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"AN OVERVIEW OF THE LEGAL AND SECURITY QUESTIONS CONCERNING TAIWANESE INDEPENDENCE"

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Introduction

For over fifty years, the island of Taiwan has been home to the remnants and descendants of China's nationalist government, the losing party in a civil war.[1] Since the establishment of the "provisional" nationalist government in 1949, Taiwan has developed into a formidable capitalist power with a burgeoning democratic system of governance. However, although it has a functioning democratic government, is a member of international economic organizations, and has a permanent population of over twenty million people, the vast majority of the international community, including the United States ("US"), has not formally recognized Taiwan as a sovereign state.[2] In the past few years, the People's Republic of China ("PRC") has taken an increasingly belligerent stance against Taiwan through its diplomatic actions and military exercises off Taiwan's coast.[3] Because the threat to Taiwan's independence from the PRC is increasing, the survival of this fledgling democracy and its ability to safely declare its independence may depend on the US recognizing it as a formal sovereign state.[4]

A Concise History of Taiwanese and American Relations

Until its defeat in the Second World War, the Japanese Empire had ruled Taiwan in accordance with the 1895 Treaty of Shimoneski.[5] Thereafter, control

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[1] United States Dept. of State, Bureau of East Asian and Pacific Affairs, *at* http://www.state.gov/r/pa/ei/bgn/2813.htm (last visited October 11, 2003)[hereinafter United States Dept. of State].

[2] Taiwan, Online C.I.A. World FactBook, *at* http://www.cia.gov/cia/publications/factbook/geos/tw.html (last visited Sept. 28, 2002) [hereinafter FactBook Taiwan].

[3] *See* Kurt M. Campbell and Derek J. Mitchell, *Crisis in the Taiwan Strait?*, *in* FOREIGN AFFAIRS, 14 (Council on Foreign Relations, 2001).

[4] Such an action would have a monumental impact on Sino-American relations, however, the author wishes to address only the more narrow issue of what legal and diplomatic reasons compel recognizing Taiwanese statehood. Also, it is not the intent of this article to explore the dynamics of Taiwan's growing independence movement and the threat of war with the PRC that so far has prevented such a declaration.

[5] Treaty of Peace, Apr. 28, 1952, ROC-Japan, art. II, 138 UNTS 3, *noted in* Jonathan I. Charney & J.R.V. Prescott, *Resolving Cross-Strait Relations Between China and Taiwan,* 94. AM.J. INT'L L. 453, 458-59 (2000).

of the island was returned to the Republic of China's Nationalist government ("ROC") under the Potsdam Proclamation of 1945.[6] After Mao Tse-Tung's Communist victory in 1949, the ROC government and nearly two million nationalists fled China to Taiwan and established a government in accordance with the Chinese Constitution of 1947.[7] This did not create a new state as much as it established a nationalist government in exile to challenge Mao's government in Beijing.[8] Thus, during the height of the Cold War there existed "two Chinas," as the majority of the world recognized the ROC in Taiwan, while the communist bloc supported the PRC on the mainland.[9] Even while in "exile," the ROC government in Taiwan continued to represent all of China at the United Nations.[10] Viewing the ROC as a strategic ally against Communism in Asia, the US entered into the Mutual Defense Treaty with Taiwan in 1954.[11] Under the treaty, the US stationed significant military forces in Taiwan and provided aid to the ROC when the PRC attempted to seize several contested islands in the Straits of Taiwan.[12]

However, in 1971, Taiwan's international status began to change. On October 25, 1971, the PRC replaced the ROC as representative of China at the United Nations ("UN"), marking the international community's recognition of the PRC as the sole, legitimate legal representative of China.[13] President Nixon instituted this radical shift in American foreign policy as a "power move" designed to introducing a new geopolitical counterweight to Soviet power.[14] Former British Prime Minister Harold Macmillan said that Nixon had "brought the oldest civilization in the world back into the game to redress the new Russian

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[6] ROC-Japan, art. II, 138 UNTS 3, *noted in* Jonathan I. Charney & J.R.V. Prescott, *Resolving Cross-Strait Relations Between China and Taiwan,* 94. AM.J. INT'L L. 453, 458-59 (2000).

[7] FactBook Taiwan, *supra* note 2.

