RECREATING ‘ONE CHINA’: INTERNAL SELF-DETERMINATION, AUTONOMY AND THE FUTURE OF TAIWAN

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1. Introduction

Since the early 1970s the most popular question concerning the Republic of China (‘ROC’) on Taiwan has been whether it constitutes a state in international law. However, given the dynamics of the ‘Taiwan Question’, this article accepts that the ROC does not presently constitute a state and is therefore notionally subject to the sovereignty of the People’s Republic of China (‘PRC’). Against this background, the article looks beyond issues of statehood in a search for internal structures of governance, which could resolve the seemingly intractable cross-Taiwan Strait dispute, while safeguarding the human rights of the people of Taiwan in the event of reunification. From a wider perspective, as the achievement of independent statehood is beyond reach in the vast majority of cases, the challenges presently faced by the people of Taiwan are broadly similar to those confronted by many other ‘peoples’ around the globe. Thus the case of Taiwan represents an interesting lens through which to appraise the advance of representative government in the post-Cold War era.

A central justification for this approach lies in avoiding the binary choice for ‘peoples’ between acceding to pre-existing state structures and seeking secession with all its attendant risks for the international state system. A significant development in this regard is the emerging standard of internal self-determination and, in particular, the concept of autonomy. In its territorial manifestation, autonomy provides a useful mechanism through

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1 For an extensive discussion of this issue see Allen, Steve, ‘Statehood, Self-determination and the Taiwan Question’, Asian Yearbook of International Law (forthcoming).
which pragmatic sub-state arrangements can be forged for the protection of group identities and the provision of meaningful self-government. Given its ostensible acceptance of the external artifices of statehood, the concept appears relevant to the Chinese context. In this respect, the article will explore the 'one country, two systems' autonomous model proposed by the PRC and assess its viability in the current cross-Strait climate. It will then examine the extent to which internal self-determination and autonomy are entrenched within international law in a bid to decipher the availability of external protective mechanisms should a fundamental dispute between Beijing and Taipei arise after reunification has been achieved. To this end, the article will critique the advance of self-determination in the post-colonial world, and investigate the ramifications of the notion of democratic governance for the structure of the present international system. Clearly if the consequences of virulent separatist activity are to be avoided, it is incumbent on the international community to develop the normative force of internal self-determination in all its forms. Nonetheless, any insistence that universal standards must be premised on Western interpretations of this evolving norm raises serious questions concerning its possible value outside the Western sphere of influence.

2. The ‘One China’ Principle and Claims to Statehood

The aftermath of the Chinese civil war witnessed the newly installed PRC and the decimated ROC locked in a struggle for governmental legitimacy. A primary arena in this regard was located in the ‘One China’ principle. In an attempt to derive national credibility, both sides maintained the illusion that the historic state of China continued to exist despite the post-war political reality. However, although both sides accepted the validity of this principle, its content was vehemently contested with each side claiming to be the sole legitimate government of the Chinese State. Thus the ROC claimed to govern the whole of China committing itself to the recapture of the Chinese Mainland while the PRC claimed title to Taiwan despite not having effective control over the island.²

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 sovereign government of China irrespective of the de

² Effectiveness has traditionally been the test by which territorial disputes have been resolved in international law, see Castellino, Joshua, & Allen, Steve, Title to Territory in International Law: A Temporal Analysis, (Ashgate 2003), pp. 29-56.