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## THE UNITED STATES AND TAIWAN AFTER DERECOGNITION: CONSEQUENCES AND LEGAL REMEDIES

AHMED SHEIKH\*

### INTRODUCTION

The basic proposition advanced in this article is that if both the United States and Taiwan were to follow a rational system of actions based upon adherence to international law concepts, Taiwan can still be regarded as a sovereign state under international law. Domestic legislative remedies in both countries to define their new relationship in the aftermath of derecognition can assure a healthy economic relation without outside interference.

Being guided in part by a spirit of synthesis and summary, analyzing this proposition involves a higher level of abstraction and inference than one would normally expect in a position paper of this sort. The focus is narrowed essentially by a strict international law perspective initially, and by an international economic perspective in the second part of the article. Although the future cultural, educational and military-security related ties between the United States and Taiwan are outside the scope of this article, their importance should not be ignored.

New legislation must be enacted, particularly in the United States, in order to eliminate the confusion that still abounds in the minds of American businessmen doing business in Taiwan. Although the topic of United States-Taiwan relationships mandates a prescriptive approach, empirical concerns about the realities of recent world politics and the uncertain future that Taiwan faces today as a result of the American termination of the mutual defense treaty with the Republic of China<sup>1</sup> necessarily impinge on the analysis.

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<sup>1</sup> Mutual Defense Treaty, December 12, 1954, United States - Republic of China, [1955] 6 U.S.T. 433, T.I.A.S. No. 3178 [hereinafter cited as Mutual Defense Treaty]. The United States delivered a notice of termination of the Mutual Defense Treaty to the Taiwan government on December 23, 1978, which became effective on January 1, 1979. Pursuant to the terms of the Mutual Defense Treaty, the notification terminated the Treaty on January 1, 1980. Mutual Defense Treaty, *supra* at art. X.

Specifically, two propositions seem to have the greatest significance for the American business community today, and each can be discussed and supported in the realm of international law. The first addresses the current status of the government and people of Taiwan under general international law. As far as international law and its current practices are concerned, America's derecognition of Taiwan's government does not spell the end of the world for Taiwan. Indeed, it can be shown that under international law Taiwan still has a legal personality, enjoys certain very important protections, and retains significant responsibilities. In this context even the position of the United States is not entirely without certain favorable legal consequences for Taiwan. For instance, the United States still recognizes Taiwan as a separate political entity for domestic consideration purposes. Therefore, it may statutorily confer on Taiwan any benefits without regard to its recognition of the People's Republic of China as the sole legal government of China.<sup>2</sup> The United States simply takes no position on the status of Taiwan under international law.

The second significant proposition for American businessmen is that the United States has attempted to alleviate any serious implications and negative consequences inhibiting continued economic cooperation between the United States and Taiwan as a result of derecognition. With additional Taiwanese legislation and reasonable construction of the laws of both countries, Taiwan can be treated fairly and equitably as a unique case under American law. What follows in this paper is a detailed discussion of the above two propositions and their legal implications.

#### TAIWAN'S CURRENT STATUS UNDER INTERNATIONAL LAW

Very simply put, the existence of a state or government under international law is generally a question independent of its recognition by one or more other countries.<sup>3</sup> Under current legal practices and international

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<sup>2</sup> See Taiwan Relations Act, Pub. L. No. 96-8, 93 Stat. 14 (1979) (codified as 22 U.S.C.A. §§ 3301-16 (West Supp. 1979)) [hereinafter cited as Taiwan Relations Act]; text accompanying notes 3-13 *infra*.

<sup>3</sup> Under the so-called constitutive theory of recognition, "the international personality of a state or the ability to represent it as a government depends on recognition by the state community." B. BOT, NON-RECOGNITION AND TREATY RELATIONS 146 (1968) [hereinafter cited as BOT]. The validity of the constitutive theory is questionable in light of present principles and practices of international law. Since recognition is extended at different times by different countries, applying the constitutive theory would mean that a state would have an international personality for some of its neighbors but not for others. Also, if an unrecognized state did not exist legally, there would be no valid reason to require that entity to adhere to any principles or duties of international law. Finally, recognition generally is given retroactive effect but under the constitutive theory there is no basis on which to validate the acts of a previously unrecognized regime which did not exist at the time it acted. *Id.*

The constitutive theory has been the subject of severe criticism. See, e.g., L. JAFFE, JUDICIAL ASPECTS OF FOREIGN RELATIONS 19 (1933) [hereinafter cited as JAFFE]. In general, a nation's existence should be determined without reference to whether or not other states have officially recognized it. See BOT, *supra* at 60; T. CHEN, THE INTERNATIONAL LAW OF RECOGNITION 13 (1951) [hereinafter cited as CHEN]. Critics of the constitutive theory differ,

conduct, diplomatic recognition of a country by other members of the international community frequently hinges on the pursuit for mutual benefits or the existence of common interests. Moreover, recognition may be withdrawn, or transferred to another country which may lay claims on the disputed territory, when an antagonistic relationship develops between two countries, often due only to new perceptions of national interests. In the case of the United States' transfer of recognition from Taiwan to the People's Republic of China, a major shift in the American interests abroad had taken place. The United States, being a sovereign state, has the right under international law to respond to such a shift, notwithstanding questions of morality or sentimentality.