[8] *See generally* United States Dept. of State, *supra* note 1; *see generally* FactBook Taiwan, *supra* note 2.

[9] Christopher J. Carolan, *The "Republic of Taiwan": A Legal-Historical Justification for a Taiwanese Declaration of Independence,* 75 N.Y.U.L. Rev. 429, 436-37 (2000).

[10] Y. Frank Chiang, *State, Sovereignty, and Taiwan,* 23 FORDHAM INT'L L.J. 959, 975 (2000).

[11] Mutual Defense Treaty Between the United States of America and the Republic of China, Dec. 2, 1954, U.S.- P.R.C. 6 U.S.T. 433. In accordance with the terms of the Treaty, the United States and Taiwan pledged to offer material (i.e. military) and economic assistance against an attack on either Party. Thus, an attack on Taiwan would likely result in an armed conflict between the United States and the aggressor.

[12] First Taiwan Strait Crisis: Quemoy and Matsu Islands, *at* http://www.fas.org/man/dod101 /ops/quemoy_matsu.htm (last visited October 11, 2003).

[13] *See* United States Dept. of State Report on the Diplomatic Relations of the Republic of China and the People's Republic of China, available in 11 I.L.M. 571 (1972), *noted* in Angeline G. Chen, *Taiwan's International Personality: Crossing the River by Feeling the Stones,* 20 LOY. L.A. INT'L & COMP. L.J. 223, 234 (1998).

[14] James C. Humes, NIXON'S TEN COMMANDMENTS OF STATECRAFT: HIS GUIDING PRINCIPLES OF LEADERSHIP AND NEGOTIATION, 64 (1997).

Empire."[15] Although this action settled the issue of who represented China at the UN, it failed to address the question of whether the PRC represented Taiwan.[16] In 1972, President Nixon visited China and issued the "Shanghai Communiqué," which committed the US to removing its military presence from Taiwan.[17] On January 1, 1979, President Carter formally established diplomatic relations with the PRC, recognizing it as the sole government of China and, in essence, "un-recognizing" the ROC.[18] The US subsequently terminated the Mutual Defense Treaty with Taiwan and put a one-year freeze on arms sales to the ROC.[19]

Current Diplomatic Relations Between Taiwan and the United States

Despite the growing populist desire for statehood, Taiwan has yet to declare its independence.[20] The United States has acknowledged, but not necessarily adhered to, the PRC's claim that there is "one China and Taiwan is part of China," as evidenced by continued political and economic relations with Taiwan.[21] This is further evidenced by the Taiwan Relations Act of 1994, which has increased military training and coordination with Taiwan.[22] According to the Act, the Secretary of Defense is required to ensure that "direct secure communications" exist between the military forces of the US and those of Taiwan.[23] Although the Act does not commit the US to the defense of Taiwan in the case of an attack by the PRC, it does allow the US to sell defensive armaments to Taiwan and establish operational links for coordination in the event of hostilities.[24] The Act also requires that US military schools reserve additional seats to train Taiwanese military officers and that the technical staff at the American Institute in Taiwan be substantially increased.[25]

The existence of the American Institute in Taiwan alone is indicative of the

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[15] *Id.*

[16] G.A. Res. 2758, 26 GAOR, Supp. No. 29, U.N. Doc. A/8429 (1971). Resolution 2758 was passed to replace Taipei with Beijing in the United Nations and its Security Council. (R. 21.4), *noted in* Chen, *supra* note 13, at 234.

[17] Joint Communique, Issued at Shanghai, Feb. 27, 1972, 66 Dep't St. Cull. 435 (1972) [hereinafter Shanghai Communique].

[18] Colin P.A. Jones, *United States Arms Exports to Taiwan Relations Act: The Failed Role of Law in United State Foreign Relations,* 9 CONN. J. INT'L L. 51, 53 (1993).

[19] *Id.*

[20] *See generally* United States Dept. of State, *supra* note 1; *see generally* FactBook Taiwan, *supra* note 2.

[21] Shanghai Communiqué, *supra* note 16.

[22] Taiwan Relations Act, 22 U.S.C. §§ 3301-16, Pub. L. 96-8 (1979); *see also* Greg May, *Reality Check: A Victory for Chen Shui-Bian, Not Taiwan Independence, at* http://chinaonline.com/commentary_analysis/intrelations/newsarchive.asp (last visited December 2000).

