

The Concept of Statehood and the Status of Taiwan

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I. INTRODUCTION

As the twenty-first century dawns, Taiwan's international status will be determined by a broad range of factors and competing claims. The governments of both the Kuomintang (KMT) and the People's Republic of China (PRC) officially consider Taiwan to be part of a unified China. The two sides only disagree about who should control this unified China and on what political principles it should be unified. This concept of a unified China is essentially a modern, state-based notion. This article argues that the concepts of statehood employed in the current discourse concerning Taiwan's future may not be consistent with objective reality, and that a reconstruction of the way such concepts are understood may be required in order to achieve meaningful dialogue and a peaceful and mutually satisfying solution to the so-called "Taiwan question."

This article begins with a discussion of the current official positions of the KMT and the PRC governments relating to unification and to Taiwan's international relations. The following section discusses emerging Taiwanese perceptions of Taiwan's international status. The discussion in this section is based on a series of informal interviews, conducted in August of 1989, with leading figures in Taiwan.¹ Those interviewed include government and opposition leaders, leading academics and other opinion makers. The interviews are

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1. Interviewees included: Wei Yung, Chancellor of the Sun Yat-sen Institute of Policy Research and Development (Aug. 19, 1989); Yu Syue-Ming, President of the Export-Import Bank of the Republic of China (Aug. 7, 1989); Hsiao Teng Tzang, Minister of Justice of the Republic of China (Aug. 8, 1989) (has since resigned his post); Ho Defen, Professor of Law at National Taiwan University (Aug. 8, 1989); Yeh Chijeng, Professor of Sociology at National Taiwan University (Aug. 8, 1989); David S. Chou, Deputy Director of the Institute of International Relations (Aug. 10, 1989); Lu Ya-li, Professor of Political Science at National Taiwan University (Aug. 11, 1989); Chen Chi Sen, Attorney at Law (Aug. 3, 1989); Kang Ning-hsiang, Founding Member of the Democratic Progressive Party (DPP), Member of the Legislative Yuan, Publisher of *The Capital Morning Post* (Aug. 12, 1989); Antonio Chang, Publisher of *THE JOURNALIST* (Aug. 17, 1989). Some interviewees may not be identified. Other informal discussions were held with students, researchers, and interested members of the public.

neither systematic nor scientific. They merely seek to summarize and describe opinions currently held by residents and leading figures in Taiwan.

The next section presents a theoretical discussion of the options available to territorial entities seeking participation in the international community. Included in the discussion is an examination of the conceptual bases of such participation and the usefulness of such conceptualizations. One question addressed is whether the concepts currently employed in the Chinese community effectively obscure the discussion of Taiwan's international status. Another question is whether a redefinition of the notion of international participation, to match more closely the actual situation, might increase the chances for resolving the "Taiwan question" or, at the very least, explain current developments in a way that is responsive to the needs of all the parties involved.

The final section briefly reviews several key points central to any prognostication of Taiwan's destiny. A lesson is drawn from the nations of Europe, whose on-going process of cooperative integration acknowledges a community of interests that stops short of a unified state. This article argues that an approach similar to that of Europe, where parties agree to disagree on politics but look to progressive economic cooperation or integration, ultimately makes all parties better off.

II. CURRENT POSITION: UNIFICATION

Both the PRC and the Republic of China (ROC) assert that the unification of Taiwan and mainland China is a primary objective, although neither side has gone beyond the rhetoric and taken much concrete action toward achieving this goal. Both sides have, however, articulated official proposals for unification.

Starting in 1978, the PRC launched a peaceful unification campaign, which included a nine-point proposal:

1. Talks between the Chinese Communist Party (CCP) and the KMT on a reciprocal basis;
2. Arrangements to facilitate the exchange of mail, trade, air, and shipping services;
3. After reunification, a high degree of autonomy for Taiwan as a Special Administrative Region (SAR), which can retain its own armed forces;
4. The retention of Taiwan's current socio-economic system and way of life, of the right to establish economic and

cultural relations with foreign countries, and of property rights associated with these guarantees.

5. The right of persons in positions of political authority in Taiwan to participate in the Mainland government;
6. Central government subsidies for Taiwan's government, when necessary;
7. The right of Taiwan residents to settle in mainland China with freedom of entry and exit;
8. Taiwan industrial and business investment in mainland China with legal rights, interests, and profits guaranteed; and
9. Specification that reunification is the responsibility of all Chinese and that comments must be solicited from all persons in Taiwan.²

In response to recent Taiwan overtures the PRC has reiterated this position, calling for "party-to-party" talks.³ These proposals, except for the one permitting Taiwan to retain its armed forces, bear a strong resemblance to the Hong Kong model of "one country, two systems."⁴ However, the outstanding feature of these proposals is the subordination of the Taiwan region to the central government. As such, they can rationally be viewed only as an initial PRC negotiating position.

The Taiwan side has historically responded with an equally unrealistic stand, based on Dr. Sun Yat-sen's Three Principles of the People: Nationalism, Democracy and People's Livelihood.⁵ Such novel sounding proposals offer very little in the way of concrete assistance towards bridging the vast gap between the two sides. The Taiwan government has generally maintained an official policy of the "three no's": no contact, no talks and no compromise.⁶ Recently Taiwanese President Lee Teng-hui announced a willingness to drop

2. *Chairman Ye Jianying's Elaborations on Policy Concerning Return of Taiwan to the Motherland and Peaceful Reunification*, in *CHINA IN PERSPECTIVES: PROSPECTS OF CHINA'S REUNIFICATION [CHINA IN PERSPECTIVES]* 214 (Y. Chu, ed. 1986); see also *N.P.C. Standing Committee's Message to Compatriots in Taiwan*, in *CHINA IN PERSPECTIVES*, *id.* at 198.

3. *Beijing in New Call for Taiwan Talks*, *South China Morning Post [SCMP]*, June 18, 1990, at 6.

4. This model is suggested in the *CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA [PRC CONST.]* art. 31 (1982) and more fully elaborated in the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong* (1984).

5. Sun Yun-suan, *The China Issue and China's Reunification*, in *CHINA IN PERSPECTIVES*, *supra* note 2, at 217.

6. *Letter from Liao Chengzhi to Chiang Ching-kuo of July 24, 1982* in *CHINA IN PERSPECTIVES*, *supra* note 2, at 224.

the "three no's" and establish government to government communications on the basis of equality if Beijing promotes democratization and economic liberalization, renounces the use of force against Taiwan, and stops interfering in Taipei's efforts to expand its international relations.⁷ Mr. Lee proposes opening up academic, cultural, scientific and technological exchanges with China to lay a foundation of mutual respect, peace and prosperity.⁸ The current official policy is a departure from Taiwan's previous demand that Beijing renounce its four principles of socialism, Communist Party leadership, dictatorship of the proletariat, and Marxism, Leninism, Mao Zedong Thought.⁹ Nevertheless, the three conditions seem nearly impossible under present circumstances and thus Taiwan's proposal can also be viewed simply as rhetorical posturing, not to be taken seriously in the short run.