On the other hand, most legal scholars agree that the existence of a state or government, even in a disputed territory or under political leadership that is being challenged by another faction in that country, depends on more objective, technical factors.<sup>4</sup> A country "exists" in international law when 1) its leadership is in effective control of the state's defined territory; 2) the bulk of its inhabitants possess sufficient political stability and provide allegiance to whatever national symbols there might be; 3) the leadership possesses sufficient administrative capability to carry out certain well recognized internal government functions and its international obligations under international law and the United Nations Charter; and 4) there is no massive and systematic interference in its domestic affairs by a foreign power.<sup>5</sup> While a state that meets these requirements may "exist" in the world community, other states generally will extend recognition only if there are no *overriding political considerations* dictating a contrary policy. Recognition does not necessarily connote approval of the method by which the leadership came to power, or of the philosophy, political institutions and programs of the new regime. In most instances it simply reflects a legal and political reality. Withholding,

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however, as to the effect recognition does have. Compare JAFFE, *supra* note 111 ("nonrecognition should be considered not as a denial of international personality, but as a sanction, as a mode of compelling an international personality to perform its duties") with CHEN, *supra* at 135 and BOT, *supra* at 18 (recognition has wider scope than declaratory existence in that the former opens diplomatic relations and "full membership in the family of nations.")

Thus, even though a nation's existence does not hinge on whether it is recognized, nonrecognition can, and in practice often does, affect the role an unrecognized entity plays in the international community. See text accompanying note 6 *infra*.

<sup>4</sup> Some scholars distinguish between recognition of states and of governments. See, e.g., BOT, *supra* note 3, at 22-23; H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 1, 87 (1947). An example of the ramifications this distinction can have arose in the United Nations debates concerning recognition and admission of Vietnam and Bengla Desh. In order for a state to be recognized, there must exist a requisite level of political and economic stability within a defined territory. Rather than stability, the level of *control* a regime can assert over a population and territory is the threshold issue in determining whether or not a government is effective enough to be recognized. See BOT, *supra* note 3, at 22-23. For purposes of this article, no such distinction is made explicitly, but implicit in the discussion is the thesis that Taiwan exists as a state and its government is in effective control.

<sup>5</sup> See RESTATEMENT (SECOND) FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 4, 100, 101 (1965). See also JAFFE, *supra* note 3, at 21, 60; LAUTERPACHT, *supra* note 3, at 26-30.

withdrawing or transferring recognition thus becomes an act of foreign policy, and perceptions of national self interests play a determining role.<sup>6</sup>

American policy towards China graphically illustrates the dichotomy between the questions of a state's existence and its recognition by other countries. The decision to recognize the government of Taiwan as the sole spokesman for all the Chinese people stemmed from severe conflicts of interest, purpose, and national goals between the United States and the People's Republic of China.<sup>7</sup> This recognition policy simply ignored the political and legal reality of the existence of People's Republic of China. Once Taiwan was recognized as *the* government of China, it was only a matter of time before United States provided it massive doses of economic assistance and a military commitment to defend it against any aggression.<sup>8</sup>

Now, of course, "the overriding political considerations" once again are responsible for the shift in American foreign policy. Recognition has been extended to the People's Republic. Taiwan is derecognized and the Mutual Defense Treaty<sup>9</sup> is terminated.<sup>10</sup> However, according to the Carter administration, Taiwan remains a country of sorts for purposes of

<sup>6</sup> Recognition policy may be determined by political considerations and may have far-reaching political effects. A statement made by then Secretary of State John Foster Dulles in connection with United States policy towards East Germany evidenced official cognizance of the role political factors play in the initial decision of whether to extend recognition. He rhetorically asked why the United States and Great Britain had not recognized East Germany, and stated that it would be

politically disadvantageous and harmful to our interests to do it. So the guide in these things isn't something doctrinaire, that you have to give recognition of a diplomatic character to a regime which is hostile to you and where it involves great disadvantages to do it. . . . But on the other hand we do not accept the blind policy of pretending that it doesn't exist. It does exist. We know it exists.

39 DEP'T ST. BULL. 735 (1958). See also LAUTERPACHT, *supra* note 3, at 33-36; JAFFE, *supra* note 3, at 112.

Recognition policy also has important political effects. See LAUTERPACHT, *supra* note 3, at 36-37. Of course, the effects a policy of recognition or non-recognition likely will have may be the political considerations that enter into the final decision. Primary among these effects are the possible protests and other reactions of sister states and the possibility, where a newly recognized state has revolted against or receded from another, of a declaration of war against the recognizing state. *Id.* at 36 & n.5.

