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# Taiwan Re-Recognized: A Model for Taiwan's Future Global Status

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# Taiwan Re-recognized: A Model for Taiwan's Future Global Status

## I. INTRODUCTION

More than a decade has passed since the United States officially recognized the People's Republic of China (PRC) as the legitimate government of China. In 1979, American policy makers concluded that recognizing the PRC was in the United States' best interest. At that time, the United States saw improving relations with China as an effective means of countering Soviet expansionism. The United States also predicted that improved relations with Beijing would win access to China's untapped market of over one billion consumers.

In recognizing the PRC, however, the United States derecognized its long time faithful ally—the Republic of China on Taiwan (ROC)—which also claims to be China's legitimate government. While derecognition did not materially alter U.S.-Taiwan relations, it did spur Taiwan's loss of status within the global community. Taiwan lost representation in most of the world's principal international structures, including the World Bank, International Monetary Fund, and General Agreement on Tariffs and Trade (GATT). Furthermore, with the exception of several Third World countries dependent upon Taiwan's economic assistance, most countries followed the United States in breaking off official ties with Taiwan.<sup>1</sup>

Today, Asia is different than it was when the United States normalized relations with the PRC. The Soviet Union is no longer perceived as the region's expansionist nemesis. Moreover, U.S. trade with China has not lived up to expectations,

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1. J. COPPER, *TAIWAN: NATION-STATE OR PROVINCE?* 112-13 (1990). Prior to 1979, Taiwan had already lost its seat at the United Nations and an increasing number of countries were shifting ties to Beijing. After the United States recognized Beijing in 1979, that once small stream of abandoning countries and international organizations became a flood. *See id.* *See also* Kau, *Taiwan and Beijing's Campaigns for Unification*, in *TAIWAN IN A TIME OF TRANSITION* 175, 187-90 (H. Feldman, M. Kau & I. Kim eds. 1988) (listing countries which maintain diplomatic relations with the ROC and the PRC).

and hopes for the timely democratization of China were virtually crushed by the tanks at Tienanmen. By contrast, Taiwan, despite its small size<sup>2</sup> and population,<sup>3</sup> has become the United States' fifth largest trading partner<sup>4</sup> and has achieved a per capita income twenty times that of mainland China.<sup>5</sup> In addition, Taiwan has rapidly democratized its political system.<sup>6</sup>

Some things have not changed. The United States continues to seek the peaceful and prosperous democratic development of the Pacific region. In light of the region's new order, however, the United States should reappraise its policy for meeting this goal. What role should Taiwan play in building a peaceful and prosperous democratic Pacific region? Should Taiwan be isolated, as Beijing advocates, or does Taiwan's model of economic and political development merit an enhanced status in the international community? If Taiwan is to play a more prominent role, should the United States officially recognize the ROC? Could Taiwan be recognized without seriously aggravating U.S.-PRC relations? Does Taiwan even desire official recognition?

Part II of this article sets the stage for the discussion of these issues by summarily recounting the United States' normalization of relations with the PRC and its effect on Taiwan. Part III examines the concept of recognition and whether offi-

2. Taiwan is a 90 by 120 mile island (approximately 13,968 square miles), making it roughly the size of Massachusetts and Connecticut combined. H. KWANG, QUESTIONS AND ANSWERS ABOUT THE REPUBLIC OF CHINA 3 (1987). Taiwan is situated just off the southeastern coast of mainland China. The island is 225 miles north of the Philippines, 665 miles southwest of Japan, and 90 miles east of the PRC. Therefore, while the island is small, its central location in the Pacific Rim has helped it to become an economic hub of the region. *See id.* *See also* J. COPPER, *supra* note 1, at 1-2.

3. While Taiwan's population of approximately 20 million people is small compared to the populations of many countries, Taiwan is five times more densely populated than the PRC, making it one of the most densely populated countries in the world. *See* J. COPPER, *supra* note 1, at 6. Adding to Taiwan's congested living conditions, most of its people live in coastal urban regions which constitute just one-fourth of the island's total area. *See id.*

4. Droker & Sander, *Market Taiwan*, BUSINESS AMERICA, June 19, 1989, vol. 110, no. 12, at 2 (In 1988, U.S. exports to Taiwan reached \$9.6 billion (excluding gold), and imports reached \$26 billion.). Taiwan is also the world's twelfth largest trader, with two-way trade of \$108 billion in 1988. *Id.* *See generally, infra* note 64 (economic assessment of Taiwan).

5. J. COPPER, *supra* note 1, at 92. *See generally, infra* note 65 (economic assessment of Taiwan).

6. *See infra* note 66 (political appraisal of Taiwan).

cial recognition of the ROC would be consistent with international legal norms. Part IV discusses the options for Taiwan's future and the desirability of re-recognition given the current interests of the ROC, PRC, and United States. Part IV also proposes a modified version of Beijing's "one country, two governments" model for recognizing both the ROC and the PRC while theoretically permitting both governments to remain in control of China. This model would conceivably increase Taiwan's international stature and, at the same time, provide a framework within which either a policy of reunification or independence could be fostered. This article concludes that the ROC deserves official recognition, that recognition of the ROC is legally and politically viable, and that recognition is consistent with the United States' interest in the peaceful and prosperous democratic development of the Pacific region.