On a practical level, however, the gap between the two sides has narrowed considerably. Since Taiwan lifted martial law in 1986, Taiwan has begun to seize the initiative as the "reasonable" party. It has also responded favorably to point two of the PRC's proposal by initiating a policy of permitting people-to-people contacts with the PRC.¹⁰ Beginning with the limited allowance of humanitarian visits to family members, this policy has witnessed a sharp increase in activities, including the visit of the Taiwan team to the Asian Games in Beijing, a virtual explosion of Taiwan investments in the Mainland, visits by leaders of the opposition Democratic Progressive Party (DPP) to Beijing, direct Red Cross contacts, visits by Taiwan reporters to the Mainland and Taiwan's expressed willingness to permit Mainland reporters in Taiwan.¹¹ Taiwan's restrained response to the events of June 4, 1989, in Beijing is another indication of the importance Tai-

7. *Taiwan Ready To Drop "Three No's"*, SCMP, May 21, 1990, at 1.

8. *Id.* Mr. Lee also announced that the period of mobilization for the suppression of the Communist rebellion will be ended in May of 1991, and Taiwan will, at that time, announce whether the Communist Party is still considered a seditious group. *Id.* The President's position seems to have received broad support in the recent National Affairs Conference, a conference of government, independent and opposition figures to recommend constitutional reform. The conference urged more trade and cultural exchanges but cautioned against official talks on reunification before Beijing agrees to end its policy of isolating Taipei diplomatically. *KMT, Rivals Agree on Poll for President*, SCMP, July 5, 1990, at 10.

9. PRC CONST. Preamble (1982).

10. Under Taiwan's policy of "people-to-people" contact, no official visits are permitted, but various private contacts of an indirect nature are tolerated. Such contacts are clearly seen to have propaganda value.

11. *Wang Signs 70-year Lease with Mainland Authorities for Land for New Plant*, China Post, June 12, 1990, at 16; *Taiwan To Be Leading Investor in China*, SCMP, Money Sec., May 19, 1990, at 1; *Taiwan in Games Talks*, SCMP, June 19, 1990, at 9; *NCNA Denies Discussion on Liaison Office*, SCMP, June 23, 1990, at 10; *Red Cross Straits Exchange*, SCMP, June 22, 1990, at 11; *Direct Flights Bid Still Up in the Air*, SCMP, Apr. 10, 1990, at 10; *Strait Trading*

wan places on the improvement of long-term relations.¹²

III. CURRENT POSITIONS: INTERNATIONAL RELATIONS

On a fundamental level, the PRC government takes the view that the issues of unification and Taiwan's international status are necessarily linked. Diplomatic recognition by foreign governments has generally been based upon bilateral agreements that almost invariably contain statements acknowledging the PRC's claim or desire to rule Taiwan or statements that fully recognize the PRC's sovereignty over Taiwan.¹³

The Taiwan government has also held the view that unification and Taiwan's international status are linked. Historically, Taiwan has claimed to be the legitimate government of all China and has rejected attempts at dual recognition or dual participation in international organizations.¹⁴ Recently, however, Taiwan has launched a more flexible diplomatic offensive to separate fundamentally the question of unification from that of international relations.¹⁵ The Taiwan government will apparently no longer inquire into a foreign government's relations with the PRC or into that government's motivations for developing links with Taiwan.¹⁶ Taiwan now accepts both a vast

Groups Set Up, SCMP, Jan. 22, 1990, at 6; *Taiwan Opposition Leader Plans Visit to Mainland*, SCMP, June 9, 1990, at 1; *Journalist Allowed to Visit Taipei*, SCMP, June 26, 1990, at 9.

12. Professor Lu Ya-li points out that the rather restrained response of the normally hostile ROC Government came from the second plenum of the central committee of the 13th KMT Congress, which was in its second day on June 4, 1989. The party authorized the Chairman, President Lee Teng-hui to (1) issue a statement of condemnation of the PRC authorities' brutality and cruelty in his own name; (2) issue a statement to express the deep concern of the government and the people for the compatriots on the Mainland in the name of the ROC Government; (3) instruct the Ministry of Foreign Affairs to order ROC representatives and envoys stationed abroad to contact friendly governments to ask them to express their condemnation and to take necessary actions to aid the pro-democracy activists in the PRC; (4) ask the ROC Red Cross to give medical assistance to the victims and to offer assistance to the families of the dead through their international connections; and (5) order the military put on full alert to deter communist aggression. *Tsung-t'ung Yan-li Ch'ien-tse Chung-kung Pao-hsing Ya-Ch'iu Li-chieh T'ing-chih Hsueh-hsing T'u-sha*, China Times, June 5, 1989, at 6.

13. L. Liang, *Ts'ung "han tsei shih pu liang-li" tao "shuang cheng-ren" T'ai-pei T'ui-hsing "t'an-hsing wai-chiao" te Ch'ien-yin Hou-kuo*. MIRROR MONTHLY, Feb. 1989, at 69-70.

14. See Chiang Ching-kuo's *Five Principles of U.S.-ROC Relations in the Post-Normalization Period*, in *CHINA IN PERSPECTIVES*, *supra* note 2, at 196.

15. "The ROC does not require the termination of a country's relations with the PRC as a prerequisite for its establishing and maintaining relations with the ROC. This 'practical diplomacy' is definitely not aimed at creating 'two Chinas' or 'one China, one Taiwan' but is insisting that there is only one China and not recognizing the PRC's legality." Y. Wei, *Shuang-chung Ch'eng-ren yu Wu-shih Wai-chiao*, Chung-yang Jih-pao, Aug. 7, 1989, at 2.

16. See 7 CHINESE YEARBOOK OF INTERNATIONAL LAW AND AFFAIRS, 512-25 (H. Chiu, ed. 1987-88) [hereinafter CHINESE YB]; see generally, G. CHAN, *CHINA AND INTERNATIONAL ORGANIZATIONS, PARTICIPATION IN NON-GOVERNMENTAL ORGANIZATIONS SINCE 1971*, (1989).

array of unofficial relationships with foreign governments and a variety of statuses in international organizations.¹⁷

Some twenty-eight countries now maintain official relations with the ROC and not the PRC.¹⁸ Over one hundred-forty countries have official relations with the PRC while maintaining, with the official or unofficial toleration of the PRC, "unofficial links" with Taiwan.¹⁹ Only one country has, over PRC objections, legalized these unofficial relations. The Taiwan Relations Act rendered the United States' relations with Taiwan nearly the equivalent of official relations in virtually all respects.²⁰ Similar legislation is pending in the Philippines.²¹

For Taiwan the shift in United States diplomatic recognition was a watershed event. The Taiwan Relations Act terminated the Sino-U.S. Mutual Defense Treaty but indicated an intention on the part of the U.S. to continue cultural, economic, trade, scientific, technological, and travel relations with the ROC.²² In response to the Taiwan Relations Act, ROC President Chiang Ching-kuo insisted that the U.S. take concrete and effective measures to renew its assurances to the region.²³ He requested that future ties be based on five principles: reality, continuity, security, legality, and "governmentality."²⁴ Taiwan has endeavored to advance these principles as much as possible in its nominally informal relations with other countries. Taiwan has quibbled over language in order to obtain the best possible indication of legal standing and generally pursued what officials in the Foreign

17. See generally G. CHAN, *supra* note 16; H. CHIU & R. DOWNEN, *MULTI-SYSTEM NATIONS AND INTERNATIONAL LAW: THE INTERNATIONAL STATUS OF GERMANY, KOREA AND CHINA* 45, 59; T. Cheng, *Mainland Alarmed Over Talks of Cross-Recognition*, SCMP, Sat. Rev., Apr. 23, 1989, at 5.

