STATEHOOD, SELF-DETERMINATION AND THE 'TAIWAN QUESTION'

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1. INTRODUCTION

The most popular question posed in relation to the island of Taiwan remains whether it constitutes a state in international law. Complexities inherent within the traditional notion of statehood have been exacerbated in the Chinese context by the various positions adopted by the international community, the Republic of China ('ROC') and the Peoples' Republic of China ('PRC') during different phases of the cross-Straits dispute. In this regard, the international community has endorsed the PRC's version of the 'one China' principle by recognising it as the legitimate successor government to the ROC regime. Accordingly, the PRC constitutes the *de jure* government of China and its sovereignty extends to Taiwan with the ROC judged to be a local authority under its jurisdiction. Therefore, despite its newly found democratic credentials and powerful global economy, the ROC on Taiwan has not been widely perceived as a state in international law. However, while the Chinese dispute remains locked within the traditional paradigms of statehood and sovereignty,¹ the increasing susceptibility of states to the pervasive norms of national self-determination, human rights, and democratic governance may signal a new chapter in cross-Straits relations. This article will therefore examine the rising tension between established norms and the progressive canon of modern international law through the doctrines of recognition, statehood, and national self-determination. Against this background, the article will assess the impact of this institutional conflict on the cross-Straits dispute, and its implications for the international status of Taiwan. Finally, it seeks to determine whether, in a search for suitable autonomous

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¹ Davis, M.C. "Towards Modern Concepts of Sovereignty and Statehood" in Henckaerts, J.M. (ed.), *The International Legal Status of Taiwan in the New World Order: Legal and Political Considerations* (1996), 22, at 31.

regimes, the case of Taiwan represents an alternative to the 'post-modern tribalism' currently threatening the international order.²

2. THE ORIGINS OF THE CROSS-STRAIT DISPUTE

In order to regenerate China in the aftermath of its imperial disintegration, the fledgling ROC government sought to construct a strong national unit on which to base a new Chinese political identity.³ Given the entrenched Westphalian order, in their pressing efforts to build a nation, Chinese leaders were influenced by the European notion of nationalism and its modal form, the nation-State.⁴ Modern nationalism advanced the theory that the nation served as the primary source of governmental authority and thus presented the only basis for a sovereign state.⁵ Accordingly, each nation has the right to constitute itself as a separate state on the grounds that political and national units should be congruent.⁶ In view of the abrupt collapse of imperial China, with its regimented political structures and vast territory, it is unsurprising that the infant Chinese nation lacked the political cohesion and popular support necessary to safeguard its early development. China soon found itself in turmoil and ultimately, a protracted civil war was waged between nationalist and communist factions, each side attempting to realise different conceptions of the Chinese nation. Although the communist forces eventually emerged victorious, the defeated ROC nationalists managed to retreat to the island of Taiwan.⁷ The conclusion of the military conflict witnessed the newly constituted PRC government and the decimated ROC regime maintaining their commitment to 'one China', with each side promoting its own state-sponsored brand of Chinese nationalism in a bid to ensure the realisation of their vision of the Chinese nation-State.

² See Franck T. M., "Clan and Super Clan: Loyalty, Identity and Community in Law and Practice", 90 AJIL 359 (1996).

³ For an historical overview of the period see Fairbanks, J.K. & Goldman, M., *China: A New History* (1998).

⁴ For general sources see Smith, A.D., *Ethnic Origins of Nations* (1986); Gellner, E., *Nations and Nationalism* (1990); Hobsbawm, E.J., *Nations and Nationalism Since 1780: Programme, Myth, Reality* (2nd ed. 1990); Deutsch, K. & Foltz, W., *Nation Building* (1963); Berman, N., "But the Alternative is Despair", 106 *Harvard Law Review* 1792 (1993). In the Chinese context, see Hughes, C., *Taiwan and Chinese Nationalism* (1997); Townsend, J., "Chinese Nationalism", *The Australian Journal of Chinese Affairs* 97 (1992); Tozzi, P., "Constitutional Reform on Taiwan: Fulfilling A Chinese Notion of Democratic Sovereignty", 64 *Fordham Law Review* 1193 (1995); and Kryukov, M.V., "Self-determination from Marx to Mao", 19 *Ethnic and Racial Studies* 352 (1996).

⁵ Mayall, J., *Nationalism and International Society* (1993), 2 cited in Hughes, n. 4, at 2.

⁶ Gellner, n. 4, at 1, cited in Hughes, *ibid*.

⁷ This retreat mirrored a similar process that occurred in the seventeenth century when the conquering Manchu dynasty forced the remnants of the Ming dynasty to the island of Taiwan.

In this regard, the PRC sought to reinforce its domestic programme of nation building through recourse to the norms of statehood and sovereignty.⁸ It perceived Taiwan as a renegade province, an inalienable part of its territory, and as such any interference from the international community was considered a threat to its territorial integrity. To this end, the original aim of 'liberating' the island by force remained entirely consistent with the nineteenth-century paradigms of statehood and sovereignty.⁹ The PRC sought to mobilise Chinese nationalism in order to realise a single Chinese nation co-terminus with its historic territorial parameters.¹⁰ Accordingly, along with Hong Kong and Macao, the return of Taiwan remains central to its self-perception and core legitimacy.¹¹ The 'one China' principle also underpinned the ROC's strategy for reclaiming the Chinese mainland. However, one of the difficulties confronting the ROC regime was that the Taiwan's population was not homogenous. The majority could be categorised as 'Taiwanese'; although originally from the Chinese mainland, their arrival on the island significantly predated the retreat of ROC supporters (the 'Mainlanders') towards the end of the civil war.¹² Consequently, the ROC advanced a policy of Chinese nationalism to consolidate its position on Taiwan and promote its core aim: the repatriation of the Chinese mainland. Therefore, the regime attempted to transcend the primordial sentiments associated with Taiwanese cultural practices by using traditional Chinese culture characterised by Confucian norms, classical arts, literature, history, and archaeology under the banner of the Mandarin dialect in order to foster a shared consciousness on which to rebuild the Chinese nation.¹³

From an international perspective, notwithstanding its retreat to Taiwan, the ROC retained the China seat at the United Nations and was widely recognised as the legitimate sovereign government of China, irrespective of the *de facto* reality for the best part of thirty years. The onset of the Cold War ensured that western liberal democratic states became increasingly sympathetic to the plight of the failing ROC especially after the outbreak of the Korean War when President Truman ordered the US Seventh Fleet to 'neutralise' the Taiwan Strait thereby preventing the PRC from invading Taiwan and satisfying its territorial claim. Clearly, western states had a vested interest in maintaining the fiction that the ROC still governed the whole of

⁸ Davis in Henckaerts, n. 1, at 30-31. Also see Townsend, n. 4, at 117-124.

⁹ See below.

¹⁰ However, this raises the question of what constitutes the territorial parameters of historic China as its territorial extent waxed and waned during its vast imperial history, see generally Fairbanks & Goldman, n. 3.

¹¹ Hughes, n. 4, at 19-20.

¹² Wachman, A.M., *Taiwan: National Identity and Democratisation* (1994), at 56-90; and Copper, J.F., *As Taiwan Approaches the New Millennium* (1999), at 25-29.

¹³ Chun, A., "Democracy as Hegemony, Globalisation as Indigenisation, or the 'Culture' in Taiwanese National Politics", in Lee, W.C. (ed.), *Taiwan in Perspective* (2000), 7, at 9-14.

China in the hope that the communist PRC would falter and provide the ROC with the opportunity of regaining control of the Chinese mainland. To this end, US support in particular was crucial in maintaining the decimated ROC regime. In return, the US gained a foothold in the Asia Pacific which, given the instability of the region, was to prove vital in protecting US commercial and security interests.¹⁴ Further, by continuing to support the ROC and casting the PRC as an international pariah, western states sought to influence the outcome of events in the Far East in favour of capitalism if not of liberal democracy.

However, the promise of untapped mainland markets ensured that this fiction could not be maintained indefinitely. During the 1960s, the rapid expansion in UN membership prompted by decolonisation marked the beginning of a new era within the organisation. New members in particular sought to challenge the policy objectives of its predominant powers through the forum of the General Assembly.¹⁵ In accordance with the spirit of decolonisation, members lobbied for the admission of the PRC on the grounds that the international community should recognise the political reality within modern China. Matters were brought to a head with the passage of resolution 2758, which sought to seat the PRC as the sole representative of China.¹⁶ Although both the PRC and ROC were committed to the 'one China' principle, each saw its respective government as the only legitimate representative of the Chinese state and therefore both were ideologically incapable of accepting either the existence of the other or any compromise solution. Ultimately, the General Assembly supported the cause of the PRC. 'Expelled' from the UN, the ROC faced the prospect of an international decline as the international community began the process of switching diplomatic allegiance from the 'de-recognised' ROC to the PRC.¹⁷ This process was markedly accelerated after the United States recognised the PRC to be the sole *de jure* government of China, and that Taiwan is part of China.¹⁸

Thus did global events force the ROC to reconsider its own interpretation of the 'one China' principle as it slowly began to accept the political reality of its new international position. In 1991, the ROC relinquished its claim to the Chinese mainland and committed itself to a policy of national unifica-

¹⁴ Wachman, A.M., "Taiwan: Trapped in a Tempestuous Triad", Conference Paper, 42nd International Studies Association (2001), Chicago, USA.

¹⁵ Wang, V.W., "All Dressed Up But Not Invited to the Party: Can Taiwan Join the United Nations Now the Cold War Is Over?", in Henckaerts, n. 1, 85, at 89-90.