## II. NORMALIZATION OF U.S.-PRC RELATIONS AND ITS EFFECT ON U.S.-ROC RELATIONS

### A. *Normalizing Relations with the PRC; Derecognizing the ROC*

When Chiang Kai-Shek and two million ROC Nationalists were forced to flee China in 1949, the allegiance of their wartime ally—the United States—crossed the Taiwan Strait with them. Strong U.S.-ROC ties, solidified by the Cold War, continued for thirty years.<sup>7</sup> However, U.S.-ROC relations began to change in the Sixties. The United States began to perceive the potential strategic and economic benefits of warming relations with the PRC. While Washington was convinced of the benefits of better relations with the PRC, it took three U.S. presidents and twenty years to ultimately normalize relations with the PRC.<sup>8</sup> Nor-

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7. The Truman administration was a little skeptical about supporting Taiwan immediately following World War II because it believed that Chiang Kai-Shek was a corrupt leader who was incapable of success. Its position abruptly changed, however, when communist North Korea invaded South Korea, and the United States ended up stationing its Seventh Fleet in the Taiwan Strait. Myers, *A Unique Relationship*, in *A UNIQUE RELATIONSHIP: THE UNITED STATES AND THE REPUBLIC OF CHINA UNDER THE TAIWAN RELATIONS ACT* 1, 1-2 (Ramon H. Myers ed., 1989). In addition to military aid, the United States gave Taiwan approximately \$1.5 billion in economic aid from 1952 to 1968. *Id.* at 2.

8. See generally Feldman, *Development of U.S.-Taiwan Relations 1948-1987*, in *TAIWAN IN A TIME OF TRANSITION*, *supra* note 1, at 137-51 (history of U.S. normal-

malization<sup>9</sup> was initiated by Richard Nixon, fostered by Gerald Ford, and consummated by Jimmy Carter on January 1, 1979 when the United States established official diplomatic relations with the PRC.<sup>10</sup>

As a condition to recognizing the PRC, the United States broke off official diplomatic relations and abrogated its security pact with the ROC.<sup>11</sup> Derecognition seemed unavoidable since both the PRC and the ROC insisted that they were the legitimate government of China. After derecognition, the ROC was no longer China to the United States, but simply Taiwan and its people. Taiwan was not completely surprised by the United States' action. In fact, it had been slowly adapting to the U.S.-PRC detente of the Seventies. Nevertheless, Carter's hasty decision to break with Taiwan left many in Taiwan bitter.<sup>12</sup>

At the time the United States broke diplomatic ties with Taiwan, its Taiwan policy was intentionally ambiguous. Washington surmised that Beijing was so eager to build U.S.-PRC ties that Washington could deliberately gloss over the issue of whether Taiwan was part of the PRC.<sup>13</sup> Washington, likewise, had no intention of letting the Taiwan issue hamper improved relations with Beijing.<sup>14</sup> The Shanghai Communique, signed by President Nixon in 1972 acknowledged that the United States did not challenge the position of "all Chinese on either side of the Taiwan Strait [that] there is but one China and that Taiwan is a part of China."<sup>15</sup> Nixon did not explicitly state,

izing relations with PRC); Hinton, *The Republic of China on Taiwan Since 1949*, in AMERICA AND ISLAND CHINA 9, 12-13 (S. Gilbert & W. Carpenter eds., 1989) (brief overview of normalization).

9. One noted diplomat defined "normalization", in this context, as "a term somewhere between euphemism and codeword that all understood to mean the establishment of full diplomatic relations with the PRC." Feldman, *supra* note 8, at 143.

10. See *Id.* at 150.

11. See J. COPPER, *supra* note 1, at 98.

12. The Carter administration gave ROC President Chiang Ching-Kuo six hours notice before it announced that it would establish diplomatic relations between Washington and Beijing, to take effect in two weeks. Feldman, *supra* note 8, at 150-51. See also THE TAIWAN RELATIONS ACT: A DECADE OF IMPLEMENTATION 6-7 (W. Bader & J. Bergner eds. 1989) [hereinafter DECADE OF IMPLEMENTATION] (Carter administration's treatment of normalization incensed Congress).

13. Copper, *Democracy on Taiwan Could Challenge United States-China Policy*, HERITAGE FOUND. REP., July 14, 1987, at 2.

14. *Id.*

15. *President Nixon's Visit to the Peoples Republic of China*, 66 U.S. DEPT ST. BULL. 435, 437-38 (Mar. 20, 1972). See also DECADE OF IMPLEMENTATION, *supra* note 12, at 4 (According to Kissinger, the purpose of this language was "to put off

however, that Taiwan was part of China. Furthermore, the 1979 Joint Communiqué establishing diplomatic relations between the United States and the PRC recognized "the Government of the People's Republic of China as the sole legal Government of China," but it did not confirm the PRC's legal claim to Taiwan.<sup>16</sup>

*B. The Taiwan Relations Act and the Practical Effect of Normalized U.S.-PRC Relations on U.S.-ROC Relations*

On April 10, 1979, Washington moved to dispel the confusion surrounding U.S.-Taiwan relations and soften the shock that had resulted from the rupture of diplomatic ties with Taiwan by enacting the Taiwan Relations Act (TRA).<sup>17</sup> Congress enacted the TRA to maintain "close and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan."<sup>18</sup>

The TRA does not refer to Taiwan as the "Republic of China," but as the people of Taiwan, their institutions, and "the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979."<sup>19</sup> Relations between the United States and Taiwan after 1979 were restricted to "unofficial" relations by the Joint Communiqué and the TRA.<sup>20</sup> In spite of this label, however, the TRA and supplemental agreements have, to some extent, reestablished the United States' recognition of Taiwan as a sovereign nation-state. For example, except for the use of diplomatic license plates and diplomatic passports, the United States extends essentially the same diplomatic privileges to representatives from Taiwan as it extends to diplomats from officially recog-

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the issue of Taiwan for the future, to enable the two nations to close the gulf of twenty years and to pursue parallel policies where their interests coincided.").

16. *Joint Communiqué on Establishment of Diplomatic Relations between the United States of America and the People's Republic of China*, 79 U.S. DEPT ST. BULL. No. 2022, at 25 (1979). See also Copper, *supra* note 13, at 2.

17. 22 U.S.C. §§ 3301-3316 (1988). Raymon Myers claims that the relationship established by the TRA was unique because "[p]erhaps for the first time in the history of modern foreign affairs, a state had broken relations with another, only to create a new legal arrangement so as to maintain virtually all the relationships that had existed before." Myers, *supra* note 7, at 13.