[23] Taiwan Relations Act, 22 U.S.C. §§ 3301-16.

[24] *Id.*

[25] *Id.*

fact that the US does not treat Taiwan as part of China.[26] Although the US technically describes the Institute as unofficial, the staff is provided with official functions and diplomatic privileges and immunities, just as are the members of Taiwan's Economic and Culture Offices in the United States.[27] Hence, there exists an unofficial diplomatic channel between the United States and Taiwan by which the US impliedly recognizes Taiwan independent from China. Further evidence of such recognition is indicated by US support of Taiwan's membership in international organizations, such as the Asia-Pacific Economic Cooperation and the Asian Development Bank.[28]

The PRC's Views on Taiwan

In its 1993 White Paper, the annual official policy papers of the PRC's communist government, Beijing explicitly stated that it regards Taiwan as nothing more than a rebellious province and that the issue of Taiwanese reunification with the mainland, is strictly internal.[29] According to the White Paper, "Taiwan's status as an inalienable part of China has been determined and cannot be changed, and 'self- determination' for Taiwan is out of the question."[30] Although made over ten years ago, the PRC's policy established in the White Paper has not changed. The PRC firmly continues to assert that the "Taiwan separatists' attempt to change Taiwan's status as a part of China by referendum on the pretext that 'sovereignty belongs to the people is futile."[31] The PRC states that there are still hostilities between it and Taiwan left over from the civil war, and "to safeguard China's sovereignty and territorial integrity and realize the reunification of the two sides of the Straits, the Chinese government has the right to resort to any necessary means."[32] Although proclaiming peaceful measures to be the ideal means of settling the Taiwan issue, the PRC has officially stated that "the Chinese government always makes it clear that the means used to solve the Taiwan issue is a matter of China's internal affairs, and China is under no obligation to commit itself to rule out the use of force."[33]

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[26] Stephen Lee, *American Policy Toward Taiwan: The Issue of the De Facto and De Jure Status of Taiwan and Sovereignty,* 2 BUFF. J. INT'L L. 323, 324 (1995-96).

[27] *Id.*

[28] United States Dept. of State, *supra* note 1. *See also* Lee, *supra* note 26, at 324.

[29] *See The One-China Principle and the Taiwan Issue,* N.Y. TIMES, Feb. 21, 2000 (the NEW YORK TIMES published the excerpts of this release by China's Taiwan Affairs Office and the Information Office of the State Counsel) [hereinafter One-China].

[30] *See* Taiwan Affairs Office & Information Office of the State Council, P.R.C., *The Taiwan Question and the Reunification of China, at* http://service.china.org.cn/link/wcm/Show_Text?info_id=7953&p_qry=taiwan%20and%20white%20and%20paper (last visited Jan. 18, 2004) [hereinafter White Paper].

[31] One-China, *supra* note 29.

[32] *Id.*

[33] *Id.*

Furthermore, the PRC stated "the Chinese Government is under no obligation to undertake any commitment to any foreign power or people intending to split China as to what means it might use to handle its own domestic affairs."[34] The PRC proclaimed that it will never tolerate, condone or remain indifferent to the realization of any scheme to divide China."[35] More ominously, it continued by saying, that if:

> ". . . a grave turn of events occurs leading to the separation of Taiwan from China in any name, . . . or if the Taiwan authorities refuse . . . the peaceful settlement of cross-Straits reunification through negotiations, then the Chinese Government will only be forced to adopt all drastic measures possible, including the use of force, to safeguard China's sovereignty and territorial integrity and fulfill the great cause of reunification."[36]

Prior to this radical policy development, China had threatened force only if Taiwan declares independence or if a third party (i.e. the United States) directly and forcibly intervenes. Under this policy, if Taiwan refuses to even negotiate matters of reunification, China reserves the right to use force.[37] With the 1993 White Paper, the PRC adopted a more aggressive stance towards Taiwan, ironically coinciding with the institution of a new round of remilitarization of the PRC's military forces.[38]

Taiwan's Qualifications for Statehood

For the purposes of this article, it is necessary to examine several of the standards for statehood such as, but not exclusively, those established in the Montevideo Convention, Principles of Effectiveness, International Airspace agreements, and general participation in international systems.