¹⁶ G.A. Res. 2758 (XXVI) 25 Oct. 1971.

¹⁷ Technically, the ROC regime withdrew from the UN when it was clear that this resolution would be voted on. See Wang in Henckaerts, n. 15, at 92. Nevertheless, the ROC government is still formally recognised by a small number of states. See <http://www.mofa.gov.tw/emofa/eindex.html>.

¹⁸ See the Joint Communiqué of the United States and the PRC government, 73 AJIL 227 (1979).

tion by peaceful means.¹⁹ The leadership of the ROC devised in the form of the National Guidelines for Unification an agenda, which set out its proposed conditions for the eventual unification of China.²⁰ Although the Guidelines reaffirmed the ROC's commitment to 'one China', this commitment was evidently conditional. The ROC's primary aim was that unification should lead to the creation of a democratic China with guaranteed human rights and adherence to the rule of law. Given the PRC's existing political structure, the Guidelines indicated that unification could be achieved only through a gradual process that would promote mutual understanding, trust and co-operation between the two sides.²¹ The ROC's position was subsequently clarified in its White Paper entitled 'Relations Across the Taiwan Straits' (1994).²² This document suggested that the notion of 'one China' represented an historical, geographical, cultural, and racial entity rather than a political designation. The ROC's new vision thus showed inconsistency with its historical claim to be the legitimate government of China; nor did it conform to the view that the PRC holds this position. Instead, it claimed that unification would lead to the creation of a new China, which would combine the benefits of progressive international norms such as democratic governance and human rights with the economic strength of a unified China. Although during this period the 'one China' principle took on new significance, its actual content became increasingly uncertain. Denied international status, the ROC evidently maintained its ideological commitment more out of convenience than conviction, relying heavily on creative ambiguity in an attempt to retain its political autonomy and expand its international space.²³ The essence of its policy was premised on the view that, while 'one China' existed in the past and may exist again in the future, there are currently two equal political entities within the Chinese context.²⁴ The ROC therefore argues that since each political entity presently has its own jurisdiction, both sides should respect the *status quo*, thereby allowing each government to advance wider Chinese interests with the resultant benefits accruing to all Chinese peoples in the event of unification. Evidently, a long-term philosophical commitment to 'one China' provides the ROC with considerable

¹⁹ By repealing the "Temporary Provisions Effective During the Period of Communist Rebellion". See Wachman, A.M., "Taiwan: Parent, Province or Blackballed State?", in Lee, W.C. (ed.), *Taiwan in Perspective* (2000), 183, at 189.

²⁰ See <http://www.mac.gov.tw/english/MacPolicy/gnueng.htm>

²¹ *Ibid.*

²² Reproduced in Henckaerts, n. 1, at 279-292.

²³ Wachman, n. 19, at 189.

²⁴ *Ibid.*

scope to pursue its own political and economic interests while purporting to support the PRC's nationalist crusade.²⁵

On the domestic front, in an effort to counteract the effects of its international isolation, the ROC embarked on a programme of cultural reconstruction by diverting political energy away from the 'one China' issue to promote the full-scale economic development of Taiwan.²⁶ Accordingly, the government relaxed its grip on the market and encouraged the growth of an export driven economy.²⁷ The end of martial law and the subsequent march towards democratic governance accelerated this process of 'indigenisation' by promoting political reconciliation between the Mainlander and Taiwanese ethnic groups. From the standpoint of the PRC, the process of democratisation on Taiwan, culminating in the first direct presidential elections in 1996, threatened the prospect of unification by bringing into question the claim that Chinese identity is inherently bound to a single Chinese nation. However, as popular sovereignty now exists exclusively in relation to Taiwan rather than to the mythological Chinese nation, the constraints of Chinese nationalism have been cast off.²⁸ Consequently, the way has been cleared for the development of ethnic, cultural and economic ties without the imperative for political amalgamation with the Chinese mainland.²⁹ The declining importance of Chinese nationalism on Taiwan remains problematical for the PRC as such a shift undermines its historical interpretation of China and its justification for unification: the re-uniting of the Chinese nation.³⁰ Developments on Taiwan, therefore, have ramifications for the national identity and core legitimacy of the PRC itself.³¹ Indeed, the PRC's heightened fears were clearly manifest in the missile crisis of 1995/6, and its continuing threat of invasion should Taiwan declare *de jure* statehood. In the circumstances, it is unsurprising that the leaders of mainstream political parties in Taiwan are increasingly committed to the political *status quo* as reflected by the wider population.³²

²⁵ Indeed adherence to the 'One China' principle could also justify initial parallel representation at the UN on the grounds that the unified China would derive substantial benefits in the long-term. See Yang, S., "The Republic of China's Right to Participate in the United Nations", in Henckaerts, n. 1, at 117.

²⁶ Chun, n. 13, at 14-16

²⁷ *Ibid.*, at 14. For the impressive statistics regarding the ROC economy at the peak of its achievements, see Zaid, M.S., "Taiwan: It Looks Like it, it Acts Like it, But is it a State? The Ability to Achieve a Dream Through Membership in International Organisations", 32 *New England Law Review* 805 (1998).

²⁸ Hughes, n. 4, at 95-96.

²⁹ *Ibid.*, at 100.

³⁰ *Ibid.*

³¹ For example, see the rise of national claims in Tibet and Xinjiang.

³² As evidenced by the results of the presidential election held in 2000, see Kau, M.Y.M., "Taiwan's Presidential Election and Cross-Strait Relations", Taiwan Research Institute, 13 Mar. 2000 http://www.taiwaninformation.org/issues/view_story.php3?101; and Rigger, S., "Is Taiwan Independence

Although the essence of the PRC's policy on unification continues to be based upon the promotion of Chinese nationalism, successive leaders of the PRC have recognised the need for a practical strategy in order to persuade the people of Taiwan to support the process of unification. In this regard, their prime strategy has been characterised as the 'one country, two systems' model under which Taiwan would become a special administrative region of the PRC with a high degree of political and economic autonomy.³³ However, the ROC government has rejected this arrangement on the grounds that it is tantamount to annexation.³⁴ The ROC has claimed that despite the promise of a high degree of autonomy, Taiwan would be subject to fundamental restrictions including that requiring that its authorities must not violate the PRC's constitution or the decrees of its government, and that the model would be guaranteed only for a transitional period.³⁵ Against this background, the people of Taiwan have turned to the international community to assist in resolving the cross-Straits dispute in such a manner that will preserve their existing political autonomy. In this regard, the primary legal mechanisms appear to be the doctrines of recognition, statehood, and national self-determination.

3. THE INTERRELATIONSHIP OF RECOGNITION AND STATEHOOD IN THE CHINESE CONTEXT

The doctrine of recognition of states in international law is dominated by two conflicting theories.³⁶ The constitutive theory of recognition maintains that legal personality is conferred through acts of recognition carried out by existing states rather than through a declaration of statehood on the part of a putative state. In contrast, the declaratory theory asserts that a state is legally constituted by its own actions and that its statehood is not dependent on the recognition of other states, the process of recognition being limited to an acceptance of the existing factual situation.³⁷ As the declaratory theory presents an attractive mechanism for ensuring that the legal position does not stray too far from political reality, it is generally considered to be more

Passe? Public Opinion, Party Platforms, and National Identity in Taiwan", in Chao, C. & Clark, C. (eds.), *The ROC on the Threshold of the Twenty-first Century: A Paradigm Re-examined* (1999), 47.

³³ Under this model, the authorities in Taiwan would continue to exercise political and administrative power and retain control over their own economic, financial and military affairs. Further, autonomy would extend to the capacity to enter into international commercial and cultural agreements and the maintenance of certain rights in the international sphere. See PRC White Paper, "The Taiwan Question and the Reunification of China", The Taiwan Affairs Office (August 1993) <http://www.china-embassy.org/eng/7127.html>.

³⁴ ROC White Paper 1994 in Henckaerts, n. 1, at 285.

³⁵ *Ibid.*

³⁶ These theories are also applicable in relation to the recognition of governments.

³⁷ Shaw, M.N., *International Law* (4th ed., 1997), at 296-297.

appropriate to the current international regime.³⁸ Nevertheless, its acceptance in an unadulterated form would suggest that recognition could reduce questions of statehood to a simple matter of power politics.³⁹ In practice, therefore, states have generally forged a middle course between the two theories.⁴⁰ Thus while 'effectiveness' remains the guiding principle, where the legitimacy of a state is in question other factors can be taken into consideration such as its willingness or ability to act in accordance with the terms of international law.⁴¹ Further, although the international community may decide not to recognise a *de facto* state, which controls its own territory effectively, it cannot deny that it possesses certain rights and duties under international law.⁴² It is evident that the doctrine of recognition continues to serve two important purposes within international law. First, widespread recognition by the international community provides tangible evidence as to whether a particular *de facto* state has satisfied the traditional criteria for statehood; thus, it may prove to be crucial in situations where the claim of a putative state is susceptible to challenge in some respect.⁴³ Second, it may be used as a tool for political approval or, more pointedly, disapproval relating to the conduct of a particular state (or government). Regarding the latter, many scholars suggest that the decision whether or not to recognise a *de facto* state or government is essentially a political act cloaked in legal terminology.⁴⁴ This is particularly true in relation to the recognition of governments where the criteria for assessing the validity of legal claims are limited to the broad determinants of effectiveness and its prospect of permanence.⁴⁵

In the Chinese context, the ROC regime sought to tackle the crisis of legitimacy brought about through its international de-recognition by recourse to the notion of statehood. However, instead of incurring the wrath of the

³⁸ See Crawford, J., *The Creation of States in International Law* (1979), at 15-25; Shaw, n. 37, at 296-298; Brownlie, I., *Principles of Public International Law* (5th ed., 1998), at 88-104. More generally see Lauterpacht, H., *Recognition in International Law* (1947); Kelsen, H., "Recognition in International Law: Theoretical Observations", 35 AJIL 605 (1941).