18. 22 U.S.C. § 3301(b)(1) (1988).

19. *Id.* § 3301(a)(1).

20. The TRA, however, describes U.S.-Taiwan relations without using the word "unofficial". See 22 U.S.C. §§ 3301-3316.

nized nations.<sup>21</sup> The TRA also grants Taiwan access to U.S. courts.<sup>22</sup>

The TRA also counteracts the United States' termination of its security pact with the ROC by promising military aid. The TRA declares that "the United States will make available to Taiwan such defense articles and defense services . . . as may be necessary to enable Taiwan to maintain a sufficient self-defense capability."<sup>23</sup> Although the United States has sold over five billion dollars worth of arms to Taiwan since 1979,<sup>24</sup> sales have been sharply curtailed in recent years.<sup>25</sup> The TRA also provides that any nonpeaceful actions against Taiwan, including boycotts or embargoes, will be considered "a threat to the peace and security of the Western Pacific area and of grave concern to the United States."<sup>26</sup>

The TRA is evidence that the United States has assumed significant responsibility for maintaining Taiwan's security and a peaceful environment for fostering Taiwan's economic and political development.<sup>27</sup> The TRA has successfully cultivated a relationship of expanded U.S.-ROC trade. Since the TRA's enactment, two-way trade between the United States and the ROC had increased from nine billion dollars to over thirty-five billion dollars, making Taiwan the United States' fifth largest trading partner.<sup>28</sup>

While the TRA has helped foster a peaceful environment for Taiwan's economic and political development, the TRA's

21. *Recent Developments—International Agreements: United States-Taiwan Relations*, 22 HARV. INT'L L.J. 451, 456 (1981).

22. 22 U.S.C. § 3303(b)(7) (1988).

23. *Id.* § 3302(a).

24. Copper, *supra* note 13, at 2.

25. Myers, *supra* note 7, at 16-18. The Reagan administration refused to sell Taiwan advanced weapon systems and promised the PRC that the United States would reduce the quantity of weapons sold to Taiwan. Some claim the agreement with the PRC to limit the quantity and quality of weapons sold to Taiwan breached the TRA provision which states that Congress and the President should make these decisions based on Taiwan's needs and not on the PRC's wishes. Feldman, *supra* note 8, at 153. Nevertheless, Taiwan has taken up the slack by committing more resources to developing advanced weapons necessary to deter possible PRC aggression, and the United States has been willing to assist Taiwan in this development by providing technology, design, and construction services. Myers, *supra* note 7, at 18.

26. 22 U.S.C. § 3301(b)(4) (1988).

27. See Copper, *supra* note 13, at 2. For more on Taiwan's economic and political development, see *infra* notes 65-66.

28. See Droker & Sander, *supra* note 4, at 2.

unofficial recognition of the ROC has not improved Taiwan's international status. Taiwan is still denied membership in all but one major international organization.<sup>29</sup> Official recognition by the United States could rectify this. The ramifications of recognizing the ROC will be considered below.

### III. "RECOGNITION" IN INTERNATIONAL LAW AND PRACTICE

"Recognition" is a political expression by the government of the recognizing country attesting that an entity meets the qualifications of statehood or that a regime meets the qualifications of a government.<sup>30</sup> Recognition of a country by participating members of the world community is vital to a country's status and activity within the world community. Under customary international law, the qualifications for recognition as a nation-state include (1) a defined territory, (2) a government which has effective control over the territory,<sup>31</sup> (3) a permanent population, and (4) a capacity to enter into relations with other nation-states.<sup>32</sup>

Possession of these qualifications, however, does not guarantee that a country will be recognized as a nation-state. History demonstrates that political considerations predominate the granting of recognition. Countries ultimately recognize other countries in order to advance their own national interests, not merely to express their allegiance to international legal principles.<sup>33</sup>

The world community's failure to recognize the ROC illustrates the significant role political considerations can play in determining whether to recognize *de jure* nation-states. The

29. See Kau, *supra* note 1, at 189 (the only important international organization that Taiwan belongs to is the Asian Development Bank).

30. See J. SWEENEY, C. OLIVER & N. LEECH, *THE INTERNATIONAL LEGAL SYSTEM* 894 (3d ed. 1988); B. WESTON, R. FALK & A. D'AMATO, *INTERNATIONAL LAW AND WORLD ORDER* 280 (1980) (quoting Schwebel, "Cognition" and the Peking Visit—Is the Recognition of Governments Obsolete?, *WASHINGTON POST*, Feb. 23, 1972, § A, at 16, col. 3).

31. B. WESTON, *supra* note 30, at 280.

32. See *Montevideo Convention on the Rights and Duties of States*, art. 1, December 26, 1933, 165 *LEAGUE OF NATIONS TREATY SERIES* 19 (1933).

33. B. WESTON, *supra* note 30, at 266-67 (quoting J. STARKE, *AN INTRODUCTION TO INTERNATIONAL LAW* 149-51 (8th ed. 1977) ("[t]here is an irresistible tendency in recognizing States to use legal principles as a convenient camouflage for political decisions")). One scholar suggests that "recognition decisions . . . be based solely on whether the new government has control of its state." Peterson, *Recognition of Governments Should Not Be Abolished*, 77 *AM. J. INT'L L.* 31, 50 (1983).