Taiwan is an Independent State Under the Montevideo Convention Requirements

Under the 1993 Montevideo Convention, to which the United States is a party, Taiwan qualifies as an independent nation based on four legal requirements.[39] These requirements are generally accepted as customary international law, even for nations not parties to the convention.[40] The

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[34] *See* White Paper, *supra* note 30.

[35] One-China, *supra* note 29.

[36] *Id.*

[37] *Id.*

[38] White Paper, *supra* note 30.

[39] *See* Montevideo Convention on the Rights and Duties of States, art. 1, 49 Stat. 3097, 165 L.N.T.S. 25 (signed at Montevideo, Uruguay, Dec. 26, 1933) [hereinafter Montevideo Convention]; *see also* Restatement (Third) of Foreign Relations Law § 201 (1987).

[40] Carolan, *supra* note 9, at 450; *see also* Thomas D. Grant, *Defining Statehood: The Montevideo Convention and its Discontents,* 37 COLUM. J. TRANSNAT'L L. 403, 408 (1999). The author identifies the Montevideo Convention as the most cited authority on the definition of a state.

qualifications for independent statehood are: (1) possession of a permanent population; (2) dominion over a defined territory; (3) maintenance of an effective government; and (4) interaction with other states.[41]

Taiwan has a permanent population, consisting of over twenty-two million ethnic Chinese and natives of Taiwan.[42] Taiwan currently has a population greater than seventy-five percent of the member states of the United Nations.[43] Taiwan also has a clearly defined territory consisting of Formosa Island, the Penghu Islands, Quemony Island, and Mazu Island, which was returned to China by the Empire of Japan at the conclusion of the Second World War.[44] Taiwan no longer lays claim to the mainland, as evidenced by its formal recognition of the PRC and renunciation of any representation of China in the international community.[45] Taiwan has an effective, democratically elected government based on the Chinese constitution of 1947, with its own executive branch, legislature, and judiciary.[46] In 1987, the martial law that had been in effect since 1948 was lifted, as well as prohibitions on certain political parties. At that time, the Taiwanese government also initiated greater freedom of the press,.[47] In 1996, Taiwan held its first direct election for president; thus, bringing to an end the parliamentarian process of election via the National Assembly.[48]

Finally, Taiwan is fully recognized by twenty-nine nations and has entered into multilateral treaties with several nations.[49] Taiwan has also undergone a complete shift in its foreign policy since 1988.[50] Previously, the foreign policies of the ROC and PRC each asserted that other nations recognize either one government or the other—but never both.[51] Taiwan now welcomes recognition by foreign states unconditionally.[52] In 1991, Taiwan informally recognized the PRC and renounced its claim as the sole government of both Mainland China

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[41] *See* Montevideo Convention, *supra* note 39.

[42] FactBook Taiwan, *supra* note 2.

[43] Carolan, *supra* note 9, at 451.

[44] The Cairo Declaration, Dept. St. Bull. Dec.4, 1943 at 393 (*quoted in* Attix, *supra* note 49, at 367).

[45] Chen, *supra* note 13, at 245.

[46] FactBook Taiwan, *supra* note 2.

[47] United States Dept. of State, *supra* note 1.

[48] *Id.*

[49] Cheri Attix, *Between the Devil and the Deep Blue Sea: Are Taiwan's trading Partners Implying Recognition of Taiwanese Statehood?*, 25 CAL. W. INT'L L.J. 357, 369 (1995); *see Treaties between the Republic of China and Foreign States 1982-1985* (*reprinted in* Hungdah Chui, *The International Legal Status of the Republic of China,* 8 CHINESE Y.B. INT'L L. & AFF. 12-14 (1990).

[50] Chen, *supra* note 13, at 245.

[51] *Id.*

[52] *Id.*

and Taiwan.[53] Additionally, in 1994, the ROC's government officially declared that it would no longer attempt to "represent China in the international community."[54] Thus, Taiwan meets the governing international standards of statehood as agreed upon by binding international treaty and custom in the form of the Montevideo Convention.