³⁹ Crawford, n. 38, at 78-79; and Rubin, A. P., "Recognition Versus Reality in International Law and Policy", 32 *New England Law Review* 669 (1998).

⁴⁰ See Shaw, n. 37, at 297. However, these theories have been roundly criticised. See Brownlie, I., "Recognition in Theory and Practice," 52 BYIL 197 (1982); and Chiu, H., "International Legal Status of the ROC", (No.5) *Contemporary Asian Studies Series* (1992), 1.

⁴¹ For the seminal interpretation on effectiveness in relation to recognition, see the award of Taft J. in the *Tinoco Arbitration* (United Kingdom v. Costa Rica) (1923), 1 RIAA 369.

⁴² Henkin, L. et al. (eds.), *International Law, Cases and Materials* (2nd ed. 1987), at 232 cited in Chiu, n. 40, at 4. Also see Shaw, n. 37, at 317. For a discussion of the concept of a *de facto* state, see below.

⁴³ See the *Tinoco Arbitration*, n. 41; Crawford, n. 38, at 24; and Opinion No. 8 of the EC Arbitration Commission, 92 ILR 199, at 201.

⁴⁴ Shaw, n. 37, at 295-296; and Chiu, n. 40, at 3.

⁴⁵ However, see Talmon, S., *Recognition of Governments in International Law* (1998) and Harris, D.J., *Cases and Materials in International Law* (5th ed. 1998), at 144-189.

PRC by declaring itself to be a *de jure* state, successive ROC leaders have unofficially asserted that the ROC has been a *de jure* state since its inception in 1912 and claim that as a result, it is unnecessary to make a fresh claim of statehood.⁴⁶ While the ROC now accepts that the PRC is the legitimate government of the Chinese mainland, it claims that since the PRC has never effectively occupied Taiwan, the PRC did not succeed to its territory. The basis for this argument stems from the original position of the ROC, that it is the sole government of the Chinese state since its authority was never extinguished on Taiwan, nor was the state that it represented. However, this interpretation suggests that since the conclusion of the civil war there have been two states in the Chinese context. Although this position is contrary to the 'one China' principle historically advanced by the ROC, such revision allows it to draw on the tenets of statehood. In particular, the notion of statehood gives credence to the view that a state may continue to exist despite the severe diminution of its territory or the existence of competing claims from other states.⁴⁷ On this re-reading of history, the ROC constitutes a *de jure* state regardless of the massive territorial losses suffered during the civil war and the PRC's continuing claim to Taiwan. Nevertheless, it is clear that the willingness of a significant proportion of the international community to recognise a state remains a vital ingredient of *de jure* statehood and therefore the interrelationship between these two concepts must be fully explored.

In general, scholars have taken great care to maintain the distinction between the notion of statehood and the doctrine of recognition of states in international law, although some are prepared to acknowledge their close relationship.⁴⁸ Regarding the recognition of states, a primary issue remains whether an entity qualifies as a *de jure* state in international law. The starting point in this respect is generally believed to be the criteria established by the Montevideo 'Convention on the Rights and Duties of States' (1933).⁴⁹ Article 1 provides that the state as a person of international law should possess the following criteria: (a) a permanent population; (b) a defined territory; (c) government; and (d) the capacity to enter into relations with other states. This formulation is consistent with the assertion that the political existence of a state is a question of fact and that the rights and obligations of such a *de facto* state cannot be denied under international law, irrespective of widespread non-recognition.⁵⁰ Thus, by creating objective criteria through which *de facto*

⁴⁶ Wachman, n. 19, at 197-198. Also see Rigger, S., "Taiwan Rides the Democratic Dragon", 23 *The Washington Quarterly* 107 (2000).

⁴⁷ Crawford, n. 38, at 36-40.

⁴⁸ *Ibid.*, 74; Grant, T.D., "Defining Statehood: The Montevideo Convention and its Discontents", 37 *Col.JTr.L* 403, at 446-447 (1999).

⁴⁹ 28 *AJIL* 75 (1934).

⁵⁰ Art.3 of the Montevideo Convention, *ibid.* This interpretation was supported in Opinion No.1 of the EC Arbitration Commission on Yugoslavia, 92 *ILR* 162. Further, see below.

states could maintain legitimate claims to *de jure* statehood,⁵¹ the Montevideo Convention embodied the spirit of the declaratory theory of recognition with its inclusive approach to international personality. Accordingly, many scholars have asserted that the ROC on Taiwan is at least a *de facto* state because it clearly satisfies the criteria as formulated by the Montevideo Convention and is therefore entitled to enjoy certain rights and duties in international law by virtue of this status.⁵²

However, this interpretation of statehood is made in the full knowledge that both *de facto* and *de jure* states exist within international law. This distinction, which finds its origins in the positivism of the late nineteenth century, accepts that all political communities could be described as states through an accommodation of the classical tenets of *jus gentium*.⁵³ Therefore, the broad notion of statehood could encompass any organised political community, which would be regarded as possessing sovereign authority over its territory regardless of the level of civilisation it had reached. Nevertheless, by the late nineteenth century, only those states recognised by the 'Family of Nations' could be endowed with legal personality for the purposes of international law. Thus while the positivist international regime did not seek to prescribe requirements for attaining statehood, it did establish criteria to determine which *de facto* states would be permitted to join the Family of Nations and thereby secure *de jure* statehood. Admission was the preserve of the existing membership, which was committed to maintaining its exclusivity. To this end, the criteria established for these purposes represented the fundamental characteristics of the European nation-State; the further from this model a political entity was removed, the less chance it had of becoming a subject of international law. In this respect, the gaze of the Family of Nations was coloured by the cause of 'civilisation' and the link between civilisation and international personality therefore became an express feature of positivist theory. Thus positivist international law demanded that 'primitive' *de facto* states achieve civilisation before gaining recognition as members of the Family of Nations with rights to territorial sovereignty and until such time their political existence was immaterial.⁵⁴ In the absence of sovereign rights, *de facto* states were at the mercy of the imperial powers whose actions when dealing with them were not constrained by the rules of international law. This central feature of the positivist international regime purported to justify the actions of the European powers during their programmes of

⁵¹ Although it is important to note that there is no duty to recognise states, *see below*.

⁵² *See below*.

⁵³ See Castellino, J. & Allen, S., *Title to Territory in International Law: A Temporal Analysis* (2003); Crawford, n. 38, at 5-10; Alexandrowicz, C.H., *The European-African Confrontation* (1973); Andrews, J.A., "The Concept of Statehood and the Acquisition of Territory in the Nineteenth Century", 94 *Law Quarterly Review* 409 (1978).

⁵⁴ Lindley, M.F., *The Acquisition and Government of Backward Territory in International Law* (1926), at 20.

colonial acquisition in Asia and Africa by ensuring that the territory of *de facto* states could be deemed *terra nullius* and therefore available for acquisition.⁵⁵

Although the impact of the distinction between *de jure* and *de facto* states was felt principally during the colonial era, the current dispute as to the international status of Taiwan demonstrates that it still has resonance for the current international regime. However, while in the modern context a *de facto* state is not considered to be free from the constraints of international law nor can its territory be treated as *terra nullius*, in practical terms, the core issue lies not in the existence of such rights and duties, but rather in the means of enforcing them in the absence of diplomatic relations.⁵⁶ Thus, *de jure* statehood is not a mere technicality of international law; it enables a state to foster significant legal relations with other states, and to participate in the international community. Consequently, despite the significant advances made by the people of Taiwan in the spheres of governance and economic development, the external manifestation of their political identity remains subject to the will of the international community where this is acting in accordance with the principles of international law.

To this end, contemporary scholars have questioned the continuing validity of the traditional criteria for statehood as formulated by the Montevideo Convention with its alleged overemphasis on effectiveness.⁵⁷ Accordingly, given the lack of a central authority and the need to maintain a link between the *de jure* position and the political reality of the existing international order, a valid claim to *de jure* statehood cannot necessarily be reduced to the test of effectiveness.⁵⁸ In particular, Crawford suggests that the central requirements of *de jure* (and *de facto*) statehood are that a putative state must formally declare its statehood, which must be supported by at least a minimal degree of effective governance.⁵⁹ In this regard, Grant suggests that while an entity might possess the attributes of a state, in the absence of such a formal declaration, statehood cannot be achieved.⁶⁰ He asserts that if this were not the correct position, many federal units could satisfy the criteria

⁵⁵ Unless acknowledging the 'sovereignty' of these *de facto* states could serve the interests of the European powers. The classical example in this regard was the process by which unequal treaties were concluded in Africa and China, regarding the former see Castellino & Allen, n. 53, at 91-118.

⁵⁶ Shaw, n. 37 at 317-318.

⁵⁷ See Grant, n. 48.

⁵⁸ Departures are justifiable where a state or government has contravened the norms of *jus cogens* such as the prohibition on the use of force, or some other fundamental illegality, see Crawford, n. 38, at 121-128.

⁵⁹ *Ibid.*, at 52-72. Also see the *Island of Palmas Arbitration*, 22 AJIL 867 (1928).