18. CHINESE YB *supra* note 16, at 508-11. In 1990 Taiwan has added Guinea Bissau and Lesotho to this list while the PRC has established unofficial links with South Korea and is restoring relations with Indonesia and Singapore. *Fresh Diplomatic Victory for Taiwan*, SCMP, May 28, 1990, at 6; *Taipei Ties to Lesotho Restored*, SCMP, Apr. 6, 1990, at 14; *Seoul Invited to Exchange Offices*, SCMP, June 12, 1990, at 13; *Beijing Jakarta Clinch New Ties*, SCMP, May 24, 1990, at 1.

19. G. CHAN, *supra* note 16, at 5.

20. Taiwan Relations Act, 22 U.S.C. §§ 3301-3316 (1982) [hereinafter TRA]. For the PRC view of the TRA, see Zhao Lihai, *The Main Legal Problems in the Bilateral Relations Between China and the United States*, 16 N.Y.U. J. INT'L L. & POL. 543, 547 (1984); J. Zhao, *An Analysis of Unification: The PRC Perspective*, in CHINA IN PERSPECTIVES, *supra* note 2, at 83, 88.

21. *Opposition to Taipei Ties with Philippines*, SCMP, Oct. 13, 1989, at 13.

22. R. Randolph, *The Status of Agreements Between the American Institute in Taiwan and the Coordination Council for North American Affairs*, 15 INT'L LAW. 249-62 (1981); G. Hsiao, *The Legal Status of Taiwan in the Normalization of Sino-American Relations*, 14 RUTGERS L.J. 809-913 (1983).

23. *Chiang Ching-kuo's Five Principles of U.S.-ROC Relations in the Post-Normalization Period*, *supra* note 14, at 196.

24. *Id.*

Ministry characterize as a "practical approach."²⁵

Some of the same pragmatism is evident in the realm of participation in international organizations. In 1986, the PRC was a member of ninety-four international governmental organizations (IGO), while Taiwan belonged to nine.²⁶ The PRC resisted Taiwan's encroachment and succeeded in blocking Taiwan's entrance into IGO's with the exception of the Asian Development Bank²⁷ in which the ROC was already a member when the PRC sought membership. In a spirit of compromise, the PRC tolerated Taiwan's continued membership as "Taipei, China."²⁸ Taiwan's membership in the Asian Development Bank under the ROC name had always indicated only the territory it actually controlled. One leading ROC diplomat has explained that the likely basis for the PRC's acquiescence in the case of the Asian Development Bank was "a membership problem," not a "representational problem."²⁹ Taiwan's current efforts to participate in IGO's are aimed at a possible dual presence in the General Agreement on Tariffs and Trade (GATT) and the Organization of Economic Cooperation and Development (OECD).³⁰ The Taiwanese side would apparently characterize this effort as a "membership problem" meaning clubs for which its economic development level renders it well qualified.³¹ The PRC's acquiescence may hinge more on goodwill than on its perception of the character of the problem.

With regard to membership in international, non-governmental organizations (INGO), Taiwan has enjoyed much greater acceptance as far as the PRC's tolerance is concerned. Again, the PRC's rhetorical resistance to Taiwan's membership has been strident, especially where United Nations affiliation through UNESCO is involved.³² Nevertheless, Taiwan has been accepted as a member by many sporting, scientific, and humanitarian INGO's under a variety of designa-

25. Interview by author with foreign policy analyst at the Ministry of Foreign Affairs, Aug. 14, 1989. Taiwan's so-called "flexible foreign policy" and pursuit of dual recognition has been criticized on the Mainland as a "two Chinas" policy. B. Chan, *Taiwan's Foreign Policy Stated* [sic], SCMP, Sept. 18, 1989, at 9. In response to recent Mainland criticism of Taiwan's call for government-to-government contact, Taiwan's New Foreign Minister, Frederick Chien, indicated that Taiwan does not plan to use the term "one country, two governments." They will instead pursue a "pragmatic" policy. *No Change in Peking's Status Seen Until Next May*, China Post, June 15, 1990, at 15.

26. G. CHAN, *supra* note 16, at 159.

27. *Id.* at 161.

28. *Id.*

29. Interview with foreign policy analyst, *supra* note 25. The interviewee is suggesting that Taiwan stands on its own qualifications as a member territory but not as a representative of China as a state.

30. *Id.*

31. *Id.*

32. G. CHAN, *supra* note 16, at 27.

tions including "Taipei, Chinese," "Taipei, China," and "Chinese Taipei."³³ Membership may be structured on an individual basis, as an affiliation with full or observer status, or as "one country, two organizations," "one country, two adhering bodies," or "one country, two territorial entities."³⁴

As with unification, in international relations it is pragmatic rather than rhetorical developments that evidence the movement of both Taiwan and the PRC towards a reconceptualization of their relationship. Such movement holds promise for yielding a practical solution to a seemingly intractable problem.

IV. TAIWAN: EMERGING PERSPECTIVES

A series of interviews conducted by the author in Taipei in August 1989, suggests the parameters of Taiwan's evolving position. The opinions of the interviewees displayed a large consensus for pursuing the *status quo* in the area of foreign policy. At the same time, official claims to be the government of all of China or to "recover" mainland China from the PRC are generally viewed with disdain, even by the KMT, albeit the moderate wing of the KMT. The KMT believes that the current policy of increased contacts and substantial investment will best preserve the strength of Taiwan's position *vis-a-vis* the PRC. On the international front, the current goal is to continue to legalize Taiwan's unofficial relations where possible, to secure recognition where possible (as in the recent cases of Grenada, Liberia, Belize, Guinea Bissau and Lesotho) and to seek membership in international organizations, such as GATT and the OECD.

The viewpoints discussed below may be divided into scholarly opinions, emerging perspectives within the government, and emerging opposition views. The scholarly opinions may be further divided into those of scholars sympathetic to the opposition and those of scholars involved in government policy formulation. Within the government, there are commercial, political, and foreign policy perspectives. Within the opposition, those strongly favoring independence are distinguishable from more moderate groups concerned with self-determination.

Among scholars, varied views emerge on the issues of unification and Taiwan's international status. Professor Lu Ya-li represents the relatively moderate theoretical view. He identifies five prevailing views on the question of Taiwan's international status:

33. *Id.* at 28-36.

