. First, China wants to limit Chen's political space. Second, it hopes to confuse the DPP (and the United States as well) about, and keep it further away from, Beijing's real bottom-lines and vulnerabilities. Third, China seeks to divide the pro-independence forces and help foster a coalition between pro-reunification forces.

Next, Beijing wants to diminish the prospect of the DPP winning the coming legislative and local elections so that Chen will be faced, for the rest of his term, with a stern structural constraint – domination of the legislative by the opposition. Fifth, China hopes to emasculate Chen's will and capability to push for independence by confronting him with *neiwai jiaokun* (internal trouble and external pressure).

China seems to have the confidence that time is on its side and it can eventually solve the Taiwan problem by applying these two strong economic and political pincers, without having to actually use force. Its military build-up is [allegedly for deterrence only].<sup>297</sup>

The question here is not whether Taiwan can use its geographically separated position as a form of jurisdictional leverage but whether the Taiwanese can continue to refute China's tactics while garnering support for their jurisdictional dilemma globally. Furthermore, in the face of continued controversy, both internally and internationally, do the Taiwanese people still believe that the only winning strategy for

resolving the island's current state of limbo is the pursuit of independence and the right to determine their own destiny? Certainly, recent poll results suggest that China's unrelenting demands have not persuaded the Taiwanese to accept reunification as the Taiwan Strait ideal. Indeed, polls show that 87.4% of the Taiwanese are adamantly opposed to China's claim that Taiwan is an integral part of the mainland jurisdiction, and that 67.8% of those interviewed believe that the Republic of China, Taiwan's official designation, is a sovereign state independent of the PRC.<sup>298</sup>

The challenge for social scientists studying islands as a discipline then, in view of the diversity of lessons experienced by Taiwan, is to recognize that the standardized 'one-size-fits-all' category does not apply. Yes, there are commonalities among islands, but as in most societies in a world of comparison, contrast, and complexity, small islands constitute societies in transition that are continually evolving, continually building strong communities, and continually stressing their own certain sense of place. In this regard, Taiwan is a prime example.

# CHAPTER 11

## COMPETING FOR AUTHENTICITY AND RECOGNITION

Whether Taiwan's assertion of its political status eventually results in the right to declare independence under international law remains to be seen. Certainly, the competing claims of sovereignty over Taiwan between the People's Republic of China and the Republic of China, transpiring for more than half a century, has helped to explain why Taiwan cannot simply be presented as a classic case of people struggling for self-determination.<sup>299</sup>

Although admittedly, "Wilson's public crusade" after the First World War helped to fuse the self-determination ideology to progressive thinking, including the elevation and promotion of democratic principles as an ideal, "self-determination's legal status has advanced little beyond that of an inspired principle."<sup>300</sup> As Moore points out, the right to self-determination is virtually non-existent in international legal consensus and state practice "outside of the colonial context."<sup>301</sup>

Still, there is some evidence that

... self-determination in a separate state is necessary where there is an independent sovereignty, or where, as the result of a combination of historical influences, the desire for political independence has reached such a

degree of intensity that it is not to be satisfied even by the removal of all the grievances from which in the beginning it may have sprung. Self-determination comes into play here not as the first, but as the last step, not as a panacea for all national dissatisfactions, but as the remedy to be administered in *extremis* when all else has failed.<sup>302</sup>

In this context, the fact that the international community has not reacted to the situation Taiwan faces: the political rhetoric, the escalating military threats and the inability of the two cross-Strait political parties to negotiate a satisfactory resolution, is suspect.<sup>303</sup>

Certainly, the combined fact that the PRC has never ruled Taiwan, not even for a day, and yet, refuses to relinquish its alleged dictatorial power over the Taiwanese, remaining “belligerent and hegemonic, relentless in its threatening attitude toward Taiwan,” offers an acceptable rationale as to why the Taiwanese are less than willing to accede to the motherland’s reunification policy.<sup>304</sup> Neither has China ingratiated Taiwanese allegiance to the motherland by “augmenting the tools of repression” as a means of “keeping the lid on the pressure cooker.”<sup>305</sup>

By contrast, Taiwan continues to experience unprecedented political, social and cultural changes emanating from its democratization and liberalization. In fact, over the course of time, and most particularly in recent years, Taiwan has shown a continued readiness to cooperate and negotiate with the mainland, particularly in matters relating to communications and inter-relations. Certainly, the record shows that

recent Taiwanese governments, in succession, have advanced specific proposals including summit meetings to discuss joint international projects, the building of an offshore transportation center, cultural exchanges, agricultural cooperative efforts, and reform initiatives regarding state-run enterprises, however, all to no avail.<sup>306</sup> Almost none of these proposals have received anything close to a positive response from the PRC. Throughout, while Taiwan's primary public policy focus is devoted to improving diplomatic relations with the mainland, PRC officials continue to remain confrontational toward Taiwan. Further, as President Chen points out, "rather than responding to our goodwill with reciprocity, Communist China has continually isolated Taiwan in the international community by quashing our space for international activities."<sup>307</sup>