⁶⁰ Grant, n. 48, at 439 derives authority for this proposition from the *Restatement of the Law of the Foreign Relations of the United States* (3rd ed. 1987), Vol. 1, section 201(f). This issue is particularly important in relation to Taiwan.

for statehood, the fact that they do not maintain a claim being determinative of their status.⁶¹

Despite its manufactured claim to statehood, the ROC has been careful not to formally declare *de jure* statehood, preferring to rely on the designation 'political entity' in a bid to appease the PRC. As such, the ROC has never formally claimed to be a state and thus according to the traditional interpretation, cannot be a *de jure* state (or a *de facto* state) in international law.⁶² Although this approach has ostensibly been a factor in the ROC's ongoing commitment to the 'one China' principle, in reality, it derives from the threat that the PRC would invade Taiwan if *de jure* statehood were declared. The bearing of this unique factor on any formal claim to statehood has led eminent scholars to object to the suggestion that the ROC cannot be a state because it does not expressly claim to be so.⁶³ Arguably, it is incumbent on the international community to take an exceptional stance in relation to Taiwan's political status. The process of democratic reform on Taiwan has reinforced its separateness from the PRC, and has demonstrated that popular sovereignty is vested solely in the people of Taiwan. In the circumstances, it has been suggested that the international community should present a united front against the PRC in this respect.⁶⁴ Accordingly, if the international community were to give its collective assurance to protect Taiwan in the event of a formal declaration of statehood, the ROC could become a *de jure* state in international law.

Although the act of recognition is not presently a collective process in international law, international organisations are playing an increasingly important role in relation to issues of statehood and recognition. In this regard, the rising value of UN membership is indicative of broader trends towards political and economic interdependence within the current international regime.⁶⁵ While membership is not a prerequisite of statehood, it does provide strong evidence of a legitimate claim, which, although not binding on individual states, is clearly presumptive.⁶⁶ Thus, full UN membership has been increasingly perceived as the 'birth certificate' of a state. Importantly, UN membership has enabled entities to achieve statehood where they would otherwise have failed to satisfy the traditional criteria for statehood, as has been apparent in relation to the process of decolonisation and the creation of microstates. To this end, if the international community, acting through

⁶¹ Grant, n. 48, at 439-440.

⁶² Crawford, n. 38, at 146-152. The United States does not accept the ROC as a *de facto* state despite its policy of accepting the political existence *de facto* states where they occupy international space see Chiu, n. 40, at 8-10.

⁶³ Chiu, *ibid.*, at 11-14.

⁶⁴ Wang in Henckaerts, n. 15, at 104.

⁶⁵ See Hannum, H., *Autonomy, Sovereignty and Self-determination: The Accommodation of Conflicting Rights* (1990).

⁶⁶ Grant, n. 48, at 445-446; and Shaw, n. 37, at 313.

the UN, were prepared to extend full membership to the ROC, it would enable the people of Taiwan to declare their formal independence from the PRC and thus to establish their own *de jure* state in relative safety.⁶⁷

However, for this proposed course of action to be successful, much depends on the significance attributed to the rising notion of democratic governance in international law. In this respect, the dissolution of, respectively, the Soviet Union and Yugoslavia has introduced a new dynamic in relation to the creation and recognition of states in international law; its implications for the status of Taiwan must be fully considered. The European Community set out its common position in its 'Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union'.⁶⁸ Further, in response to the Balkan crisis, it issued a 'Declaration on Yugoslavia', which adopted the Guidelines and developed supplementary criteria according to which the republics of the former Yugoslavia would be recognised.⁶⁹ Through its declarations, the European Community reinforced the overtly political nature of recognition by requiring that the putative states meet additional criteria in order to secure statehood, including respect for the rule of law, democracy and human rights, and the observance of the appropriate international commitments.⁷⁰ In this context, the United States also adopted towards recognition a new approach that went beyond the traditional criteria for statehood. It developed a two-tier formulation premised on a 'modified declarative view' of recognition.⁷¹ Consequently, if an entity met the traditional criteria for statehood, it was considered to be a *de facto* state and would be accorded the rights and privileges of a state under international law.⁷² Nonetheless, in relation to the republics of the former Soviet Union, the United States would not grant recognition until it had decided that conditions broadly similar to those prescribed in the Guidelines of the

⁶⁷ Readmission to the UN has been a high priority of the ROC since the early 1990s. See Henckaerts, n. 1, at 261-278.

⁶⁸ 31 ILM 1486 (1992).

⁶⁹ *Ibid.*, at 1485.

⁷⁰ These included the UN Charter, the CSCE's Helsinki Final Act, 14 ILM 1292 (1975); and the "Charter of Paris for a New Europe" 30 ILM 190 (1991).

⁷¹ The traditional approach of the United States closely mirrors the criteria established by the Montevideo Convention, see §201 of the *Restatement of the Law of the Foreign Relations of the United States* (3rd ed. 1987), Vol. 1, at 72. However, the United States maintains that a state is not required to formally recognise another state or the government of that state, 72 AJIL 337 (1978). Opinion No. 10 of the EC Arbitration Commission supports this position, 92 ILR 206, at 208.

⁷² The United States recognised that Macedonia occupied international space although it refused to formally recognise the former republic of Yugoslavia for a period of eighteen months. See Williams, P.R., "Creating International Space for Taiwan: The Law and Politics of Recognition", 32 *New England Law Review* 801, at 802-804 (1998).

European Community had been fulfilled.⁷³ Certain scholars have welcomed these developments on the grounds that these will enable the wider international community to embrace the progressive norms of self-determination, human rights and democratic governance, which will allegedly lead to long-term international peace and security.⁷⁴

It is apparent that this new dynamic signals a new phase in the doctrine of recognition and the creation of states in international law. The positivism of the late nineteenth century spawned the first incarnation of recognition to ensure that the notion of statehood remained the exclusive preserve of the Family of Nations. This interpretation was subsequently revised in accordance with the principles of modern international law, which promoted the declaratory theory of recognition and the inclusive approach to statehood as typified by the Montevideo Convention. This third phase marks a return to a more prescriptive approach, premised on the ideological aspirations of the predominant international actors, seemingly reminiscent of the purposes served by the notions of statehood and recognition during the late nineteenth century. Clearly, events in the former Soviet Union and Yugoslavia are indicative of a theoretical shift away from the declaratory theory in favour of the constitutive approach.⁷⁵ This development not only signifies a shift in the purpose of recognition in order to promote 'suitable' governmental structures in the post-Cold War era, but it also threatens the delicate relationship between recognition and statehood within international law. Grant summarised the problems facing *de facto* states neatly when he stated that:

The process of recognition, which is probably a hybrid one of law and politics, can blur confusingly with the definition of 'state.' Entities claiming to be states have been denied recognition on grounds that in the past had little to do with statehood, for new criteria are now advanced as prerequisites to statehood. Such criteria furnish apparently legal grounds to decline recognition of new states, but non-recognition may well be inspired by political, not juridical, considerations. Discretionary or political conduct in international relations does not promote the rule of law.⁷⁶

⁷³ See Murphy S.D., "Democratic Legitimacy and the Recognition of States and Governments", 48 ICLQ 545, at 558 (1999). In relation to the former Yugoslavia, the United States did not provide specific criteria by which it recognised the new states although it acknowledged that their statehood was the result of the democratic exercise of popular sovereignty in the new states. See *ibid.*, at 563.

⁷⁴ See Reisman, W.M., "Sovereignty and Human Rights in Contemporary International Law", 84 AJIL 866 (1990).

⁷⁵ This view is supported by Warbrick, C., "Recognition of States", 41 ICLQ 473, at 480 (1992).

⁷⁶ Grant, n. 48, at 452-3.

Arguably the main thrust of this dynamic can be attributed to the rise of democratic governance in the international dimension.⁷⁷ By way of example, the will of the people proved to be a determining factor in relation to the creation of new states in the former Yugoslavia. In particular, Opinion No.4 of the EC Arbitration Commission held that the lack of participation by the Bosnian Serbs in the electoral process meant that Bosnia could not be recognised as a state in the absence of an internationally supervised referendum in which all Bosnians could participate.⁷⁸ Thus, it could be suggested that a legitimate claim to statehood cannot arise except through the exercise of popular sovereignty.⁷⁹

On a practical level, it is evident that the legitimacy engendered by a regime governing with the consent of its people is difficult to ignore and such a measure of popular support is a useful indication of effective governance irrespective of other considerations.⁸⁰ Further, global economic developments that have clearly favoured western liberal democratic states appear to have given them a political mandate to prescribe the criteria by which other states can participate in a 'new world order'. Although it is not suggested that liberal democratic states are prepared to forgo economic relations with non-democratic regimes, it is arguable that such states consider democratic governance to be indicative of a strong civil society and a distinct advantage in producing the kind of order conducive to optimal economic development within the international community.⁸¹ An assertion often made in this context is that democratic states are far less likely to go to war with each other than are non-democratic regimes and therefore present a better model for statehood.⁸² Arguably this 'democratic peace' is reinforced by global economic order whose interdependence warrants that the peaceful resolution of conflict is in the best interests of all states and their constituent populations.⁸³ In the modern context, economically powerful liberal democratic states are seemingly pre-disposed towards putative states or governments that are willing to develop in their image by embracing democratic structures, the corollary being that

⁷⁷ See Franck, T.M., "The Emerging Right to Democratic Governance", 86 AJIL 46 (1992). Also see Murphy, n. 73; and Reisman, n. 74 (these two essays are also included in Fox, G.H. & Roth, B.R. (eds.), *Democratic Governance and International Law* (2000)). Also see Orentlicher, D., "Separation Anxiety-International Responses to Ethno-Separatist Claims", 23 Yale JIL 1 (1998); and Wheatley, S., "Democracy in International Law: A European Perspective", 51 ICLQ 225 (2002).