ROC has never ceased to meet the legal criteria for recognition. In fact, the ROC is in control of a territory and population that is larger than the average contemporary nation-state.<sup>34</sup> The ROC government is more stable than the governments of most nation-states. And while its diplomatic ties are few, its capacity to enter into relations with other nation-states compares favorably with many Third World countries.<sup>35</sup> Nevertheless, as mentioned before, most countries—including the United States—do not recognize the ROC. In 1979, U.S. policy makers renounced any official recognition of the ROC after determining that U.S. interests would be better served by stronger ties with Beijing. Washington felt that strong ties with Beijing could be used as its "China card" to be played against the Soviet threat.<sup>36</sup> Washington also thought that strong ties with Beijing would best serve its overall economic interests in Asia since mainland China offered a large, mostly untapped, marketplace for U.S. business. Finally, while recognition of the PRC necessitated derecognition of the ROC, many in Washington believed that this could be accomplished without sacrificing U.S. economic or political ties with Taiwan.<sup>37</sup>

The circumstances which led to the United States' decision to deny the ROC official recognition in 1979 have changed dramatically in the last twelve years. Today there are much fewer compelling political considerations for the United States not to recognize the ROC. The United States is no longer playing its China card to check Soviet expansionism because the

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34. J. COPPER, *supra* note 1, at 123.

35. *Id.*

36. Ironically, it was for basically the same underlying political reasons that the United States had recognized the ROC while refusing to recognize the PRC for the thirty years prior to 1979 when the PRC also satisfied the legal criteria for recognition. During the Fifties, the United States' policy for containing the spread of communism was to "isolate and contain the PRC's foreign policy through trade embargo and building alliances in the Pacific Basin. The U.S. State Department announced in May 1951 that the United States had no intention of recognizing the PRC and instead would recognize the ROC as having sovereignty over the mainland." Myers, *supra* note 7, at 11. This policy began to change in the Sixties, however, when Beijing broke off relations with Moscow and many advocated giving the PRC a seat at the United Nations. From that point on, the United States increased its contacts with the PRC. *Id.* at 12.

37. While Washington realized the potential economic benefits of closer ties with the PRC, it did not want to give up existing economic benefits with Taiwan. In 1979 the United States and the ROC's two-way trade reached \$9 billion, U.S. investments in Taiwan exceeded \$6.6 billion, and the two had entered into more than 60 treaties and agreements. *Id.* at 14.

Soviet Union has abandoned its expansionist course. Furthermore, U.S. business in the PRC has failed to turn a profit and has dropped sharply since the events of Tienanmen.

#### IV. TAIWAN'S FUTURE GLOBAL STATUS

##### A. ROC-PRC Relations and the Future of Taiwan

Since the basis for Taiwan's derecognized status is its claim as the legitimate government of China, Taiwan's future is inextricably tied to its relationship with the PRC. The possible legal and political relationships that could develop between the ROC and the PRC are numerous. However, the most likely relationships to develop are (1) forced reunification under communist rule, (2) Taiwan independence or maintenance of the status quo, (3) reunification under the "one country, two systems" formula, or (4) peaceful reunification under democratic rule. The likelihood and implications of each of these four scenarios is discussed below.

##### 1. *Forced reunification under communist rule*

Forced reunification by the PRC represents the worst, but plausible, case scenario for Taiwan and the region. Taiwan has so much to lose by reunification that it may never voluntarily agree to reunify, and Beijing, for its part, has maintained that it "could not pledge never to use force to achieve reunification."<sup>38</sup> Surely the United States would not accede to Beijing's forced occupation of Taiwan. But the question is just how far

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38. *Id.* at 21 (quoting *Daily Report: China*, FBIS-CHI-88-107 (June 2, 1988) at 52). Beijing claims that it cannot commit itself to give up the use of force because

First, matters that concern national dignity must not be handled at the beck and call of a foreign country and any promise that would harm national dignity must not be made. For matters relating to China's internal affairs, we will not tolerate any foreign country's indiscreet remarks. Since some foreign countries have always cast greedy eyes on Taiwan, we must not bind ourselves hand and foot and thus be at a loss what to do if foreign involvement should occur. Second, the statement is also directed against the plot for the "independence of Taiwan." The "movement for independence of Taiwan" is making increasing noise and so we must be on the alert. Third, the statement is aimed at those Kuomintang members opposed to reunification. If we promised to relinquish the use of force, these people would wax cocky and never accept peace negotiations.

Qing, "One Country, Two Systems" *The Best Way to Peaceful reunification*, 33 *BEIJING REV.* 18, 25 (Aug. 13, 1990).

would the United States be willing to go in protecting Taiwan?<sup>39</sup> The answer to this question depends, of course, upon who is in the White House and the global situation at the time.

While forced reunification is possible, "[t]he Communist Party of China has long indicated that peacefully reunifying [China is] an established policy."<sup>40</sup> Still, Beijing's mixed signals concerning the use of force have made Taiwan wary of the PRC's peaceful overtures.<sup>41</sup> If Beijing's commitment to a peaceful solution is genuine, then it appears that Taiwan holds the upper hand in determining its future. This does not mean, however, that Taiwan will persuade the PRC to reunify under ROC Nationalist rule or that Taiwan even wants reunification. An increasingly vocal number of Taiwanese today have little desire to become part of the mainland, especially after the events of Tienanmen.<sup>42</sup>

## 2. *Taiwan independence or maintaining the status quo*

Taiwan's territory and the make-up of its population has remained unchanged for four decades. It is likely to remain the same in the future. The majority of Taiwan's citizens are satisfied with the status quo. However, some local citizens and

39. One noted China scholar maintains that

If an invasion of Taiwan were to become imminent, the United States might order the return of U.S. naval forces to the Taiwan Strait. Such an action could be justified by several lines of reasoning: that lives would be saved, that it would protect Japan's oil lifeline as well as other international commerce in the area, and that it would prevent the Soviet Union from exploiting the situation.

J. COPPER, *supra* note 1, at 122.

40. Qing, *supra* note 38, at 20.

41. While Beijing's ultimate goal of unification has been consistent, how it will reach this goal has alternated between "armed liberation" and "peaceful unification." This phenomenon, as described by one commentator, gives Taipei little assurance of Beijing's intentions:

The use of militant threats or peace overtures has correlated closely with the radical or moderate political moods of the nation. During the militant periods of the "Resist America and Aid Korea" Campaigns (1950-1953), the Great Leap Forward Movement (1958-1961), and the Great Proletarian Cultural Revolution (1966-1971), the policy of armed liberation prevailed. Conversely, in the moderate phases of the Bandung spirit (1954-1955), the Hundred Flowers Campaign (1955-1956), and the Four Modernization Movement (1978-), Beijing shifted to an accommodating posture of peace overtures.