34. *Id.* at 44-65.

they are.³⁹ It is Professor Yeh's view that both a federation with the PRC and autonomy are contrary to Chinese political culture, which has always emphasized unity. He further believes that the notion of Taiwanese autonomy is nothing more than a PRC scheme that will be followed by indirect infiltration and control by the PRC.

Scholars involved in formulating current government policy offer some theoretical justifications for that policy. Professor Wei Yung, who currently heads the Sun Yat-sen Institute on Policy Research and Development, has devised a "multi-systems" approach to the Taiwan question.⁴⁰ He encourages the use of the term "multi-systems" instead of "divided states" or "divided nation." His use of "multi-systems" emphasizes "the emergence of more than one political system within one nation" rather than the division of one state into several states.⁴¹ In his opinion, this terminology better expresses the true nature of the conflict which is the confrontation between a communist and non-communist system:

The key issue is not the creation of conditions for hitherto separate geographical units to develop a common cultural and national identity, but a choice as to which system, communist or non-communist, will be used to bring about national unification.⁴²

This suggests an either/or approach to the unification of China. Professor Wei suggests that unification is essentially a domestic issue and that third countries should not intervene.⁴³ Regarding relations with third countries, Professor Wei suggests a multiple-recognition approach that would also extend multiple representation in the United Nations and all other international organizations. He notes that hostilities between the two Germanys were reduced by multiple-recognition, as well as by tourism, trade and the exchange of representatives.⁴⁴ Unlike the Federal Republic of Germany and the German Democratic Republic, the PRC and Taiwan have no direct official contacts with each other. In some respects, Professor Wei's account best explains Taiwan's current policy. His use of the word

39. Interview with Yeh Chijeng, Professor of Sociology, National Taiwan University, (Aug. 8, 1989).

40. Y. Wei, *The Unification and Division of Multi-System Nations: A Comparative Analysis of Basic Concepts, Issues, and Approaches*, 45 OCCASIONAL PAPERS/REPRINT SERIES CONTEMP. ASIAN STUD. 59, 65 (1981).

41. *Id.* at 61.

42. *Id.*

43. Interview with Wei Yung, Chancellor, Sun Yat-sen Institute of Policy Research and Development, (Aug. 19, 1989).

44. Wei, *supra* note 40.

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44. Wei, *supra* note 40.

"nation," however, appears ambiguous. In general, Professor Wei concurs with the official view favoring unification with the PRC.

Professor Wei is also critical of the term "one country, two governments" because the use of the word "government" suggests that both sides necessarily recognize each other's legality.⁴⁵ This view may conflict with Taiwan's recent overtures at government-to-government contact. He finds the word "system" more flexible because it does not necessarily suggest such recognition. Nevertheless, to the extent that it is applied to a model where one system is subordinated to the other, he does not support the PRC's slogan "one country, two systems."⁴⁶ PRC scholars who seek support in Professor Wei's multi-systems approach misunderstand his position. These slogans are also generally ignored by leading policy analysts in the Foreign Ministry, where a more pragmatic policy is pursued.⁴⁷

Foreign policy specialist Dr. David S. Chou stresses that Taiwan could not declare independence because no other countries would recognize such a declaration.⁴⁸ Dr. Chou believes that Taiwan should maintain the *status quo* of *de facto* autonomy.⁴⁹ He suspects that the movement now is towards the earlier German model of "one country, two states."⁵⁰ He is not optimistic about Taiwan's acceptance into GATT or the OECD in the near future.⁵¹ He points out that Taiwan has not tried to circumvent the admission policies of international organizations, but has instead proposed innovative approaches, avoiding any direct confrontation with the true issues.

Even within the ROC government, these same flexible views prevail, although not with monolithic consistency. The business community is also generally supportive of the KMT and the overall government policy. Nevertheless, factions within the government that represent commercial interests are on the whole less supportive of Taiwan's general foreign policy. Business and trade representatives find some troubling aspects in the apparently practical *status quo* policy, although such representatives encourage the Taiwan government's efforts to increase opportunities for contact, investment, and trade with the Mainland.

Mr. Yu Syue-Ming, the president of the ROC Export-Import

45. *Id.*

46. Interview with Wei Yung, *supra* note 43.

47. Interview with foreign policy analyst, *supra* note 25.

48. Interview with David S. Chou, Deputy Director, Institute of International Relations, (Aug. 10, 1989).

49. *Id.*

50. *Id.*

51. *Id.*

Bank, points out that there are practical problems on the international front.⁵² In particular, an unrecognized government may have difficulty collecting international debt obligations, such as those used to finance exports and imports. The ROC Export-Import Bank requires commercial bank guarantees, and Taiwan includes choice-of-law and choice-of-forum clauses in its loan agreements designating the State of New York, a jurisdiction where Taiwan has legal status under the Taiwan Relations Act.⁵³ Some countries criticize Taiwan for not helping with the debt crisis, but this criticism ignores the fact that in recent years Nicaragua and Uruguay, upon de-recognition of Taiwan, have defaulted on their obligations to Taiwan. Court cases are pending in New York, although enforcement of any judgment would be difficult.⁵⁴ The further practical problem of protecting Taiwan investment on the Mainland is also a concern.⁵⁵ Because of these problems, acquiring legal status of any type is a matter of considerable urgency.

Other problems cited by Mr. Yu stemming from the lack of official recognition include the difficulty of obtaining visas and the protection of ROC officials abroad under diplomatic immunity. There are even problems with participation in the Asian Development Bank. For example, Taiwan offered to increase its subscription to ordinary capital, but the offer was rejected. Mr. Yu opposes declaring independence, but he notes that independence in all but name may be a practical reality in ten years. In his opinion, unification is unrealistic as long as a large economic rift exists between the PRC and Taiwan.⁵⁶

Mr. Hsiao Teng Tzang, former Minister of Justice for Taiwan, adheres to the traditional government position (*i.e.*, unification should ultimately occur) shared by the more senior, conservative government officials.⁵⁷ Mr. Hsiao says that those who advocate independence do not understand Chinese history.⁵⁸ In his view, current policies should promote Taiwan's economic and political development.⁵⁹ He also supports "people-to-people" contacts in order to improve understanding on both sides of the Taiwan Strait. He believes that continuing U.S. arms sales to Taiwan will aid peaceful unification by ensuring

52. Interview with Yu Syue-Ming, President, The Export-Import Bank, (Aug. 7, 1989).

53. 22 U.S.C. §§ 3301-16 (1982).

54. Interview with Yu Syue-Ming, *supra* note 52.

55. *Increase in Pressure for Beijing Links*, SCMP, May 1, 1990, at 11.

56. Interview with Yu Syue-Ming, *supra* note 52.

57. Interview with Hsiao Teng Tzang, former Minister of Justice, ROC, (Aug. 8, 1989).

58. *Id.*

59. *Id.*

Taiwan's defense. The question remains whether this conservative position will continue under a new, younger KMT leadership.