Additionally, even though Taiwan meets the legal criteria of an autonomous state – a permanent population, a defined territory, a functioning government, and the capacity to enter into relations with other states, and similarly meets the established prerequisites for self-determination and sovereign statehood – the island jurisdiction has failed to influence international opinion.<sup>308</sup>

As well, the post-war assumption that "shared economic and cultural development [of dual territories] along common paths would of necessity lead to a convergence" has also failed.<sup>309</sup> Likewise, after years of lobbying, legislative reforms, international campaigning for global



recognition as a de facto state, “possessing one of the worlds most vibrant and stable economies, a maturing democratic government, and a highly sophisticated and skilled population,” Taiwan is still no further ahead. Even other island jurisdictions such as Malaysia, the Philippines, Sri Lanka, Indonesia and East Timor gained their independence following colonial occupation by the British, Dutch, French and Portuguese.<sup>310</sup> And yet, Taiwan’s quest for the right to determine its own future remains in limbo.

In spite of all of the theoretical and ideological arguments that confirm Taiwan’s right to govern its own political affairs, including the fact that the ROC has been the only official government of Taiwan since 1949, Taiwan’s lack of recognition as an independent, sovereign state is more a reflection of the international community’s increasing commitment to China’s influence and territorial assumption rather than the inability of the Taiwanese to present a credible sovereignty case.

In this regard, to a great extent, the international community must share some of the responsibility for the current state of relations in the Taiwan Strait. Clearly, “the reigning paradigm of territorially-defined nation states [that] excluded Taiwan from the playing field when the People’s Republic of China was recognized as the regime sovereign over China” needs to be revisited.<sup>311</sup> Also, there needs to be an in-depth review of the subsequent military actions of Beijing since that time, actions that include the PRC unilaterally conspiring to force the

Taiwanese to accept the one-China formula while refusing to acknowledge the people of Taiwan as vested masters of their homeland.

Unfortunately, it was not until the most recent legal maneuvering by the PRC, resulting in the passing of an anti-secession, anti-separation bill aimed specifically at Taiwan that the cross-Strait conflict came to the forefront of current events.

The difficulty for the world community attempting to reconcile the two parties at this point is two-fold. First, because Taiwan has only recently begun in the last two decades to make a case for independence as a sovereign entity, many of the international players unfamiliar with its colonial past believe that Taiwan does indeed belong to mainland China. In this regard, any political scenario that suggests Taiwan is independent and sovereign, at least from the vantage point of Beijing, would be interpreted as secession from mainland China and not liberation from an aggressive, belligerent colonial master. Moreover, since the doctrine of territorial '*integrity*' trumps secession, regardless of reason or motive by the peoples involved, the door has been opened for China to proclaim to the world that Taiwan is withdrawing from "an established internationally recognized state to create a new sovereign state" without having to legitimize its position.

In this context, the PRC assertion that such a move by Taiwan would result in China's '*political disintegration*' is contrary to what most 21<sup>st</sup> century nations, would find acceptable today.<sup>312</sup> That is, according to

Bartkus, a prevailing opinion that holds secession to be “irrational as it entails the ostensible sacrifice of economic opportunities and the endurance of social upheaval.”<sup>313</sup> Similarly, as Moore states,

... secessionist struggles are frequently assessed from an ethical perspective, in terms of either justice based or autonomy based arguments. Justice theorists argue that there is a right to secede only when the secessionist group is victim of injustice. The right to secede is conceived as a remedial right only, as a right which a group may have to remedy an injustice done to them. Autonomy based arguments, by contrast, typically ground the right to secede in an argument against the importance of collective identity to individual self-respect and the exercise of autonomy. On this conception, the right to secede is a primary right, which a group has regardless of whether or not it can claim to be unjustly treated. However, both ways of framing the issue ... ignore the vital territorial dimension of many secessionist claims.<sup>314</sup>

This is the point that mainland China reiterates. In fighting to preserve and prolong their vision of a Chinese Empire dating back to antiquity, the PRC argues that self-determination movements can not act in isolation from the original geographical territory. The group arguing for self-determination must do so with due regard for agreed to international principles such as territorial integrity, an understanding that recognizes a commitment by superpowers to “uphold existing state boundaries ... boundaries that are viewed as permanent and not negotiable.”

This leads to the second point. “Because of the [recognized] coercive powers which the state can employ in these [secession] disputes, secessionist struggles frequently become violent and protracted ... causing secessionist conflicts to be among the most bitter.”<sup>315</sup> Interpreted, this prevailing attitude again gives China the advantage, primarily because the world perception is that Taiwan in pursuing recognition of their already established independence since 1949 is the source of this relatively new, contentious cross-Strait issue.