Taiwan is an Independent State Under the Principle of Effectiveness

Under the principle of effectiveness, if a state has exclusive control of a territory for a substantial amount of time with the intent to govern that territory as the sole sovereign, then that state will be "considered to incorporate that territory."[55] A state that has exercised such control over the territory is to be given preference in an international tribunal when there is a competing claim to that territory.[56] According to Judge Alfaro of the International Court of Justice, "[t]itle to territory is abandoned by letting another country assume and carry out for many years all the responsibilities and expenses in connection with the territory concerned. Such . . . inaction disqualifies the country concerned from asserting the continued existence of title."[57]

The PRC has never exercised jurisdiction over Taiwan, taken government actions or enacted programs on Formosa.[58] Over the past 50 years, the ROC has governed Taiwan without interruption or occupation by the PRC, largely because the PRC does not possess the military technology or equipment to take the island by force. Since its establishment in Taiwan, the ROC has served as the only government of the population and has acted as a sovereign nation both domestically and internationally. Therefore under the principle of effectiveness, Taiwan has sole dominion over the island as an independent nation.

International Airspace Agreements with Taiwan Imply Its Statehood

Taiwan has entered into airspace agreements with several nations, including Russia, Thailand, Australia, and New Zealand. Under such agreements, each nation's civil aircraft are allowed to fly directly into Taiwan.[59] The agreements,

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[53] *Id.*

[54] *Id.*

[55] *Legal Status of Eastern Greenland* (Nor. V. Den.) 1933 P.C.I.J. (ser. A/B) No. 53, at 45-64 (Apr. 5) (holding that Denmark possessed valid title to Greenland based on lengthy and sole control of the territory), *noted in* Carolan, *supra* note 9, at 453.

[56] See Fisheries (U.K. v. Nor.), 1951 I.C.J. 116, 184 (Dec. 18) (Sir Arnold McNair, dissenting) (stating that governments must be able to show authoritative exercise of jurisdiction to secure their title), *noted in* Carolan, *supra* note 9, at 453.

[57] *Temple of Preah Vihear* (Cambodia v. Thail), 1962 ICJ REP. 6, 45 (June 15) (see op. Alfaro, J.), *quoted in* Charney & J.R.V. Prescott, *supra* note 5, at 463.

[58] Anne Hsiu-An Hsiao, *Is China's Policy to Use Force Against Taiwan a Violation of the Principle of Non-Use of Force Under International Law?*, 32 NEW ENG. L. REV. 715, 735 (1998).

[59] Attix, *supra* note 49, at 382.

besides serving important business and trade purposes, also give further legitimacy to Taiwan's claim of statehood. Under the Convention on International Civil Aviation, "every state has complete and exclusive sovereignty over that airspace above its territory."[60] In establishing flight authorization without having consulted the PRC, the aforementioned countries recognize Taiwan's sovereign airspace and, implicitly, its sovereignty.[61]

Taiwan's Economic Relations Reflect Those of An Independent State

Taiwan's economy has been classified as one of the "Asian Tigers."[62] Taiwan is the fourteenth largest trading nation in the world; the United States' eighth largest trading partner; the world's seventh largest investor; and owner of one of the world's largest foreign exchange reserves.[63] In 2001, Taiwan exported $27.7 billion dollars worth of goods to the United States and imported $18.2 billion dollars in goods in 2001.[64] Taiwan also has the world's eighteenth largest gross national product. Additionally, the exchange rate of Taiwan's currency, the New Taiwan Dollar, is tied to the United States' Dollar.[65]

Taiwan's association with international governmental organizations is also indicative of its sovereign and independent status.[66] The other members of the Asia-Pacific Economic Cooperation and the Asian Development Bank are all sovereign nations.[67] More significantly, in 1990, Taiwan applied for membership in the General Agreement on Tariffs and Trade ("GATT"), despite protests by the PRC that Taiwan was a province of China and, therefore, ineligible for membership.[68] With the support of the United States, Taiwan subsequently became a member of the World Trade Organization (WTO) in 1995.[69] Because the PRC is merely an applicant to the WTO, it can be inferred that Taiwan's membership represents de facto international recognition that Taiwan and the

[60] Convention on International Civil Aviation, art. 1, 61 Stat. 1180, 15 U.N.T.S. 259 (Dec. 7, 1944), *noted in* Attix, *supra* note 49, at 382.

[61] Attix, *supra* note 49, at 382.