⁷⁸ 31 ILM 1501 (1992), cited in Grant, n. 48, at 440-441.

⁷⁹ *Ibid.*, 441. This development is supported by art. 21(3) of the Universal Declaration of Human Rights (1948); and art. 25 of the International Covenant on Civil and Political Rights (1966).

⁸⁰ Murphy, n. 48, at 547.

⁸¹ Slaughter, A.M., "International Law in a World of Liberal States", 6 *European Journal of International Law* 503 (1995) <http://www.ejil.org/journal/Vol6/No4/art1.htm>.

⁸² *Ibid.* Also see Owen, J.M., "International Law and the 'Liberal Peace'", in Fox & Roth, n. 77, at 343.

⁸³ Keohane, R.O. & Nye, J.S., *Power and Interdependence* (1977), at 25, cited in Slaughter, n. 81.

the more remote a governmental structure is from the model of liberal democratic state, the less likely it is that it will be recognised by international law, as mentioned on page 9, above. In this regard, an analogy can be drawn between recent developments and the positivist interpretation of the state during the late nineteenth century, which ensured that legal personality was extended only to those *de facto* states reflecting the European model of statehood.

A paradigm shift has clearly occurred in relation to the creation and recognition of states in international law and these developments have serious implications for those *de facto* states or entities wishing to secure *de jure* statehood. Historically, the notion of statehood was founded on the universality of *jus gentium* although its premise was subsequently reinterpreted by the positivism of the late nineteenth century, which led to the distinction between *de facto* and *de jure* states. The Montevideo Convention, by seeking to prescribe the elements of statehood, represented an attempt to produce standardised criteria in order to allow unrecognised non-European entities to become states in international law.⁸⁴ However, it appears that the universality of the notion of statehood is once more under threat. The creation of new criteria in an attempt to redefine the notion of statehood serves to create a raft of new problems, further confusing the relationship between statehood and recognition.⁸⁵ Arguably, therefore, a policy of non-recognition of states premised solely on political grounds is abhorrent in principle and contrary to the tenets of the UN Charter.⁸⁶ Alternatively, as the notion of statehood is historically contingent,⁸⁷ it must be influenced by the progressive canon of international law if it is to retain its legitimacy within the current international regime. However, while change may be desirable, in an effort to produce long-term order, the international community *as a whole* should determine the manner in which a new objective approach to recognition and statehood is developed. The present *ad hoc* approach, driven by the particular political preferences of individual states, does not assist those *de facto* states and entities which seek to achieve *de jure* statehood although, at first glance, it would appear that the ascendancy of a constitutive approach premised on the norms of democratic governance, self-determination and human rights might increase Taiwan's chances of becoming a *de jure* state in international law.

However, despite the rise of this persuasive dynamic, there is sufficient evidence of states recognising non-democratic states to show that democratic governance has yet to replace the test of effectiveness as the guiding principle for the creation and recognition of states in international law. Perhaps, there-

⁸⁴ Grant, n. 48, at 448-449.

⁸⁵ *Ibid.*, at 451-453.

⁸⁶ Art 4(1) provides that membership of the United Nations is open to all peace-loving states which in the judgement of the Organisation are able and willing to accept the obligations of the Charter.

⁸⁷ Grant, n. 48, at 456-457.

fore, it is too early to maintain that democratic governance has become the cornerstone of a new international order.⁸⁸ In the Chinese context, as long as the PRC is allowed to adhere to traditional interpretations of statehood and recognition, leading international actors will continue to place a higher premium on power politics and the economic imperative than on the widespread promotion of a democratic 'entitlement' and the agenda of international human rights.⁸⁹

Further, the ROC's informal claims of *de jure* statehood and the work of sympathetic scholars appear to disregard the fact that the cross-Strait dispute historically centred on the existence of competing claims to be the *de jure* government of China, not issues of statehood. The 'one China' principle advanced by both the ROC and the PRC consequently ensured that the cross-Strait dispute drew on the doctrine of recognition of governments rather than on the recognition of states. In the absence of formal recognition, a state is required to treat the government of another state as a *de facto* regime if it controls its territory effectively.⁹⁰ However, while an unrecognised government of a *de jure* state can possess rights and obligations, in those cases where a government has been de-recognised in favour of another government claiming to represent the same state, its *de jure* authority ceases to exist on the demise of its international personality. Accordingly, when the international community recognised the PRC as the *de jure* government of the Chinese state, the ROC government on Taiwan lost its legal status in international law. Given its historical claim to be a *de jure* government, and the reluctance of international actors to confer *de jure* statehood in the absence of a formal declaration of independence (or to enable such a claim to be made), *de jure* statehood is not a realistic option for the people of Taiwan in the current international environment. Although the case of Taiwan clearly demonstrates the overwhelming importance attached to political considerations in the creation and recognition of states in international law, at present Taiwan can be characterised as a political entity under the authority of a *de facto* government, which effectively controls its territory and population, and discharges the usual functions of government including the responsibility for international relations.⁹¹ Therefore, in a search for a mechanism that can protect the existing political autonomy enjoyed by the people of Taiwan, we must turn to alternate models within the progressive framework of international law.

⁸⁸ Murphy, n. 48, at 579-581.

⁸⁹ See generally Fox & Roth, n. 77.

⁹⁰ §203(1) of the *Restatement of the Foreign Relations Law* (3rd ed. 1987), Vol. 1, at 84, quoted in Chiu, n. 40, at 5.

⁹¹ *Ibid.*, at 10.

4. NATIONAL SELF-DETERMINATION AND THE 'TAIWAN QUESTION'

The principle of national self-determination possesses two distinct interpretations in relation to the notion of statehood.⁹² First, in its traditional sense, the political existence of a state and the international order that has developed in support of it provides the paradigm example of a nation's right to determine its own political status. In this regard Koskenniemi views self-determination as a justification for statehood and the structure of the international regime that underpins it:

Without a principle that entitles – or perhaps even requires – groups of peoples to start minding their own business within separately organised 'States' it is difficult to think how statehood and everything that we connect with it – political independence, territorial integrity and legal sovereignty – can be legitimate. As a background principle, self-determination expresses the political phenomenon of State patriotism and explains why we in general endow acts of foreign States with legal validity even when we do not agree with their content and why we think that there is a strong argument against intervening in other States political processes.⁹³

This interpretation of self-determination was underpinned by the traditional concerns of international actors during the nineteenth century when the primary focus of a state was on its internal predominance as characterised by the doctrine of territorial sovereignty.⁹⁴ The prevalence of this traditional notion of statehood persists in modern international law assisted by the provisions of the UN Charter, which hold that states have no right, as a consequence of the sovereign equality of all states, to interfere in the internal affairs of another state.⁹⁵ Thus, the traditional notion of statehood remains heavily reliant on the idea of exclusive territorial competence despite the recent rise of an inclusive reality, which has engendered global interdependence thereby undermining the practical significance of state sovereignty.⁹⁶

⁹² Koskenniemi, M., "National Self-determination Today: Problems of Legal Theory and Practice", 43 ICLQ 241, at 245 (1994).

⁹³ *Ibid.*, 245.

⁹⁴ Davis in Henckaerts, n. 1, at 22-24

⁹⁵ UN Charter Art.2(7) states that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state..." Art.2(4) provides that "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

⁹⁶ Davis in Henckaerts, n. 1, at 25-30. Also see Barkin, J.S. & Cronin, B., "The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations", 48 *International Organization* 107 (1994); Ruggie, J.G., "Territoriality and Beyond: Problematising Modernity in International Relations", 47 *International Organization* 138 (1993).

Rather than supporting the notion of statehood, however, the second interpretation of self-determination appears to undermine the international order that statehood has created. By perceiving the state as merely the formal political expression of its constituent nation, this interpretation allows a nation to recreate its political form in the light of subsequent national developments thus ensuring that political and national units remain congruent.⁹⁷ The potential scope for 'post-modern tribalism' and the inherent threat posed to the present international regime has meant that the content and application of this radical right of self-determination has been the subject of intense scholarly debate.⁹⁸ However, as a result of its ramifications for the traditional conceptions of state sovereignty, the international community has generally been unsupportive of claims of self-determination outside the colonial context. Consequently, secessionist activity has historically been perceived as a domestic matter and therefore beyond the scope of international regulation.⁹⁹

Against this background, the reinvention of the ROC as an existing *de jure* state has serious implications for the application of self-determination in the cross-Strait dispute. Regarding a claim of self-determination, state practice suggests that a seceding entity must obtain the consent or acquiescence of its predecessor state before its statehood will be recognised by the international community.¹⁰⁰ Therefore, in the Chinese context, if the ROC achieved *de jure* statehood after the PRC had become firmly established, it would have required the consent or acquiescence of the PRC as the legitimate representative of its 'predecessor' state. Alternatively, if the ROC has been a *de jure* state since 1912, the PRC should have secured the ROC's consent or acquiescence in order for its 'secession' from the ROC to be accepted by wider international community.¹⁰¹ Clearly, the history of the Chinese conflict demonstrates the normative limitations of self-determination in this regard. Further, if it is accepted that the ROC is an existing *de jure* state, the people of Taiwan have already determined their political status and therefore the traditional conception of self-determination would be relevant in urging the international community to respect the right of a nation to constitute itself as a state. However, the radical interpretation of self-determination would become applicable only if it is accepted that Taiwan is currently under the sovereignty of the PRC, with the ROC regime on Taiwan being merely provincial in nature. Purely for the purposes of investigating the limits of self-determination in the cross-Strait dispute, this article will

⁹⁷ Koskeniemi, n. 92, at 242.