Kau, *supra* note 1, at 182.

42. See *id.* at 178.

overseas Taiwanese organizations advocate independence because, while satisfied with Taiwan's economic and political success, they believe that independence would bring official recognition to Taiwan and increase its stature in the international community. Taiwan's citizens are gaining a stronger political voice as Taiwan becomes more democratic. This could ultimately frustrate reunification. If Taiwan were successful in democratically moving toward independence, official recognition of Taiwan as a nation-state would take on new meaning for the United States.

Taiwan's path to independence, however, is strewn with many obstacles. First, a majority of Taiwan's leaders and population agree that declaring independence at this time would only provoke the PRC and aggravate Taiwan's diplomatic isolation.<sup>43</sup> Second, cultural and historical arguments exist for not perpetuating Taiwan's separation from the mainland. Those who fled to Taiwan with Chiang Kai-Shek in 1949, as well as the native Taiwanese,<sup>44</sup> are culturally and ethnically Chinese. In addition, although throughout history China and Taiwan have often been separated, they have always reunified.<sup>45</sup> Third, the ROC government is outspoken in its support for reunification. As recently as October 1990, ROC President Lee Teng-hui declared that Taiwan and China must reunify and that all ROC citizens should work together to realize reunification.<sup>46</sup> Taiwan's business community is also pushing for reunification as commercial relations with the mainland improve. In short, Taiwan's current economic prosperity coupled with its relationship with the PRC and the United States make independence an unlikely course for the near future. What then are the prospects for peaceful reunification?

### 3. *Reunification under the PRC's "one country, two systems" formula*

The ROC and the PRC each have their own plans for

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43. J. COPPER, *supra* note 1, at 115.

44. This does not include Taiwan's aborigines which make up 1.5% of Taiwan's population. *See id.* at 8.

45. *Id.*

46. Central News Agency, October 24, 1990 (LEXIS, Nexis Library, Currnt & Intl files) ("All Chinese believe that China should be unified. The question is how.' ROC citizens must shoulder their 'unshirkable historic responsibility' of reunifying China.").

peaceful reunification. In recent years, the PRC has encouraged the opening of dialogue with ROC leaders and has proposed a "one country, two systems" formula for reunification. The PRC's "one country, two systems" formula proposes that the ROC concurrently unify with the PRC while retaining its current lifestyle and economic system and enjoying a high degree of autonomy.<sup>47</sup>

While the "one country, two systems" formula was Beijing's most significant peaceful overture to Taiwan, it was not its first. Beijing began making peaceful overtures as early as 1979 when it proposed that Taiwan and the mainland exchange postal services, trade, and tourism, as well as begin academic, cultural, scientific, and sports contacts.<sup>48</sup> In 1981, the PRC proposed a nine-point plan for negotiations between the Chinese Communist Party (CCP) and Taiwan's Nationalist Party. The nine-point plan offered Taiwan a high degree of autonomy, including the maintenance of its own armed forces, if it surrendered its sovereignty and independence.<sup>49</sup> Finally, after Beijing concluded the Sino-Britain agreement in 1984, it attempted to entice Taipei into accepting its Hong Kong plan of "one country, two systems" by offering even more favorable terms. For example, while the Hong Kong plan gives Hong Kong only fifty years of autonomy, Beijing offered to give Taiwan an unspecified longer autonomous period.<sup>50</sup>

Taiwan's reaction to these proposals has been negative. This is so because the proposals would not give Taiwan anything it does not already have. The proposals would merely further isolate Taiwan by taking away its sovereignty. Moreover, it will be virtually impossible for the PRC to persuade Taiwan to accept the "one country, two systems" formula. Even if the formula works for Hong Kong, it might not work for Taiwan. One commentator noted that "[u]nlike Taiwan, Hong Kong has never been sovereign; is not now self-governing; is not economically viable; and, most important, it cannot defend itself because it has no armed forces. Over time the differences between Hong Kong and Taiwan are likely to become more

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47. M. LASATER, *POLICY IN EVOLUTION: THE U.S. ROLE IN CHINA'S REUNIFICATION* 106 (1989).

48. Kau, *supra* note 1, at 182.

49. *Id.* at 182-83.

50. *Id.* at 183.

widely appreciated.<sup>51</sup> In short, the "one country, two systems" formula, as currently proposed by Beijing, is not acceptable to Taiwan.

#### 4. *Peaceful reunification under democratic rule*

Peaceful reunification under democratic rule is more likely to occur than peaceful reunification under communist rule for the simple reason that Taiwan would not voluntarily unify with the PRC under communist rule. President Chiang Ching-Kuo made it clear when the United States normalized relations with the PRC that the ROC would never compromise with communism,<sup>52</sup> and the people have echoed his sentiment. Public opinion polls show that over ninety-nine percent of Taiwan's populace is opposed to living under communist rule.<sup>53</sup>

Unfortunately, peaceful reunification under democratic rule also has its problems. For example, the likelihood of peaceful democratic reunification will probably diminish as economic, societal, and political gaps between Taiwan and China widen. Nevertheless, peaceful reunification under democratic rule is still the most talked about relationship and the articulated goal of many from the ROC, the United States, and even the PRC.

Assuming that peaceful reunification under democratic rule is the goal, the ROC can facilitate such reunification by influencing change on the mainland. Taiwan must become China's model for economic and democratic development through increased trade, cultural exchanges, and other meaningful contacts. To this end, Taiwan is in fact increasing its contacts with the mainland. In 1989, nearly 10,000 tourists a month from Taiwan visited China, and over 3.4 million pieces of mail crossed the strait.<sup>54</sup> ROC trade and investments on

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51. J. COPPER, *supra* note 1, at 124.