A leading foreign policy specialist in the ROC government has characterized the current foreign policy as embracing pragmatism and aiming at avoiding "nonsense" debates.⁶⁰ While the ROC officially considers itself to be the government of the whole of China, it realizes that many countries do not.⁶¹ Unification will remain a remote ideal, even more so after the events of June 4, 1989. This foreign policy specialist acknowledges an identity crisis regarding the extent of ROC sovereignty. The pragmatic approach employed by Taiwan's government is to secure the best characterization of their status in every exercise of foreign relations.⁶² The government has focused its efforts on securing membership in the GATT and the OECD based on the view that membership problems, not representation problems, are involved.⁶³ This foreign policy specialist notes that the concept of "one country, two governments" is not useful.⁶⁴ The concept was originally an attempt by one legislator to characterize the existing state of affairs in foreign policy.⁶⁵ In 1990, it was again seized upon by the media to characterize Taiwan's conditional offer of government to government negotiations. This model has no domestic application under the ROC Constitution. This specialist suggests that if some policy regarding reunification needs to be stated, which he doubts, it would be best characterized as "integration." In the short term, increased recognition from abroad should reduce the impetus for independence.

The opposition, especially the DPP and its supporters, which generally represent the native Taiwanese community,⁶⁶ exhibit a broad range of opinions. These opinions tend to reflect strong sentiments for independence held by the Taiwanese community. Even so, the question of independence is divisive both within the DPP and the Taiwanese community at large.⁶⁷ Some would claim independence

60. Interview with foreign policy analyst, *supra* note 25.

61. *Id.*

62. *Id.*

63. *Id.* The focus under this viewpoint is therefore on the qualification of the territorial entity, such as Hong Kong, and not on what nation-state it purports to represent.

64. *Id.*

65. *Id.*

66. "Native Taiwanese" means those Taiwan residents whose ancestors had established residence in Taiwan before the 1949 exodus from mainland China. 85% is a rough figure that is commonly used and was suggested to this author by Dr. Chen Chisen. Interview with Chen Chisen, opposition lawyer, (Aug. 3, 1989).

67. A recent survey shows that 42% of the people in Taiwan would favor independence if one party rule continues in the Mainland. *Mixed Reaction on Independence*, SCMP, June 16, 1990, at 8.

not only from the PRC but also from the KMT. Still others advocate that Taiwan should become a neutral state. Many DPP members believe that Taiwanese in reality prefer complete independence, but that they have been educated by government propaganda to oppose independence. The law itself still prohibits people from advocating independence, although enforcement has been considerably relaxed. Overseas Chinese groups also support the independence movement.⁶⁸

The moderate faction of the DPP has advanced a theory of self-determination. This group is led in part by Mr. Kang Ning-hsiang, the founder of the DPP, a former member of the Legislative Yuan, and the publisher of the *Capital Morning Post*.⁶⁹ Mr. Kang stresses that it is not enough merely to have either democratic reform or the expression of the Taiwanese people's wishes to the world. Rather, both are necessary for self-determination. This is part of the DPP platform. He notes that the term "self-determination" is traceable in part to Woodrow Wilson and notions of anti-colonialism. In Taiwan, the term for self-determination, *zi jue*, does not carry this meaning or mean independence; it simply means "we decide." While some members of the DPP favor independence, others simply seek the people's guidance in a fair democratic process. Mr. Kang thinks the combination of these two factions is a good strategy.⁷⁰

Mr. Kang believes that American participation in the one China policy is merely one facet of the United States' global strategy. In his view, the United States traded Taiwan for the PRC's participation in pursuit of this strategy. The Taiwan Relations Act is unsatisfactory, in Mr. Kang's view, because it is nothing more than a complex tool that enables the United States to stay involved on both sides of the Taiwan Strait while leaving Taiwan worried whether it will be abandoned. He feels that someday a new United States global strategy will emerge. He notes that years ago, both the PRC and the other major world powers dealt only with the KMT. Now the world knows that it must reckon with the DPP. This is, in part, because of better DPP publicity. Mr. Kang led a DPP group to the United States and Japan in 1982 and 1986. When asked whether the DPP could deal directly with the PRC, he was not enthusiastic about direct contact. He noted that forty years of separation has resulted in two quite different systems. He expressed no urgency regarding dialogue with the PRC and fell back on the often expressed view that Asian culture permits such

68. Interview with Chen Chi Sen, *supra*, note 66.

69. Interview with Kang Ning-hsiang, former member, Legislative Yuan, (Aug. 12, 1989).

70. *Id.*

relationships to be handled slowly.⁷¹ It should be noted, however, that several months after this interview other DPP leaders are presently planning trips to meet China's leaders on the Mainland.⁷²

When asked whether he would support any short term changes in current policy on international relations, Mr. Kang substantially agreed with KMT moderates. He noted that in the short term, so long as the *status quo* policy continues to work, there is no need for drastic change. He indicated that Taiwan's economic and political status has been better off because of Taiwan's overall development. Because of this, Taiwan has an ongoing need to represent its commercial interests as best it can, including a need to improve its external relations. In the long term, however, some consensus must emerge regarding Taiwan's relationship with the PRC. Proper measures may be taken at that time. Mr. Kang noted that many people in Taiwan believe the propaganda that the PRC would invade if Taiwan pursued independence, but he personally does not believe this will happen.

A leading opposition journalist, Antonio Chang, notes that current public opinion is moving away from independence.⁷³ Overseas Taiwanese groups often more enthusiastically support independence. The local DPP leader of the independence movement, Mr. Yao Chia-wen, recently released a draft constitution at a meeting of the Overseas Taiwanese Association held in Kaohsiung. While not expressly calling for independence, this draft emphasized the "Five New's": a new constitution, a new nation, a new economy, a new environment, and a new culture. These proposals did not receive wide-spread local support.

Mr. Chang emphasizes that independence has different meanings.⁷⁴ He notes that Taiwan has enjoyed *de facto* independence for the past forty years. The only remaining action necessary for formal independence is to renounce sovereignty over mainland China and to reject PRC sovereignty over Taiwan. The purpose of independence, he says, is to guard against further intervention by the PRC, to create opportunities for democracy in Taiwan, to restructure the constitution and the government, and to facilitate joining the international community. The current government seeks to achieve these goals without declaring independence, thereby deflating the incentive for independence.

Mr. Chang also notes the difficulties associated with Taiwanese

71. *Id.*

72. *Taiwan Opposition Leader Plans Visit to Mainland*, SCMP, June 9, 1990, at 1.

73. Interview with Antonio Chang, publisher, *THE JOURNALIST*, (Aug. 17, 1989).

74. *Id.*

independence. Internal problems concern him more than the ostensible danger of PRC intervention. To assert independence, there must be an internal consensus. Once the people are unified, then the next priority would be to strengthen the military. At such time a diplomatic offensive may be viable. While most countries may nominally accept the PRC's claim of sovereignty over Taiwan, Mr. Chang thinks that it is unlikely that many of these countries genuinely support PRC domination of Taiwan. The United States and Japan certainly would not support aggressive PRC action toward Taiwan. Even in the PRC, reformers recognize that a separate Taiwan creates support for their own movement.