⁹⁸ See Castellino, J., *International Law and Self-determination* (2000); Cassese, A., *Self-Determination of Peoples: A Legal Reappraisal* (1995); Tomuschat, C., (ed.), *Modern Law of Self-determination* (1994); and Neuberger, B., *National Self-Determination in Postcolonial Africa* (1986).

⁹⁹ Jennings, R.Y., *The Acquisition of Territory in International Law* (1962), at 8-9.

¹⁰⁰ Crawford, J., "State Practice and International Law in Relation to Unilateral Secession" (1997), <http://canada.justice.gc.ca/en/news/nr/1997/factum/craw.html>

¹⁰¹ Wachman, n. 19, at 197-199.

proceed on the basis that Taiwan is currently under the *de jure* sovereignty of the PRC.

5. TAIWAN: A NATION, FOR THE PURPOSES OF SELF-DETERMINATION?

A preliminary problem, which has traditionally hindered the application of self-determination, has been the enduring difficulty concerning the definition of a nation or a people for such purposes. It is widely acknowledged that international law has never devised the general criteria by which a nation could be recognised.¹⁰² Although self-determination played a central role during the process of decolonisation, its scope was restricted to the colonial context and self-determination as such was not considered to be a general right of all peoples.¹⁰³ Nevertheless, such a general right was eventually enshrined in the International Covenants of 1966.¹⁰⁴ Building on the themes raised by the process of decolonisation, art.1 of both Covenants asserted that: 'all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.' Although the Covenants denote the origins of a general legal right, in the absence of an authoritative definition of 'people-hood', the exact scope of its application has remained uncertain.¹⁰⁵ Further, it is clear that the right of self-determination remains subject to the requirement of maintaining the territorial integrity of existing states.¹⁰⁶ Accordingly, the primacy given to the principle of territoriality within the current international regime ensures that not every people can exercise their right of self-determination. Although a substantial literature has developed regarding this

¹⁰² Koskeniemi, n. 92, at 260-263. This issue clearly plagued the framers of the First World War settlement at Versailles, see Thornberry, P., "The Democratic or Internal Aspect of Self-determination with Some Remarks on Federalism", in Tomuschat, C. (ed.), *Modern Law of Self Determination* (1994), n. 98, at 101. Castellino, J., "Territory and Identity in International Law: The Struggle for Self-determination in the Western Sahara," 28 *Millennium Journal of Legal Studies* 523, at 525-527 (1999).

¹⁰³ See Hannum, H., "Rethinking Self-determination", 34 *VirgJIL* 1, at 11-17 (1993).

¹⁰⁴ The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966), also see *ibid.*, at 25.

¹⁰⁵ Nonetheless UNESCO experts have broadly defined the notion of 'people-hood' as "a group of individual human beings who enjoy some of the following features: a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection, a common economic life." See Thornberry, n. 102, at 124. The test of 'people-hood' for the purposes of self-determination continues to be a controversial topic. See Higgins, R., "Comments", in Brolmann, C., Lefeber, R., & Zieck, M., (eds.), *Peoples and Minorities in International Law* (1993), at 30.

¹⁰⁶ However, the pre-eminence of this principle is subject to challenge in international law. See the *Western Sahara Advisory Opinion*, ICJ Rep. 1975, at 12.

issue,¹⁰⁷ factors which may entitle a people to exercise their right of self-determination, include: first, where a state carries out serious human rights violations directed at a minority people belonging to its territory;¹⁰⁸ second, the systematic discrimination of a minority people thereby prohibiting its members from fulfilling their legitimate political aspirations under the existing governmental structure,¹⁰⁹ and third, where, through a democratic process, the people of a compact territory decide to establish their own government in accordance with the concept of popular sovereignty.¹¹⁰

In relation to the cross-Strait dispute, it is generally accepted that from at least the seventeenth century until the end of the nineteenth century, the island of Taiwan belonged to imperial China.¹¹¹ A steady process of emigration from southern China (most notably Fukien province) occurred during this period, thereby marking the origins of a distinct Taiwanese identity.¹¹² However, China was forced to cede its sovereignty over the island to Japan by virtue of the Treaty of Shimonoseki (1895) through which the people of Taiwan were subjected to Japanese colonial rule until the conclusion of the Second World War. Further, the subsequent retreat of ROC supporters to Taiwan during the latter stages of the Chinese civil war characterised a new stage in Taiwan's history.¹¹³ Despite representing a minority of the popula-

¹⁰⁷ See Buchanan, A., "Self-determination, Secession and the Rule of Law", in McKim, R. & McMahan, J. (eds.), *The Morality of Nationalism* (1997), at 301. Buchheit L.C., *Secession: The Legitimacy of Self-determination* (1978); Brilmayer, L., "Secession and Self-determination: A Territorial Interpretation" 16 Yale JIL 177 (1991); "The Logic of Secession" (ed.), 89 Yale LJ 802 (1980). Although scholars have traditionally developed these factors to justify secession, it is evident that in certain cases the mechanism of internal self-determination would be applicable.

¹⁰⁸ Buchanan, n. 107.

¹⁰⁹ Heraclides, A., "Secession, Self-determination and Non-Intervention: In Quest of a Normative Symbiosis", 45 *Journal of International Affairs* 399 (1992).

¹¹⁰ See generally Fox and Roth, n. 77.

¹¹¹ Copper, J. F., n. 12; Charney, J.I. & Prescott, J.R.V., "Resolving Cross-Strait Relations between China and Taiwan", 94 AJIL 453, at 453-457 (2000); Jianming S., "International Law Rules and Historical Evidences Supporting China's Title to the South China Sea Islands", 21 *Hastings International & Comparative Law Review* 1 (1997). Certain scholars would challenge this assertion. See Chen, L.C. & Reisman, W.M., "Who Owns Taiwan: A Search for International Title", 81 Yale LJ 599 (1972); Chen, A.G., "Taiwan's International Personality: Crossing the River by Feeling the Stones", 20 *Loy. L.A. Int'l & Comp. L.J.* 223 (1998); Attix, C., "Between the Devil and the Deep Blue Sea: Are Taiwan's Trading Partners Implying Recognition of Taiwanese Statehood?", 25 *California Western ILJ* 357 (1995).

¹¹² However, it is important to note that various Austronesian peoples populated the island several millennia before the Han Chinese settlers arrived on Taiwan; as such they constitute its indigenous peoples.

¹¹³ It was generally thought that claims of territorial reversion could not be entertained by international law and as such the return of Taiwan to the ROC at least initially was considered to be controversial. See Chen & Reisman, n. 111; Charney & Prescott, n. 111, at 458-461. Further, see Phase I of the Eritrea-Yemen Arbitration (Perm. Ct. Arb. 1998), <http://www.pca-cpa.org> and Antunes, N.S.M., "The Eritrea-Yemen Arbitration: First Stage-The Law of Title to Territory Re-averred",

tion,¹¹⁴ the Mainlanders quickly established themselves as the political elite on Taiwan. Under the authority of the ROC regime they sought to promote their interpretation of Chinese cultural traditions, which were in sharp contrast to the practices of the pre-existing settler culture, articulated through the Taiwanese dialect. However, it would be erroneous to assume that Taiwanese ethnic practices provide evidence of a non-Chinese cultural tradition. In general, Taiwanese practices reflect those traditions practised in the Chinese provinces from which the Taiwanese people emigrated and thus, at one level, the distinction between Chinese and Taiwanese cultures can be reduced to regional differences historically found on the Chinese mainland.¹¹⁵ The overriding distinction between the Taiwanese and Mainlander categories thus appears to be the time of their arrival on the island. Consequently, a 'Mainlander' who left Fukien with ROC forces for Taiwan in the late 1940s may share greater cultural similarity with the Taiwanese people than with other Mainlanders who arrived in Taiwan from other parts of China during the same period.¹¹⁶ While Chinese nationalists would argue that this demonstrates the artificiality of Taiwanese nationalism, the Japanese occupation and the ensuing oppressive emergency measures implemented by the ROC have fostered a shared Taiwanese consciousness that has clearly given rise to a distinct national identity. Therefore, despite sharing cultural similarities with the other Chinese peoples, it is evident that the Taiwanese ethnic group as a result of their distinct political experiences could constitute a people in their own right. Alternatively, leaving the established nationalist categories aside, arguably the people of Taiwan *as a whole* could also comprise a people on the grounds that the political events during the last fifty years in both Taiwan and on the Chinese mainland have severed the national identity of the Chinese peoples on either sides of the Taiwan Strait. Given that a central element in the attainment of people-hood is the existence of a shared consciousness, the solidarity of the entire population of Taiwan in the face of external threats combined with their remarkable political and economic development entitles them to claim both a distinct national identity and the right to determine their own political status as a result.

Although the people of Taiwan could constitute a distinct people according to either of the above interpretations, under international law, they must qualify as a 'people' for the purposes of self-determination. In the circumstances, it appears that a claim could be justified on three grounds.¹¹⁷ First, that the island of Taiwan represents a compact territory distinct from the Chinese mainland, thereby facilitating the creation of an autonomous political

48 ICLQ 362 (1999).

¹¹⁴ Slightly less than 85% of the population identify themselves as 'Taiwanese', 14% as 'Mainlanders' and just over one per cent as indigenous, Wachman, n. 12, at 17.