52. See Kau, *supra* note 1, at 177-78 (citing an Address by Chiang Ching-Kuo on Dec. 16, 1978, *News from China*, (Chinese Information Service, N.Y.), Dec. 29, 1978). Taiwan's opposition party, the Democratic Progressive Party (DPP), has also declared that "[t]he future of Taiwan should be determined only by the people on Taiwan through free, democratic and fair process. No government or combined forces of governments have the right to decide the ultimate political status of Taiwan." *Id.* (quoting *Platform of the DPP adopted Nov. 10, 1986*, 66 LIANHE YUEKAN [UNITED MONTHLY] 48 (1987)).

53. Copper, *supra* note 14, at 3.

54. J. COPPER, *supra* note 1, at 109.

the mainland have also flourished. Trade between Taiwan and the mainland neared four billion dollars in 1990.<sup>55</sup> Increased contacts between Taiwan and China are propelled by the potential economic benefits of increased business contacts, the common heritage of Taiwan and China's people, incentives from Beijing, and the possibility that Taiwan's wealth could help change the PRC's socialist system.

As an increasing number of PRC citizens witness the prosperity of visitors from Taiwan, there is a greater likelihood that they will demand change.<sup>56</sup> This could eventually force Beijing to make far-reaching, radical reforms, thus helping the move toward reunification.<sup>57</sup> On the other hand, increased contacts might also have the opposite effect. As an increasing number of visitors from Taiwan discover China's backwardness, overcrowding, and corruption, there is a greater likelihood that they will not support reunification.<sup>58</sup> Nevertheless, if reunification under democratic rule is the goal, Taiwan must convince the PRC that Taiwan's system is superior.<sup>59</sup>

In summary, Taiwan's future status *vis-a-vis* the PRC is uncertain. Absent major policy changes by the PRC and ROC, Taiwan will likely remain part of a divided nation. And, while this relationship with the PRC persists, the global community will likely continue to treat Taiwan as a unique political entity, extending it the rights of a nation-state in some instances while withholding these rights in others. Although the ROC's future status *vis-a-vis* the PRC is uncertain, its superior economic and democratic development *vis-a-vis* the PRC is apparent. Taiwan's economic clout appears to be forcing the issue of Taiwan's recognition by the global community. Taiwan is playing a larger role in the international arena, and with additional official

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55. See *From Three Noes to Three Guns*, ECONOMIST, Feb. 9, 1991, at 42. See also Lo, *Strait Talk*, January FREE CHINA REV. 6, 9 (1990).

56. For a detailed description of Taiwan's economic and political miracles and their effect on the PRC, see the economic and political appraisals *infra* notes 65-66.

57. Myers, *supra* note 7, at 20.

58. For a comparison of the economic conditions of the PRC and the ROC, see the economic appraisal at *infra* note 64.

59. Even as early as one year after Chiang Kai-Shek retreated to Taiwan in 1949, he told his son, Chiang Ching-Kuo, that they would have to reform the Nationalist party and "transform Taiwan into a model province to serve as a base for the eventual recovery of mainland China from Communist rule." Myers, *supra* note 7, at 1. Most have ruled out any plan of Taiwan taking back China by force. *Id.*

recognition from nation-states and international organizations, Taiwan has the capacity to play a much larger role.

The remainder of this article analyzes Taiwan's future and proposes a model for enhancing its global status in accordance with Asia's changing political and economic order. Section B discusses Taiwan's future, giving particular attention to its relationship with the United States. Section C then proposes a model for enhancing Taiwan's status by officially recognizing it, while at the same time, providing a framework within which goals of reunification or independence could be advanced.

### *B. The Future Status of U.S.-Taiwan Relations*

Because Taiwan's growth and security rely so heavily on its relationship with the United States, the United States' Taiwan policy must be considered in any assessment of Taiwan's future.<sup>60</sup> In the past, U.S.-Taiwan relations have acted as a barometer for measuring the United States' perception of conditions in the region. Since conditions have changed dramatically over the past decade, the United States should adjust its relations with Taiwan to conform with these developments.

The impetus for normalization of U.S.-PRC relations that existed at the height of the Cold War no longer exists. During the Eighties, the Soviet threat diminished while the United States developed new military and political capabilities for dealing with the Soviets.<sup>61</sup> The failing Soviet economy coupled with glasnost have led to agreements to cut back the Soviet Union's military arsenal and have reduced U.S.-Soviet tensions. The Soviet Union is also attempting to implement elements of market economics and to increase cooperation with the West.

The PRC is also experiencing severe domestic problems, both economically and politically. Its economy is floundering, inflation is escalating, and Beijing is losing touch with its people. After normalization, Americans befriended China in anticipation of China's democratization. The prospect of a democratic China has now, however, been virtually crushed by the tanks at Tienanmen. As a result of the economic, strategic, and political changes in the Pacific region in the Eighties, the PRC's political leverage over the United States has declined, while Japan,

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60. See J. COPPER, *supra* note 1, at 120.

61. Myers, *supra* note 7, at 16.



Taiwan, and other Pacific Rim countries are becoming more important to the United States.<sup>62</sup>

While the economic, strategic and political landscape of Asia is changing, U.S. interests in a peaceful and prosperous Pacific Rim remain the same. The United States carries on a prosperous and significant trade with Taiwan, and U.S. businesses have invested billions of dollars in Taiwan's flourishing economy.<sup>63</sup> Taiwan is also strategically located and has offered to give the United States military basing rights should the Philippines revoke those rights.<sup>64</sup> Finally, the ROC's successful economic modernization<sup>65</sup> and rapid democratization<sup>66</sup> offer a powerful

62. *Id.*

63. *Id.* at 20.