[62] Why the "Asian Tiger" Miracle is an Endangered Species, *at* http://members.tripod.com/~american_almanac/tigers.htm (last visited October 11, 2003). This is the nickname for Taiwan, South Korea, Malaysia and Thailand because their economies transformed themselves from poor agrarian markets to successful Western-modeled industrial and manufacturing economies.

[63] United States Dept. of State, Bureau of East Asian and Pacific Affairs, *at* http://www.state.gov/r/pa/ei/bgn/2813.htm (last visited Sept. 28, 2002). *See also* Lee, *supra* note 26, at 324.

[64] *Id.*

[65] Chen, *supra* note 13, at 238-39; *see generally* Y. Dolly Hwang, *The Rise of a New World Economic Power: Postwar Taiwan* (1991).

[66] Chen, *supra* note 13, at 237-38.

[67] United States Dept. of State, *supra* note 1; *see also* Lee, *supra* note 26, at 324.

[68] Hsiao, *supra* note 59, at 738.

[69] *Id.*

PRC are two separate political and territorial entities.[70] Based on its membership in these organizations, its trading activities, and its overall economic power, it is difficult to accept that Taiwan is not an independent nation, but rather only a rebellious province of China.

The Growing Military Imperative for Recognizing Taiwanese Independence

The Peoples Liberation Army ("PLA"), the armed forces of the PRC, is one of the largest militaries in the world. However, most of its military technology and support capabilities date back to the 1970s and some even as far back as the Korean War.[71] As a result, China is ill-prepared to launch a cross-Strait invasion and face the modern American and European weapon systems that have been sold to Taiwan.[72] The PRC began a massive re-armament program in the early 1980s called the 863 Program, which it accelerated in 1996 to achieve completion by 2010.[73] Additionally, PLA training, doctrinal writings, weapons procurement, and propaganda have been extensively focused on a military campaign against Taiwan and, if necessary, the United States.[74] This modernization, combined with the belligerent language of the PRC's White Paper, increases the threat of the PRC attempting to prevent Taiwanese independence via military means.

Notwithstanding the use of nuclear weapons to destroy Formosa, the PRC could employ several military options if it decides to use force against the ROC.[75] These options differ in terms of the PRC's technological capabilities, effectiveness, and possible international backlash. The first option is naval exercises and missile testing, such as those undertaken in 1995 and 1996, which may intimidate the Taiwanese government or, at the very least, clearly evidence the PRC's displeasure with Taiwan.[76] The second option would be to enact a naval quarantine designed to prevent the arrival of additional high tech Western arms to the ROC from the United States and Europe.[77] Although the effectiveness of such a measure is questionable, due to American airlift capabilities, it would have severe political and economic ramifications on Taiwan. The potential for such a confrontation between the US and PRC could

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[70] *Id.*

[71] Frank W. Moore, Institute for Defense and Armament Studies, *China's Military Capabilities*, *at* http://www.comw.org/cmp/fulltext/iddschina.html (last visited Oct. 1, 2002).

[72] *See* Jones, *supra* note 18.

[73] June Dreyer, *The PLA and the Taiwan Strait*, Taiwan Security Research, *at* http://taiwan security.org/IS/Dreyer-The-PLA-and-the-Taiwan-Strait.htm (last visited Oct. 1, 2002).

[74] Campbell & Mitchell, *supra* note 3; *see* Al Santoli, "*Chinese military resumes harassing US recon flights; Chinese navy practices attacks on US aircraft carriers,* China Reform Monitor, No. 418 (Dec. 10, 2001), *at* http://www.afpc.org/crm/crm418.html (last visited Oct. 1, 2002).

[75] Kim Viner, *Potential Military Solutions for the Taiwan Question*, ASIAN AFFAIRS, (Fall 1997).

[76] *See* Campbell & Mitchell, *supra* note 3.