¹¹⁵ *Ibid.*, at 57-90

¹¹⁶ *Ibid.*, at 101-118.

¹¹⁷ Charney & Prescott, n. 111, at 473.

unit. Second, the presence of a distinct socio-economic system that has flourished on the island over the last fifty years is in contrast to the communist structure that exists in the PRC. Third, there is the presence of a democratic regime established on Taiwan that has consequently reinforced the cross-Strait political divide. These elements combined with the unique factor that Taiwan has been a *de facto* political entity for over half a century could allow the people of Taiwan to make a valid claim for self-determination in accordance with the principles of international law.¹¹⁸

Further, a related issue in this context is the question of who decides whether a group qualifies for the purposes of self-determination.¹¹⁹ From the traditional perspective, governmental arrangements are a domestic matter and are thus beyond the remit of international law.¹²⁰ Accordingly, outside the colonial context and situations of dissolution, the existence of a people, for the purposes of self-determination, is ultimately a matter for the state concerned. Nevertheless, persuasive authority now exists to support the view that where a people are denied democratic institutions, minority rights or fundamental human rights, the validity of their claim of self-determination is a question for international law rather than for the state in issue.¹²¹ The prospect of incursions being made into the domestic jurisdiction of states has led optimistic scholars to assert that popular sovereignty characterised by the norm of democratic governance validates the current international regime rather than 'anachronistic' notions of state sovereignty.¹²² However, while recent developments have made significant inroads into the traditional conception of state sovereignty, events in Chechnya demonstrate that power politics still plays an important part in determining, on the one hand, those internal conflicts which are accessible to the international community and, on the other, those which are not.¹²³ Consequently, where the international community is not prepared to become involved in an internal dispute, the people concerned have no available means to enforce their right of self-determination irrespective of their 'democratic entitlement'.¹²⁴ In all the circumstances, given the PRC's avowed response to any attempt at 'secession' and the general reluctance of the international community to embrace secessionist activity, the application of the radical interpretation of self-determination in the cross-Strait dispute seems to be unlikely in the present international climate.

¹¹⁸ *Ibid.*, at 471.

¹¹⁹ Fox, G.H., "Self-determination in the Post-Cold War Era: A New Internal Focus?", 16 *Mich.JIL* 733, 747 (1995); and Charney & Prescott, n. 111, at 467-471.

¹²⁰ Crawford, n. 100.

¹²¹ *Re Secession of Quebec* [1998] 2 S.C.R. 217, paras 134, 138, 154, 155, cited in Charney & Prescott, n. 111, at 469-470.

¹²² See Reisman, n. 74.

¹²³ See Grant, T.D., "A Panel of Experts for Chechnya: Purposes and Prospects in Light of International Law", 40 *VirgJIL* 115 (1999) cited in Charney & Prescott n. 111, at 469-470. This factor constitutes an important dynamic in the Chinese context.

¹²⁴ Fox, n. 119. The case of Taiwan illustrates this point clearly.

6. INTERNAL SELF-DETERMINATION AND THE CROSS-STRAIT DISPUTE

It has been suggested that both the attraction and the tragedy of self-determination are a consequence of the widespread belief that it gives peoples the right to establish their own *de jure* state.¹²⁵ However, while self-determination in its external form remains inextricably linked to the state structure of the current international regime, its normative essence is not tied to the idea of statehood. To this end, the developing norm of 'internal self-determination' seeks to embrace governmental structures which fall short of statehood, to ensure that existing states meet their fundamental obligation of representing their constituent populations in accordance with the progressive canon of international law.¹²⁶ Thus, by performing the dual role of securing political autonomy for particular groups while preserving the territorial integrity of an existing state, internal self-determination attempts to avoid the binary choice between accepting the structure of an existing state, or seeking secession.¹²⁷ Evidently, this dilemma has confounded the application of external self-determination since its Wilsonian conception at Versailles, and was apparent in the initial response of the General Assembly to the process of decolonisation.¹²⁸ Although the General Assembly originally proclaimed that any attempt aimed at partial or total disruption of the national unity and territorial integrity of a state was incompatible with the purposes and principles of the UN charter,¹²⁹ it increasingly appreciated that adherence to the principle of territoriality could be justifiable only if the government of a state represented its entire population without distinction as to race, creed or colour.¹³⁰ In keeping with the broader themes of human rights, self-determination accepts that states are not ends in themselves in that they derive their core legitimacy from the will of their constituent populations.¹³¹ Accordingly, by emphasising the obligations of a state rather than its rights, the internal affairs of a state are no longer considered sacrosanct; therefore,

¹²⁵ Tomuschat, C., "Self-determination in a Post-Colonial World", in Tomuschat, n. 98, at 1.

¹²⁶ For the purposes of this article the notion of 'internal self-determination' refers to the concept of territorial autonomy rather than any right to participate in the political processes of state.

¹²⁷ Charney & Prescott, n. 111, at 475. See Steiner, H., "Ideals and Counter-ideals in the Struggle Over Autonomous Regimes for Minorities", 66 *Notre Dame Law Review* 1539, at 1547 (1991); and Anaya, S.J., "The Capacity of International Law to Advance Ethnic or Nationality Rights Claims", 75 *Iowa Law Review* 837 (1990).

¹²⁸ Hannum, n. 103, at 11-17.

¹²⁹ See the "Declaration on the Granting of Independence to Colonial Territories and Peoples", G.A.Res. 1514 (XV)(1960).

¹³⁰ See the 'Declaration on the Principles of International Law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations', G.A.Res. 2625 (XXV)(1970).

¹³¹ Tomuschat, n. 125, at 8; and Charney & Prescott, n. 111, at 467-470.

if a state fails to deliver on its core commitments its legitimacy can be brought into question.¹³² While flagrant governmental abuses may result in justifiable claims for secession, in many cases internal self-determination can protect the cultural and political rights of distinct groups by allowing them to maintain their national identity without violating the territorial integrity of an existing state.¹³³ A great advantage of the internal norm is that its resultant form can be determined by the circumstances of a given case to ensure that the particular needs of the parties are met through the development of appropriate autonomous regimes.¹³⁴ Thus, while the internal norm reinforces the structure of current international regime, it also endeavours to redefine the notion of statehood in the light of modern developments.

This developing norm is clearly pertinent to the cross-Strait dispute since the PRC is willing to concede a degree of internal self-government to the people of Taiwan. However, the fundamental problem in this regard concerns the precise formulation of self-governance given that the 'one country, two systems' approach is evidently unacceptable to the ROC. Although the model was developed in relation to Taiwan, it was applied to Hong Kong following its reversion to Chinese sovereignty in 1997.¹³⁵ Given that Hong Kong had never exercised its own sovereignty, the people of Taiwan will not be prepared to settle for a comparable level of autonomy, especially in the light of the political developments since reversion.¹³⁶ In view of the uncertain guarantees and the PRC's human rights record, the perennial problem remains why the people of Taiwan should accept an autonomous model that purports to offer them no greater authority than that which they already possess.

In its White Paper 'The One China Principle and the Taiwan Issue' (2000), the PRC contends that the phrase 'sovereignty belongs to the people' refers to all the people of the state and therefore cannot be used by sub-state groups to justify their right to self-determination.¹³⁷ It claims that sovereignty over

¹³² The Vienna Declaration of 1993 expanded the ambit of this claim by allowing the right of self-determination to be exercisable in situations in which a government fails to represent the whole of its people by making a distinction of any kind. See 32 ILM 1661 (1993), cited in Kirgis, F.L., "The Degrees of Self-determination in the United Nations Era", 88 AJIL 304, at 305-307 (1994). Also see Tomuschat, n. 125, at 9.

¹³³ See Hannum, H. & Lillich, R.B., "The Concept of Autonomy in International Law", in Dinstein, Y., (ed.), *Models of Autonomy* (1981), at 215.

¹³⁴ For alternate models for the protection of minority rights see generally Thornberry, P., *International Law and the Rights of Minorities* (1991) and Hannum, H., "Contemporary Developments in the International Protection of the Rights of Minorities", 66 *Notre Dame Law Review* 1431 (1991).

¹³⁵ See generally Cradock, P. *Experiences of China* (1998).

¹³⁶ See Edwards, G.E. "Applicability of the 'One Country, Two Systems' Hong Kong Model to Taiwan: Will Hong Kong's Post-Reversion Autonomy, Accountability and Human Rights Record Discourage Taiwan's Reunification with the People's Republic of China?", 32 *New England Law Review* 751 (1998). Klintworth, G., "China and Taiwan-From Flashpoint to Redefining One China", Parliamentary Library of Australia, <http://www.aph.gov.au/library/pubs/rp/2000-01/01rp15.htm>

¹³⁷ See Higgins, n. 105.

Taiwan belongs to all the people of China and accordingly any democratic process limited to the people of Taiwan cannot be representative of the will of the Chinese people. Further, as Taiwan has not been a colony during the UN era or subject to any foreign occupation, the principle of self-determination cannot be applied in relation to Taiwan.¹³⁸ The PRC, seeking to rely on the traditional interpretation of state sovereignty, has discounted the radical interpretation of self-determination and is therefore prepared to countenance modern developments only where they bolster the traditional position.¹³⁹ Evidently, the PRC does not accept that it is the inherent duty of a state to represent all its constituent populations without distinction of any kind or that a failure to meet such obligations may result in the legitimacy of its governance being brought into question.