64. *Id.*

65. The following is a brief appraisal of Taiwan's economic success:

Taiwan's rapid economic growth is the envy of Asia. Like Japan, Taiwan took an underdeveloped island with few natural resources and, with the efforts of its industrious people, performed an economic miracle. Shortly after their arrival in 1949, ROC authorities implemented a series of economic and social policy reforms, including land reform, which are credited with laying the foundation of Taiwan's future economic growth and stability. Taiwan also benefitted from U.S. aid programs and from substantial foreign (U.S., Japanese, and overseas Chinese) investment in labor-intensive, export-oriented industries. Droker & Sander, *supra*, note 4, at 2.

Taiwan's economy grew at an average annual rate of 9.2% between 1963 and 1985. Real GNP growth, which was more than 11% in 1986 and 1987, slowed to 7.1% in 1988 and 6.5% in the first quarter of 1989. INT'L TRADE ADMIN., U.S. DEP'T COM., FOREIGN ECONOMIC TRENDS AND THEIR IMPLICATIONS FOR THE U.S.: TAIWAN 3 (May 1990) [hereinafter ECONOMIC TRENDS]. Per capita GNP exceeded \$6,000 in 1988—up 20% from 1987, the fourth highest in Asia and twenty times higher than the \$300 per capita income of the PRC. J. COPPER, *supra* note 1, at 92. Unemployment is about two percent. Labor shortages are appearing in some sectors, such as construction. Investment is moving out of Taiwan to lower Labor-cost areas such as Southeast Asia, Latin America, and even mainland China.

Frugality, a traditional Chinese virtue, coupled with past government incentives to save has given Taiwan one of the highest private savings ratios in the world. More than 30% of the GNP for almost every year since 1972 was saved. This statistic is changing, however, with increased pressure from U.S. to buy American and encouragement from Taiwan authorities to spend more. Foreign exchange reserves stood at \$71 billion at the end of 1988, the second highest in the world after Japan. Inflation was less than 1.5% in 1987 but was heading for a 3-4% rate in 1989. ECONOMIC TRENDS, *supra*, at 3.

Historically, Taiwan's economic growth has relied on exports. Between 1952 and 1988, its exports increased from \$120 million to \$61 billion, or 19% annually. Droker & Sander, *supra* note 4, at 2. Because of exchange rate appreciation, growing domestic demand, and trade liberalization measures, import growth is now outstripping the increase in exports. Imports, at \$47 billion in 1988, were up 34% from 1987, compared to a 13% growth rate for exports. *Id.* Taiwan is attempting to sustain economic growth primarily by upgrading and diversifying its economy. Taiwan's attempts to change have already begun to affect the U.S. Taiwan is opening

challenge to mainland China to fundamentally reform its communist system. Because the ROC is increasingly becoming economically, strategically, and politically vital to the United

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its customs doors to U.S. products and its banking doors for US-bound investment. Consequently, internal domestic demand rose nearly 18% in 1988, while external demand, as measured by the trade surplus, shrank twenty-six percent. The share of the services sector for the first time exceeded the share of industry in the economy. ECONOMIC TRENDS, *supra* note 4, at 3. Within the industrial sector itself, the share of heavy and high-technology industry in total industrial production rose from approximately 57% to 60% last year--at the expense of light industry's share, which declined from 43 to 40 percent. *Id.*

66. The following is a brief appraisal of Taiwan's democratization:

Momentous political changes have occurred in Taiwan in the last three years. These changes are milestones in the development of democracy in Taiwan. Arguably, the most significant change was the late Chiang Ching-kuo's order that lifted the 38-year-old martial law on July 14, 1987. The purpose of this move, as reported by government spokesman Yu-ming Shaw, was "to accelerate the promotion of constitutional democracy, to fully realize the spirit of the constitution, to make government and society more open, and to improve the people's well-being." Shaw, *Emergency Decree Lifted*, 38 FREE CHINA REVIEW 6 (October 1987). Taiwan abrogated martial law in order to "(1) reduce military control and expand the power of civil administration and judicial authority." *Id.* at 7. For example, civilians will no longer be tried in military courts. In addition they sought to "(2) increase civil rights." *Id.* For example, the rights of the people to form political parties and to demonstrate is now protected by law. *Id.* Taiwan also hoped to "(3) insure that administrative authorities adhere to the law. Prior to the lifting of martial law, the administrative scope of some government authorities were vague and open to interpretation." *Id.*

Taiwan's increasingly healthy political atmosphere, despite recent instability across the Strait, is reflected in its people's confidence in Taiwan's future. Taiwan authorities realize that domestic confidence and stability is crucial to future growth.

Even before the late President Chiang lifted martial law, opposition parties had been organized. The most popular opposition party, the "Democratic Progressive Party" (DPP) was established on September 28, 1986. Jiang, *Celebrations and Challenges*, 38 FREE CHINA REVIEW 5 (October 1987). Even before the DPP was officially recognized by law, DPP candidates were allowed to compete with the Nationalists for seats in the Legislative Yuan and the National Assembly in the December elections of that same year. Tsai, *Transformations in the Body Politic*, 38 FREE CHINA REVIEW, 14 (October 1987). The DPP was successful in obtaining almost one-third of the popular vote. The success of a second party shocked many China watchers. One commentator noted that this was "the first time in Chinese history that a truly functional opposition party, even though still technically illegal, was able to challenge the existing authority in an election on an equal footing." *Id.* at 15.

The DPP today is a viable party capable of challenging the Nationalists on every front. Taiwan citizens hope that the recent radical political democratization will continue and that "future generations will view these times as the beginning of a new chapter in Chinese political history." *Id.*

In addition to the lifting of Martial Law in 1987, the new chapter in Chinese political history will invariably include the lifting of restrictions on visits to the mainland, the lifting of restrictions on newspaper size and competition, and some hundreds of demonstrations that, unlike Korea's experience, have been mostly ignored by the police force. See Andrews, *Transition on Trial*, ECONOMIST, March 5, 1988, at 16.