Mr. Chang believes that, on an emotional level, Taiwanese are split over whether they are part of mainland Chinese culture. He agrees with KMT moderates that the concept of "one country, two governments" is not very useful. He also agrees that some form of consensus exists behind the current approach of making every effort to improve Taiwan's international position. On the other side, Mr. Chang believes that the KMT will lose its legitimacy if it attempts to conform its domestic political model to its current international policy. This explains why the KMT has historically been anxious to separate domestic and international affairs.

Chang notes that residents of Taiwan who fled mainland China shortly before the establishment of the PRC have no political base. The KMT represents those residents' best chance to maintain political control over Taiwanese affairs. Those who fled mainland China during the Revolution have no ancestral land, no graves to visit, and no knowledge of the local dialect. The native Taiwanese, on the other hand, historically owned and tilled their own land. The Taiwanese dialect was frequently used in past electoral campaigns, thereby effectively excluding those who did not speak it.⁷⁵

Current developments reveal a rich and varied political landscape for Taiwan's domestic as well as international development. The central issue is how evolving aspirations can be satisfied given the complex realities of modern China. Before any conclusions can be reached, it is important to consider how international law and world practice deal with the status of territorial and autonomous communities.

V. TERRITORIAL ENTITIES IN WORLD PRACTICE

This Article began by posing the question of whether the con-

75. *Id.*

cepts employed in the current discourse concerning Taiwan's future are consistent with the objective reality, and whether these concepts are understood in a way that may be helpful toward achieving a peaceful and satisfying solution. In considering these questions, it is necessary first to ascertain the nature of the expectations embraced by the parties (*i.e.*, the ROC and the PRC) to the Taiwan issue. With such expectations clearly in mind, it will then be possible to ask, in a theoretical sense, what kind of assistance the evolving notion of the world community may offer.

On one side of the conflict, the PRC seeks to subordinate Taiwan as an internal autonomous region inside the nation-state of China.⁷⁶ The PRC seeks to do this peacefully, but the military option has not been ruled out.⁷⁷ Given the problems of Taiwan's lack of confidence in the PRC, of Taiwan's capitalist system, and of the uncertain enforceability of any PRC commitments, Taiwan is justified in perceiving a threat to its economic and political survival.

The PRC policy appears to be based on some form of nation-state nationalism. This policy embodies a very rigid conception of sovereignty that seeks to limit any internal or external constraints. It must be asked whether such a policy is in the best interests of the future development of either Taiwan or the PRC. Taiwan's political discourse, on the other hand, offers the full range of alternatives from independence to a multi-systems approach.

Given the conflict between the political discourse in the PRC and in Taiwan, it may be well to ask whether it is possible to construct an image of territorial entities that dissolves this conflict and advances mutual benefits. Additionally, it may be asked whether the words and definitions currently employed enhance mutual understanding and advance deep-felt needs. A preliminary examination of evolving notions of autonomy and statehood in international law and practice are relevant to this inquiry.

As noted above, for Taiwan to accept any relationship with the PRC that lacked the firm international guarantees of autonomy enjoyed by other nation-state-like territorial entities would certainly endanger its economic and political survival. Without well secured guarantees, the goals of the parties for a successful relationship would be illusory. Recognizing the increasing importance of territorial entities, international legal practice as expressed generally in the United Nations Charter and in various territorial or security arrangements

76. This would be done under the "one country, two systems" concept embodied in the PRC CONST., *supra* note 4.

77. *Taiwan's Foreign Policy Slated* [sic], *supra* note 25.

endeavors to give some security to autonomous arrangements for cooperation. Such territorial entities are often characterized as associated states or autonomous regions, although the practical distinction between the two may be blurred.⁷⁸ Looking to the characteristic features of both states and autonomous regions and to the varying degrees of external effectiveness in their autonomy arrangements, the term "territorial entity" is favored.⁷⁹ The concept of autonomy may then be used to characterize this association.

When the territorial entity and the larger territorial community into which the entity is to be subsumed share a common culture and similar goals, it should be possible to reconstruct or recharacterize the larger territorial community in a way that will be beneficial to all. The peace and security of the international community may, likewise, be advanced by the full participation in world affairs of such territorial entities. The notion of autonomy should be examined in this context.

Recent developments in international legal practice have given rise to fundamental changes in the notions of statehood, sovereignty, and autonomy. World practice has witnessed both so-called states moving to higher degrees of interdependence and distinctive, regional territorial entities securing higher levels of autonomy, although short of full independence. The most prominent example of the former practice is the evolving European Economic Community (EEC). Good examples of the latter practice are the Soviet republics or the program model for Hong Kong. Little, however, has been written about this emerging phenomenon. This convergence between characteristic features and levels of independence of both nominal states and autonomous territories is the basis for preferring the term "territorial entity" or "territorial community" to the word "state." In this article the term "territorial entity" will be used.

In one of the earliest thorough studies of this evolving phenomenon that concerned the associated state of Puerto Rico, Professor W. Michael Reisman suggests that "the question . . . is thus not 'to be or not to be' international but how to participate in the international system at different points in the future, in ways which best contribute to the realization of . . . national, cultural, economic, and social goals."⁸⁰ Reisman notes the importance of international participation as a way of maintaining effective internal autonomy: "The inability to turn to the world is translated into a lessened internal effectiveness."⁸¹

78. See generally W. REISMAN, *PUERTO RICO AND THE INTERNATIONAL PROCESS, NEW ROLES IN ASSOCIATION* (1975).

79. *Id.*

80. *Id.* at 2.

81. *Id.* at 4.

His view does not deprecate the existence of the broader territorial community that subsumes both participants. On the contrary, it better secures the achievement of their collective task. This view also blurs the levels of exclusive control and other rights associated with sovereignty.

Modern developments in the inter-relationship of territorial entities display a wide spectrum. On one side are the independent states that surrender to the larger subsuming entity certain aspects of their ability to conduct their internal management of external relations. The result of a smaller state surrendering some degree of its independence in order to secure a useful, durable link with a larger state may be referred to as an association.⁸² The United Nations Charter, among other manifestations of international law, focuses attention on this association.⁸³ Professor Reisman notes that international law affords no clear indication when an association has become so integral that the smaller territorial entity is no longer independent but is deemed to be entirely subsumed in and a part of the principal state.⁸⁴ Such an association may deprive the smaller territorial entity of access to some international arenas, but not to all.⁸⁵ Reisman notes that the obvious indicators of integration, such as common citizenship, common trade agreements, competence in foreign affairs, military or defense privileges, or judicial subordination, have often not been sufficient to ensure autonomy.⁸⁶ The demands of the people for independence appear to be the determinative factor.⁸⁷

Varied levels of integration are evident in world practice, thereby revealing the increasing interdependence of states. A rather unequal partnership exists in modern military alliances, though the level of integration of states involved is slight. In the wake of these alliances, other more equal attempts at integration have arisen. The chief example is the EEC, which will eventually involve the free movement of people, common markets, common currency, and common application of community law.⁸⁸ Similar attempts at integration often arise in communities that share certain cultural or social commitments,

82. *Id.* at 10.

83. U.N. CHARTER. See also *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1961).

84. REISMAN, *supra* note 78, at 15.

85. *Id.*

86. *Id.* at 16-18.