[77] Viner, *supra* note 76.

cause the United States to reevaluate its willingness to risk a war in defense of Taiwan.[78]

The third option is a direct amphibious assault on Taiwan with the intent of capturing and holding it. However, this option, unless coupled with the use of biological, chemical, or nuclear strikes, would most likely end in failure due to the inadequacy of the PLA amphibious forces.[79] At this time, the PLA only has transport capabilities for 10,000 soldiers compared to the 240,000 currently serving in the Taiwanese Army, which also has a 1.5 million-man reserve force.[80] Even if the PLA augmented its troop transportation capabilities with commercial vessels, a successful invasion would still be unlikely because the PRC could not achieve a three attackers-to-one defender ratio that traditional military doctrine dictates for success.[81]

Conclusion

Under international law, Taiwan qualifies as a state. It possesses the legal requirements stated in the Montevideo Treaty and is treated as a political entity separate from the PRC by other nations and international organizations. Economically, it has proven itself to be a vital, self-sustaining member of the world market with the financial mechanisms and commitments befitting an independent nation. There is no legal justification for denying Taiwan statehood, as it clearly cannot be considered a PRC province after fifty-five uninterrupted years of self-rule. The looming threat of invasion and war with the PRC has always hung over Taiwan and is arguably the sole reason for its reluctance to declare its independence and claim sovereignty.

With the acceleration of the PRC's modernization programs, the possibility of a successful invasion of Taiwan is increasing. The PLA is specifically focusing on upgrading and creating new amphibious landing crafts to support a growing compliment of rapid reaction forces trained in airborne and amphibious island assaults.[82] Additionally, the PRC Air Force is undergoing extensive training to support an amphibious landing and to counter Western aircraft and US aircraft carriers.[83] If military buildup continues at current rates, the PRC's offensive capabilities may outstrip the ROC's defensive capabilities within the next five to

[78] Conflict in the Taiwan Strait: American Response, *at* http://taiwansecurity.org/IS/IS-Lasater-0200.htm (last visited October 11, 2003).

[79] Richard Halloran, *Analysts Downplay Threat China Poses to Taiwan*, WASH. TIMES, *at* http://www.fas.org/news/china/2000/e20000515analysts.htm (last visited Dec. 21, 2002).

[80] Moore, *supra* note 72.

[81] The Microscopic Model, *at* http://www.rand.org/publications/MR/MR638/chap2.html (last visited October 11, 2003). Military theorists from Von Clausewitz to Schwarzkopf have recognized this principle of proportionality when attacking a fortified enemy position.

[82] Moore, *supra* note 72.

[83] Santoli, *supra* note 75.

ten years.[84] The PRC's ability to crush the ROC and occupy Taiwan, bringing its territory and over twenty-two million citizens under the control of the communist government in Beijing, is increasing every year. From a purely military standpoint, Taiwan's chances for successfully declaring independence in the near future are decreasing as the PRC's remilitarization and technological overhaul of its armed forces continues.[85]

For the time being, however, the PRC lacks the military capabilities and training to stop a declaration of independence by Taiwan short of a nuclear attack. Additionally, the threat of confrontation with the United States, acting in accordance with the Taiwan Relations Act, would likely stay the unprepared PRC from military action.[86] Although the PRC cannot effectively undertake direct military action presently, the day is coming when the revamped armed forces of the PRC will be able to reunify China with force. Therefore, now is the time for the United States to let Taiwan know it is prepared to recognize it as a sovereign, independent nation.

Beyond the legal issues and Machiavellian geopolitics, there lies the simple proposition of guaranteeing the life and liberty of over twenty-two million free people who support their democratic government. To sit back and allow Taiwan to be absorbed by an aggressive, undemocratic PRC would be to repeat the mistakes of the past. Such a course of inaction, sacrificing a small democracy to appease a powerful neighbor, harkens back to when Chamberlain gave Hitler Czechoslovakia and Roosevelt let Stalin have Eastern Europe. Although the legal and political justifications for recognizing Taiwan as an independent nation are both compelling and overwhelming, the irony of a young democracy struggling for its independence against a giant power from across the sea should not be ignored by American leaders.

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[84] *See* David Shambaugh, *A Matter of Time: Taiwan's Eroding Military Advantage,* WASH. QUARTERLY, (Spring 2000), *at* http://www.twq.com/spring00/232shambaugh.pdf (last visited Oct. 1, 2002); *but see* Halloran, *supra* note 80.

[85] See Future Military Capabilities and Strategy of the People's Republic of China, *at* http://www.rand.org/publications/MR/MR638/chap2.html (last visited October 11, 2003). *See also,* China Special Weapons News, *at* http://www.fas.org/news/china/1998/index.html (last visited October 11, 2003).

[86] Taiwan Relations Act of 1979, U.S.C. Title 22 Chapter 48 § 3302.