States, the United States should work to improve the current international political status of the ROC.

Under Asia's current economic and political order, it is unlikely that the United States would have derecognized the ROC, since relations with the PRC would not have been so crucial. Taiwan will likely continue to prosper economically under its current close, but unofficial, relationship with the United States. Taiwan's own prosperity, however, will not necessarily foster prosperity throughout the region unless it is permitted to actively participate in the international arena. In light of the increasingly irrelevant political considerations which led to its derecognition, the ROC should no longer be denied membership in important international organizations—especially financial organizations such as GATT, the International Monetary Fund, and the World Bank—nor should it be hindered from conducting normal foreign relations with other nation-states.

### C. *A Model for Recognizing the ROC*

One method for recognizing the ROC, without derecognizing the PRC, is a *modified* version of Beijing's "one country, two systems" formula discussed above.<sup>67</sup> Under this model, not only would there be one country and two systems, there would also be two legitimate governments. Both the PRC and the ROC would be officially recognized as governments of China and would be afforded all the rights of recognition. The ROC would continue to govern Taiwan, and the PRC would continue to govern the mainland. The proposed model is notably different from the PRC's "one country, two systems" formula because in addition to permitting the ROC to continue governing Taiwan after reunification, it would permit the ROC to share claim to the government of China.

#### 1. *International legal precedent for the modified "one country, two systems" model*

Although international law has not yet developed sufficient rules for dealing with the recognition of two legitimate governments of one country, there is some precedent for doing so. The most recent and conspicuous examples of the recognition of two legitimate governments of one country are Korea and, until

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67. See *supra* text accompanying notes 47-51.

recently, Germany. One scholar identifies countries with more than one recognized government as "multi-system nations."<sup>68</sup> They might be better characterized, however, as "dual-system nations" since, while having more than two systems operating in one country is conceivable, our examples involve only two systems. Dual-system nations appear to share at least three unique characteristics: (1) both systems once belonged to a unified country and, while divided now, both expressly maintain the goal of reunification; (2) both systems claim to be the legitimate government of their country; and (3) both systems meet all of the legal qualifications for recognition as an independent state, but do not openly advocate independence.<sup>69</sup> The PRC-ROC relationship also possesses these characteristics.

Recognition of both governments of a dual-system nation would avoid the difficulty that many countries have when faced with the choice of recognizing one nation-state at the expense of another. Recognizing each system would not affect any genuine goals of reunification, nor would it affect the ROC or PRC's domestic policies. The ROC and the PRC could both claim to be the legitimate government of China, and domestically act as though they were, while other nation-states would be free to enter into diplomatic relations with both.

The Germany experience suggests that such a system might be conducive to reunification. Under Germany's former dual-system government, the Federal Republic of Germany (FDR) and German Democratic Republic (GDR) were able to develop closer ties and work out their differences. Both the GDR and the FDR have been members of the United Nations since 1973. The day after both were admitted to the United Nations, the foreign ministers of each side, speaking before the General Assembly, renounced, on behalf of their countries, the use of force in solving their differences.<sup>70</sup> In 1973, the two sides also entered into an agreement to work toward peaceful reunification. In 1974, the two opened formal relations with each other.<sup>71</sup> All of these exchanges helped lead to the eventual reunification of the two Germanies. The Korea situation, while still too early to substan-

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68. Chiu, *The International Law of Recognition and Multi-System Nations*, 1 CHINESE Y.B. INT'L L. & AFF. 1, 6 (1981).

69. *See Id.*

70. *Id.* at 9.

71. *Id.*

tiate, could very well be following a similar tract toward reunification.

## 2. *China and the modified "one country, two systems" model*

Unless Beijing becomes convinced that a "one country, two systems" model would foster reunification, it is doubtful that Beijing would accept it. Beijing could indeed argue that this modified model would not foster reunification because, while it attests to one China, it grants Taiwan more sovereignty, further separating Taiwan from the mainland. However, the dual-system nation or modified "one China, two systems" model could stabilize the Taiwan situation within the context of the goal of reunification. By tolerating an internationally recognized Taiwan, the PRC could foster increased communication and closer ties with the ROC. This balanced relationship is crucial to China's reunification. If reunification is to be realized, the relationship between the ROC and PRC must be one of equality, not subordination.

Finally, as the popular movement for Taiwan's independence intensifies, the model would likely become more favorable to Beijing because, under the model, Taiwan would not be allowed to claim independence. In other words, giving Taiwan limited sovereignty would probably be preferable to the PRC to giving Taiwan absolute sovereignty.

## 3. *Taiwan and the modified "one country, two systems" model*

The modified "one country, two systems" model is most attractive to Taiwan because it would give Taiwan more than it currently has. The model would allow Taiwan to be officially recognized by other nation-states, enhancing Taiwan's global status and making it a more active participant in global affairs. In spite of enhancing Taiwan's status, the model would perpetuate the claim that Taiwan is inextricably part of China—a claim that independence advocates oppose. Nevertheless, while perpetuating this claim, the model does not force reunification. Taiwan would still control its own future. One might even argue that Taiwan would gain even more control over its future under the model because, as Taiwan's international status increases, Beijing's threat of forced reunification would weaken. Thus, the proposed model could create a framework in which Taiwan might foster either reunification or independence, depending on the will of the people.

## V. CONCLUSION

Taiwan's economic and political progress, coupled with the changing order of the Pacific region, necessitates a more active role for it in world affairs. Granting Taiwan increased international rights and allowing it to participate in world organizations would improve the peace and prosperity of the region. It would also foster change in the PRC and affirm Washington's support for democracy, a free market economy, human rights, and loyalty to its allies.

The ROC's global status could be enhanced by official recognition under a modified version of Beijing's "one country, two systems" formula. This model could increase the ROC's global stature while providing a framework within which popular goals of reunification or independence could be advanced.

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