87. *Id.* at 18. The standard dictionary definition of sovereignty suffers likewise: "supremacy of authority . . . complete independence and self-government." THE AMERICAN HERITAGE DICTIONARY (1980).

88. See generally EUROPEAN COMMUNITY TREATIES (K. Simmonds ed. 1972).

such as the United States and Canada. This increasing interdependence among nation-states suggests a convergence in certain basic features with a growing number of autonomous, non-state territorial entities.⁸⁹

These interdependent states have available a number of formal options for international participation, including bilateral treaties, multinational treaties and international organizations. Such participation has obvious advantages for smaller, associated states that are trying to preserve a degree of independence or autonomy: "Local effective autonomy is often a function of one's capacity to operate internationally."⁹⁰ International organizations have placed less emphasis on independence as an admission criterion and have made available avenues for non-member participation.⁹¹

The post-colonial period has witnessed not only an explosion in the number of states with varied degrees of independence and varied characteristic features regarding sovereign rights, but also an increased demand for regional autonomy within existing states.⁹² Autonomy has, however, been subject to little study by international legal scholars. One thorough study has been carried out by Professors Hurst Hannum and Richard Lillich, both of whom have offered the following general comments:

Autonomous areas are regions of a state, usually possessing some ethnic or cultural distinctiveness, which have been granted separate powers of internal administration, to whatever degree, without being detached from the state of which they are a part. For such status to be of present interest, it must be in some way internationally binding on the central authorities.⁹³

89. See generally Hannum & Lillich, *The Concept of Autonomy in International Law*, in *MODELS OF AUTONOMY* 215 (Y. Dinstein ed. 1981).

90. REISMAN, *supra* note 78, at 51.

91. Professor Reisman points out the following:

When nations choose the international organization route, they establish a centralized component to which decision functions are delegated; when nations choose the multilateral agreement route, in contrast, performance of the obligations undertaken remains in the hands of the states-parties themselves. Non-members, as we have seen, may acquire significant rights and obligations, including procedural rights, in international organizations; the range for outsider activity, and, in particular, the scope of procedural privileges for outsiders in multilateral treaties are considerably less.

Id. at 105.

92. Hannum and Lillich conducted a thorough study of this phenomenon, identifying numerous examples in relation to exploration of a possible solution to the Palestine question. Hannum & Lillich, *supra* note 89.

93. *Id.* at 216 n.8.

They further observed:

Autonomy and self-government are determined primarily by the degree of actual as well as formal independence enjoyed by the autonomous entity in its political decision-making process. Generally, it is understood to refer to independence of action on the internal or domestic level, as foreign affairs and defense normally are in the hands of the central or national government, but occasionally power to conclude international agreements concerning cultural or economic matters also may reside with the autonomous entity.⁹⁴

Historically, autonomy often arose when individual states in an emerging federal system surrendered some sovereign authority to a central government while retaining a certain degree of independence. Recently, such autonomy has devolved into unitary systems where a central government surrenders certain authority to regional territorial entities. The former type of autonomy is fairly secure; the latter type constantly risks the central government's incursion. What the central government gives, the central government can take away.

Autonomous territorial entities have often acquired a unique religious or ethnic make-up that tends to legitimize their claim to a higher degree of self-determination. On the other hand, national security interests may render full independence beyond reach when the central authorities perceive the long-term, national interest to be better served by maintaining a larger territorial claim and some control over potentially hostile regional or adjacent communities.

Autonomy is often a compromise between full independence claimed by the regional community and full integration claimed by the central authorities. Recent claims for autonomy fall more closely on the side of the former than the latter.⁹⁵ In an increasingly interdependent world, these claims for autonomy offer a range of options. There is much room for flexibility. Labels such as statehood or sovereignty need not be all-important. It is possible for the parties to design their own model that addresses both claims for autonomy of the region and concerns of the central government. Communities

94. *Id.* at 216-18. It is interesting to note that Hannum and Lillich confined their study to autonomy that is in some way internationally binding. For purposes of studying territorial conflict, the term "autonomy" should be confined to that level that invites international scrutiny. The term loses its significance when applied to any local government that can be destroyed at will by central authorities.

95. The Hong Kong model calls for a fairly high level of independence. The Soviet republics seem likewise inclined. Intense regional conflict in India and the Philippines may ultimately move in the same direction.

that wish to avoid the imposition of outside values will find this flexibility appealing. Given the attention focused on various autonomy arrangements, however structured, such arrangements have increasingly become matters of international concern.⁹⁶ This reality should not be avoided. Rather, it should be acknowledged and embraced by the parties. It is in the enforceability of the arrangement that the confidence of both parties and of concerned members of the international community will most likely be assured.

Hannum and Lillich's studies focused on autonomous regions with a high level of subordination to the central authorities.⁹⁷ Even these regions may acquire considerable independence. They note that autonomous regions that were formerly independent of the central government retain the most independence after being subsumed into the larger territorial entity. Such autonomous regions often have the power to enter into international agreements and the right to comment on treaties that will affect them. Such autonomous regions have rarely been allowed to participate in international organizations. Hannum and Lillich also note that such autonomous regions have usually been allowed to retain police powers.⁹⁸

Hannum and Lillich conclude that "autonomy" is not a term of art with a generally accepted definition. Hence, "there is not a particular level of independence which can be designated as reaching the status autonomy."⁹⁹ Such a conclusion implies that the autonomy arrangement a community chooses to employ may be quite flexible. In the words of Hannum and Lillich, "the increasingly complex interdependence of contemporary world politics no longer corresponds to the sovereign nation-state simplicity of the nineteenth century."¹⁰⁰

For present purposes it is important to emphasize that the converging notions of statehood and autonomy may not reveal a very rigid picture. To impose the former concept on the whole of China is to impose not only western values but nineteenth century western values. Relationships between associated states and principals or between autonomous regions and central governments may be designed to suit the unique conditions and objectives of the parties. If

96. "A pattern characterized by the continuing subordination of one community is . . . a constant invocation of international scrutiny." REISMAN, *supra* note 78, at 10.

97. Hannum & Lillich, *supra* note 89.

98. *Id.* at 226-44.

99. *Id.* at 248-50. Hannum and Lillich do suggest the minimum governmental powers a territory would need to possess: a local legislative body not subject to veto by the central government unless the local body has exceeded its authority; a locally chosen chief executive; an independent local judiciary; some areas of permitted national control such as defense and foreign affairs; and possibly power sharing in some areas. *Id.* at 250-51.

100. *Id.* at 254.

effective, emerging autonomy and associational arrangements may offer intermediate avenues for resolving territory-related social, economic and developmental needs.

It is important that such arrangements, whether better characterized as autonomous, associational or otherwise, permit sufficient external effectiveness so as to insure confidence in the internal or mutually cooperative arrangement. This can permit the broader community to evolve while internal confidence is assured. Separating the internal dynamic from the external simply ignores political reality. Characterizing such arrangements as purely internal matters renders success unlikely and sincerity suspect.