How far China will [go to] carry out its [objective of unifying Taiwan with the motherland] depends how it reads the change in United States-China strategy. At present, [the Beijing government] is undertaking ‘soft-nail’ tactics, which is best, described in Chinese as *mianli cangzhen* (hide needles in cotton.)

[The People’s Republic of China continues to] believe that to go all out to protect Taiwan is against US fundamental national interests. The Bush administration, [despite its refusal to commit military forces,] only wants to use Taiwan to delay China’s modernization process.

[The PRC assumes that the United States will not] pull itself, together with Taiwan, into a massive war of mutual destruction with China. Both sides are aware that [if] there is a war in the Taiwan Strait, China may not follow the Iraq and Yugoslav examples [of confining] the war in and around the Strait.<sup>316</sup>

Perhaps, from this perspective, the research shows that Taiwan is what it is “because of, rather than in spite of the tragic events of the past, [and it is for this reason] that Taiwan has been able to nurture a unique culture, rich in diversity [and that] its people have acquired a flexibility and adaptability with which to cope with adversity.”<sup>317</sup>

## CHAPTER 12

### EVERLASTING SEARCH FOR SOLUTIONS

Most certainly, at this point in 2006, it is difficult to understand why conventional wisdom in the international community has failed to prevail in the China-Taiwan divergence, or that the differing views held by both sides of the Taiwan Strait has not led to the negotiation of a satisfactory compromise before now. Certainly, one of the most remarkable features of the cross-Strait conflict is having a primarily Chinese population in both China and Taiwan and yet, the pressing issues, the escalating political conflict and the ongoing oratory that has evolved over the last half of a century remains largely unresolved. One would have assumed that at some point the legal and historical empirical evidence would have sufficed. Or, at the very least a compromise could have been arranged.

Not surprisingly, the discourse leads back to the collective historical experiences of the Taiwanese and how they relate to the various interpretations and established practices in the international community. Certainly, in terms of transitions, the Taiwanese have many experiences to report: a continued political separation from mainland China that extends beyond defined geographical boundaries; repeated civil riots and insurgencies against colonial masters by native and Han Taiwanese over

a number of centuries; the aborted attempt by islanders to create a sovereign Republic in 1895; fifty years of Japanese rule that resulted in numerous atrocities and deaths, essentially rendering the Taiwanese as victims of injustice without recourse; the established tradition of independent sovereignty from 1949 onward; the continued combination of aggressive actions and unjustified rhetoric from a mainland counterpart that sees no shame in pointing nine hundred missiles or more at Taiwan; and a political situation whereby the PRC “grossly and systematically ignore” the constitutional and legal rights of the Taiwanese.<sup>318</sup>

Further, and for the record again, Taiwan is not a newly emancipated governing entity. Likewise, the Taiwanese have a right to be recognized as the legitimate governing authority in the territory they have occupied for over fifty years if they so desire. The fact that the Republic of China recognized as Taiwan has never been governed by the People’s Republic of China is a crucial component in finding a satisfactory resolution. In fact, it remains nonsensical to the Taiwanese to declare the island independent from Beijing when the island has never been an integral part of the PRC.

Still, in spite of being “victims of systematic discrimination [and] exploitation, [a situation that] will not end as long as the [Taiwanese] conform to China’s reunification wishes, the Taiwanese continue to push forward.

Therefore, in this regard, the China-Taiwan conflict is not about whether Taiwan is a recognized political community resident within a defined, geographic territory, or whether the Taiwanese have established a Constitution and legal structure for their constituents. Neither is the conflict about the necessity to remedy a historical injustice, or likewise, about a partition of geographic territory. Indeed, the conflict is not even about a stable community that has historically evolved and sustained itself over a period of time or, about an entity that has established trade relations with other states. In fact, to some extent, the conflict is not even about independence. Rather, the accumulative evidence shows that this cross-Strait conflict between China and Taiwan is about the “conceptual link between democracy and self-determination” that permitted the Taiwanese to fully recognize their political aspirations and liberties in the first place.<sup>319</sup>

Whether Taiwan can survive independently may ultimately depend on its ability to [continue to] pursue its goals while not embarrassing Beijing’s moderates or giving its hard-liners a reason to go to war. But a free-speech democracy with an independent and assertive populace is not a fertile ground for subtle diplomacy. Taiwan’s strongest card is the enormous cost to China, economic and political, that a military conquest of the island would



involve. Still, wars have been started  
for lesser causes than national  
reunification.<sup>320</sup>

With both sides still at a critical juncture, whatever decision the Taiwanese make with regard to their future: whether it is to preserve the status quo of de facto independence; whether it is a push to achieve formal independence; or whether it is to seek some kind of reconciliation with China, the delicate balancing act of keeping peace in the Taiwan Strait and the question of who controls Taiwan still remains unresolved.<sup>321</sup>

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