Clearly, the reluctance of the PRC to adopt the progressive canon of international law with its ramifications for state sovereignty is a corollary of China's modern history. Chinese political leaders began to promote their vision of Chinese nationalism some two hundred years after nationalism had transcended the political institutions of Europe. The humiliations of modern Chinese history combined with the urgent need to establish the Chinese nation across a vast territory resulted in an accelerated commitment to nationalism and the task of nation building.¹⁴⁰ In addition, given the Chinese civil war and the obstacles left in its wake, it is notable that both the ROC and PRC clung to Chinese nationalism and traditional interpretations of state sovereignty in a desperate attempt to maintain their perceived legitimacy. The process of international de-recognition ultimately forced the ROC to alter its historic demands and embrace progressive international norms in a bid to carve out a political identity for itself. However, an accommodating international community has allowed the PRC to maintain its commitment to Chinese nationalism and the traditional interpretations of state sovereignty for the present.

Nonetheless, global market forces have meant that the PRC is slowly changing its focus, as has been demonstrated by its recent admission to the WTO. Further, the PRC is starting to acknowledge its wider responsibility of upholding international order, as evidenced through its increased role in UN peacekeeping missions and international anti-terrorist strategies.¹⁴¹ Although the PRC is beginning to accept the tenets of the economic system that has spawned global interdependence, the extent to which it is prepared to embrace the attendant forces of democratic governance, self-determination

¹³⁸ Clearly the PRC has adopted a restrictive interpretation of self-determination in this regard. See Hannum, n. 103, at 12-17

¹³⁹ PRC White Paper, "The One China Principle and the Taiwan Issue", The Taiwan Affairs Office, 21 Feb. 2000. <http://www.china-embassy.org/eng/7128.html>.

¹⁴⁰ Townsend, n. 4, at 112-124

¹⁴¹ Bates, G. & Reilly, J., "Sovereignty, Intervention and Peace-Keeping: The View from Beijing", 42 *Survival* 41 (2000).

and human rights remains less clear. In this regard, despite the end of the Cold War and the demise of the Soviet Union, Yugoslavia and other communist states, the PRC appears to have actually reinforced its commitment to the traditional notions of statehood and sovereignty, perhaps because of the heightened fears that such events have engendered for its own existence.

7. POLITICAL IDENTITY UNDERPINNED BY ECONOMIC DETERMINANTS

The continuing existence of the ROC can arguably be attributed to its successful incorporation into the global economy; undoubtedly, its underlying economic strength has been a major factor in its social transformation. It has been suggested that Taiwan represents the first quasi-national entity whose successful existence is largely attributable to globalisation, with its flow of trans-national capital and promotion of de-territorialized economic identities.¹⁴² However, political identity defined by reference to economic determinants can produce instability, with identity's being held hostage to the fortunes of global capitalism. In this regard, a central problem facing the ROC derives from its apparent over-reliance on the economic factors that underpin its existence. Despite its strong export-driven economy, the thawing of cross-Strait relations in the early 1990s encouraged Taiwan's entrepreneurs to exploit commercial opportunities developing on the Chinese mainland.¹⁴³ With its cheap land and labour costs, cultural similarities, shared language and distinct industrial strengths, the mainland clearly presents an attractive proposition. Notwithstanding the existence of governmental restrictions,¹⁴⁴ the flow of exports and investments to the PRC has soared,¹⁴⁵ leaving political leaders in Taiwan increasingly anxious about the dangerous pull of the mainland economy and about the inherent risk of political concessions being made as a result of economic duress.¹⁴⁶ Further, the impact of the recent recession in Taiwan has compounded fears that the increasing dependence on the PRC's rapidly expanding markets will lead to the 'hollowing out' of Taiwan's economy.¹⁴⁷ Faced with a shrinking ROC economy, the Chinese mainland continues to offer the best prospect for Taiwan's economic re-

¹⁴² Chun, n. 13, at 24.

¹⁴³ Hughes, n. 4, at 113-122.

¹⁴⁴ In addition to initial ROC restrictions regarding the types of products that could be exported and forms of approved investment, a ban on direct trade, transport and communication links (collectively known as the 'three direct links') remains in force.

¹⁴⁵ By 2001, ROC businesses had invested approximately \$70 billion since business relations were liberated in 1987. *South China Morning Post*, 12 Nov. 2001. Also see <http://www.mac.gov.tw/english/CSExchan/Welcome.html>

¹⁴⁶ Hughes, n. 4, at 113-122.

¹⁴⁷ In 2001, unemployment in Taiwan reached 4.5% and the economy shrank by 2%. *The Economist*, 5 Jan. 2002.

invigoration and, in recognition of this fact, the ROC government has replaced its cautious attitude with a policy of actively encouraging mainland investment, making closer economic integration inevitable.¹⁴⁸ Against this background, in January 2002, the ROC acceded to the World Trade Organisation ('WTO') under the name 'Customs Territory of Taiwan, Pengu, Kinmen and Matsu'. In this context, President Chen has claimed that membership of this 'economic United Nations'¹⁴⁹ will enable the ROC to exploit new commercial opportunities and allow it to rejoin the international community. Chen has also emphasised that the recent accession of the PRC to the WTO has created a new institutional mechanism whereby the spirit of economic liberalisation and the regulatory framework of the WTO can combine to advance cross-Straits relations.¹⁵⁰ However, early signs indicate that the PRC considers the WTO to be purely an economic forum and is unwilling to address issues that may compromise its claim of sovereignty over Taiwan.¹⁵¹

8. CONCLUSION

Since the withdrawal of international recognition, political identity on Taiwan has been guaranteed by economic determinants and therefore its changing economic fortunes could undermine the very basis for the existence of the ROC. Although it has been suggested that, given its democratic reforms, liberal democratic states have a moral responsibility to support Taiwan,¹⁵² the general apathy of the international community does not inspire confidence. Evidently, if the ROC declines as an economic force, its bargaining power in unification negotiations will be severely diminished. In the past, scholars have assured the people of Taiwan that time is on their side and that in all probability the cross-Straits dispute will recede on the basis of 'masterly inactivity'.¹⁵³ However, these views were premised on the ROC's maintaining its economic vitality and global outlook; now that these postulates are open to question and given the rapid international expansion of the PRC, the ROC's position looks more vulnerable than at any time since its widespread de-recognition. Arguably, the best opportunity for a cross-Straits

¹⁴⁸ *Ibid.*

¹⁴⁹ See Ma, M., "WTO approval greeted with enthusiasm", *South China Morning Post*, 19 Sept. 2001.

¹⁵⁰ Chen, S.B., ROC Government Information Office, 12 Nov. 2001. http://www.taiwaninformation.org/issues/view_story.php3?508. However, accession to the WTO has not been without domestic costs. See Dickie, M., "Taiwan Entry to WTO Raises Concerns at Home", *Financial Times*, 2 Jan. 2002.

¹⁵¹ See "Benefits and Challenges of Taiwan WTO Membership", Taiwan Studies Institute, 1 Dec. 2001. http://www.taiwanstudies.org/tsi_publications/view_story.php3?521.

¹⁵² Hughes, n. 4, at 143-144

¹⁵³ Henckaerts, J.M., "Self-determination in Action for the People of Taiwan", in Henckaerts, n. 1, at 241, 244; and Charney & Prescott, n. 111, at 474.

settlement favourable to the people of Taiwan has passed and the prospect of accepting the 'one country, two systems' model in its present form has moved a step closer. If the unification of China becomes a reality, the people of Taiwan will be reliant on the development of the progressive norms of international law in order to safeguard the level of political autonomy agreed through any cross-Straits 'settlement'. In this regard, internal self-determination will have particular resonance in the seeking of the ROC to ensure that Beijing adheres to any agreed model. To this end, the international community must support a fundamental revision of the traditional notions of statehood and sovereignty, in the interests of a sustainable international order and the advancement of international human rights.

However, accession to the WTO has had profound implications for the PRC.¹⁵⁴ Membership has clearly raised the spectre of political liberalisation; economic freedom will inevitably heighten expectations for further reform, indirectly placing the question of human rights on the domestic agenda. The PRC remains distinctly uncomfortable about the institutional bias of the WTO, fearing that the preponderance of western states will manipulate its mechanisms in order to undermine the PRC's sovereignty.¹⁵⁵ Evidently, the PRC wishes to secure the benefits of globalisation without accepting the basis for such gains (i.e., economic liberalisation through the relaxation of governmental controls). By joining the WTO, the PRC has pledged itself to fulfilling a diminishing role in economic affairs and will consequently lose the ability it now has to control its citizens *via* its vast network of state-owned enterprises, which provide the foundations of the Chinese communist party. Over time, it is anticipated that the introduction of market forces will marginalise the communist party, ultimately resulting in political transformation.¹⁵⁶ International expansion may therefore lead to the creation of a new political community on the Chinese mainland, which increasingly satisfies the ROC's criteria for unification; in turn, this will thereby enhance the prospect of 'one China' for the people of Taiwan and guarantee their political autonomy without the need for direct intervention by the international community.

¹⁵⁴ Barshefsky, C., "Enter China: WTO Membership Has Important Potential", *Washington Post*, 9 Nov. 2001.

¹⁵⁵ Chan, V.P.K., "Chinese Economists Fear Favoured West may Threaten Sovereignty", *South China Morning Post*, 13 Nov. 2001.

¹⁵⁶ See "Special Report on Politics in China", *The Economist*, 30 June 2001.