VI. THE GREATER CHINESE COMMUNITY AND TAIWAN

The question still remains as to whether Chinese on both sides of the Taiwan Strait will be able to devise a solution to this apparent contradiction. It seems that the recovery of Taiwan has become virtually a religious quest in the PRC. In Taiwan, while the tenet of unification is being questioned, the ideology of the nation-state stands in the way of a search for alternative answers. This ideology is yet another basis for conflict in a situation where the heart-felt claims of one side necessarily come up against the survival instincts of the other.

It should be noted at the outset that the present KMT and PRC political regimes are for all intents and purposes mutually exclusive and could not be unified into a single body sharing power over all of China. They distrust each other greatly. Each, however, shares the legacy of a single Chinese culture. This became evident in a conversation this author had with a student in Taipei who obviously favored independence. He asked how he might obtain a copy of a book this author had recently written.¹⁰¹ When told that the book concerned Hong Kong's future and not Taiwan's he replied, "We are interested in Hong Kong's future as well. After all, we are all Chinese." This illustrates the feelings of unity which underlie Chinese culture despite any political disagreements. Many people in Taiwan, while not desiring to be part of the Chinese state, particularly if it is a one party communist state, nevertheless view themselves as part of the Chinese community.

The effect of a unified Chinese culture is still unclear. There appears to be a Chinese community that is not and perhaps never has been a nation-state in the nineteenth century European conception.

101. M. DAVIS, *CONSTITUTIONAL CONFRONTATION IN HONG KONG* (1989).

This community nevertheless evokes a deep sense of attachment. Certainly today the vast majority of Chinese territory is unified under a single government. But does that mean that all of China needs be unified, no matter what the cost? The PRC's policy on autonomy acknowledges what it calls "special circumstances." The Constitution of the PRC recognizes the need for the creation of autonomous regions such as SAR's, allowing even further possibilities for localized rule of regions within China.¹⁰² The realities of autonomy in these regions, in fact, may be another matter. Must all feelings of self-determination be crushed in Taiwan in order to allow it to become "Chinese"?

Taiwan's distinctive qualities merit a different approach. In Europe, countries which have shared a relatively homogenous cultural heritage are now moving towards unification despite centuries of warfare among themselves. This unification stresses fundamental unity while trying to preserve the national integrity of the constituent elements. While the European model cannot be copied wholesale as a blueprint for Chinese unification, such a model does represent a useful example for any effort toward Chinese unification. Chairman Mao Zedong is alleged to have responded to the PRC's exclusion from the United Nations by saying that China does not need the United Nations; it could make its own United Nations within China.¹⁰³

The effects of centralized rule on the economic and political well-being of the Chinese people should be considered by both the PRC and the KMT. The PRC's establishment of autonomous regions recognizes, but does not fully address, the problem of diversity within the PRC. Because of this, one can understand why communities on the periphery of China, most notably Taiwan and Hong Kong, have great concerns regarding the potential loss of their self-determination. The PRC should recognize these fears and work to preserve the economic success of these "outlying regions" of China for the good of all Chinese. Despite the internal tensions which might be caused by "truly" autonomous regions within a greater China, such autonomy is the best way to preserve the beneficial effects of these "outlying regions" on the Chinese community as a whole.

Attitudes towards a confederation are unclear in the PRC and Taiwan. Professor Chiu Hungdah states that the PRC is morally opposed to Taiwanese independence. Still, economic realities give

102. PRC CONST. arts. 31, 113 (1982). See also DAVIS, *supra* note 101, at 128-45.

103. E. Vogel, Lecture given in seminar at Chinese University of Hong Kong (Sept. 1, 1989).

Taiwan no incentive to unify with mainland China.¹⁰⁴ Taiwan is particularly fearful of PRC dominance after the events in Tibet. On May 23, 1951, the PRC had promised not to "alter the existing political system in Tibet."¹⁰⁵

If the PRC does not work to allay Taiwanese fears, Taiwan may move further away from unification. Forcible recovery of Taiwan by the PRC seems unlikely. On the other hand, economic, political and cultural disparities between the people of the two regions is growing at a geometric rate.

In order to promote greater unity, political terms should not be allowed to pose a barrier. Concepts such as "autonomy" and "confederation" may aid discussion, but should not be used as straight jackets. Both sides are beginning to recognize that they must move toward a more give-and-take relationship that acknowledges the other side's needs without forcing the other into extreme positions. Recent increases in "people-to-people" contacts are a good start. The ultimate goal should be some form of community status where both members enjoy full international recognition within the context of a commitment to a cooperative community. To refer to this new symbiotic relationship may make it necessary to coin new terms, which will eliminate the need to specify at the outset the precise path to be taken, and which will allow for flexibility in resolving problems as they arise.

The flexibility needed to work toward such a goal may not exist. There is little evidence at present that the parties can work together in such a fashion. The current rhetoric stresses a rigid, state-based conception, which offers little chance for deviation from the established system of international participation in which only "states" in the traditional sense play a role.

In spite of these rhetorical strictures, a subconscious attitude of mutual forbearance may, in fact, animate the current policies of the PRC and the KMT. A more flexible definition of what is or is not a state may be starting to emerge in Taiwan. The PRC's attitudes indicate a degree of change as well. This adjusted sense of international law and practice could well serve as a basis for further negotiations that would permit both sides to fully participate in world affairs while preserving a sense of Chinese community. Integration could occur in areas where mutual benefits may be had, especially in the economic sector. The opposite approach of establishing political control while maintaining separate economic systems, which is being used in Hong Kong, seems to offer very little for Taiwan.

104. H. CHIU & R. DOWNEN, *supra* note 17, at 41, 51.

105. *Id.* at 51.

The rest of the world is growing weary of side-stepping the issue of Taiwanese sovereignty, and the effects on both the PRC and Taiwan are harmful. Economic integration, combined with a high level of self-determination for Taiwan, will solve many problems both communities now face and will allow for an improved world order.

This result will not be realized in the near future, nor will there be immediate negotiations toward this end. Present practice indicates that there is still a great deal of wariness and that much more time is needed for the parties to earn each other's respect. Attitudes must be changed and new understandings must be forged. A new sense of pragmatism on both sides indicates that the necessary attitudes are emerging. Increased contact is indispensable to facilitate the creation of a climate where meaningful steps may be taken to resolve this mutually inconvenient situation. The strident rhetoric which has been used is of little help.

Besides current, indirect trade, contacts between the two sides are increasing. Evidence of this trend includes dual participation in the Asian Development Bank and in INGO's in the fields of sports and science. Red Cross contacts, as well as political and scholarly contacts, have also been established. These contacts are indicative of the new directions which are being explored. Other contacts should be established, most notably joint participation in the GATT and the OECD, which both parties have approached. Some form of "unofficial" liaison or coordination office and appropriate laws to protect mutually beneficial investments and business ties may also be indicated.

Without flexibility and mutual understanding, any hopes of a functional union become increasingly unlikely. If China demands too much from its "outlying areas," those areas will merely rebel and chart an independent course. The benefits which both sides could derive from a confederation would then be lost.