The frequency with which political factors are decisive in a decision of whether or not to extend recognition is not easily quantified. See LAUTERPACHT, *supra* note 3, at 37. Nevertheless, since any recognition policy unquestionably has some political ramifications, they will be considered in connection with the initial decision to withhold, extend, withdraw or transfer recognition.

<sup>7</sup> See generally Dean, *United States Foreign Policy and Formosa*, 33 FOREIGN AFF. 360 (1955).

<sup>8</sup> See, e.g., Agreement on the Furnishings of Certain Military Material to China for the Defense of Taiwan, February 9, 1951, United States - Republic of China, [1952] 2 U.S.T. 1499, T.I.A.S. No. 2293; Agreement to Facilitate Construction of Defense Facilities, November 21, 1956, United States - Republic of China [1957] 7 U.S.T. 3411, T.I.A.S. No. 3713.

<sup>9</sup> See note 1 *supra*.

<sup>10</sup> *Id.*

United States domestic laws.<sup>11</sup> The Administration has stated that it recognizes the People's Republic as the sole legal government of China and that Taiwan is a part of China. But the simple fact under international law remains that the People's Republic existed as a state before American recognition, and Taiwan exists now as a state, with all the privileges and obligations under international law after American derecognition. The legal concept of state responsibility is equally applicable to both Chinas because they both meet the legal requirements of statehood under international law.<sup>12</sup> Clearly, any sovereign nation has the legal right to withdraw or withhold diplomatic recognition of another state if its own national security requirements, economic welfare or broader national interest so demand. Nevertheless, the strict and demonstrational requirements of political control and stability, administrative capability and international accountability, the existence of a well-defined territory, and the lack of massive intrusion from a foreign government determine whether a state exists under international law. Under this standard, Taiwan exists as a state under international law, and the legal precepts that will guide nations dealing with Taiwan, and the consequences of those relationships, must be determined in light of that status.<sup>13</sup>

Beyond general international law concepts, past legal practices also substantiate the thesis that even after derecognition the United States and other nations are definitely under certain legal obligations to respect Taiwan's rights, responsibilities and prerogatives in the international arena. The Charter of the Organization of American States,<sup>14</sup> (O.A.S. Charter) adopted at Bogota in 1948, and largely written by the United States,<sup>15</sup> reflects some of the deeply held beliefs in America on this point. It provides the best guarantee to the people and government of Taiwan that mutually beneficial bilateral relations will persist as long as Taiwan is able to maintain its status as an existing sovereign state under the re-

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<sup>11</sup> *Presidents' Message to Congress Transmitting Proposed Legislation*, 15 WEEKLY COMP. OF PRES. DOC. 165 (Jan. 26, 1979).

<sup>12</sup> See text accompanying note 5 *supra*. As early as 1955 authorities and commentators characterized the Communist regime as the *de facto* government of Mainland China. See Wright, *The Chinese Recognition Problem*, 49 AM. J. INT'L L. 320, 321-23, 321 n.3 (1955). At the same time, Chiang Kai-Shek's government was considered the *de facto* government of Formosa and the Pescadores. *Id.* at 323. The factors of stability, control, and territory that led to these characterizations parallel the requirements for a state's existence.

<sup>13</sup> See BOT, *supra* note 3, at 33-35; RESTATEMENT (SECOND) FOREIGN RELATIONS LAW OF THE UNITED STATES § 107, (Comment 1, Illustration 1) (1965); 2 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 604-06 (1963) [hereinafter cited as WHITEMAN]. For examples of instances in which the United States has had relations with unrecognized states, largely for political reasons, see JAFFE, *supra* note 3, at 112-16.

<sup>14</sup> Charter of the Organization of American States, April 30, 1948, [1951] 2 U.S.T. 2416, T.I.A.S. No. 2361 [hereinafter cited as OAS Charter].

<sup>15</sup> For a general discussion of the evolution of the Organization of American States, see J. DRIER, THE ORGANIZATION OF AMERICAN STATES AND THE HEMISPHERE CRISIS 10-41 (1962); INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, THE INTER-AMERICAN SYSTEM xv-xxxvi (1966).

quirements of international law. Article 19 of the O.A.S. Charter reads:

The political existence of a state is independent of recognition by other states. Even before being recognized, the state has the right to defend its integrity and independence, to provide for its preservation and prosperity and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services and to determine jurisdiction and competence of its courts. The exercise of these rights is limited only by the exercise of the rights of other states in accordance with international law.<sup>16</sup>

This provision represents the United States' attitude and legal thinking on the rights of an unrecognized state, which suggest that a meaningful and economically beneficial relationship can be maintained with the government and people of Taiwan through the American Institute in Taiwan (Institute)<sup>17</sup> and appropriate federal legislation. Surely the United States could deny the Island government, within its own territory and absent proper domestic laws, certain privileges. The denial may extend to Taiwanese business corporations, individual citizens, or special groups such as athletes.<sup>18</sup> For instance, the United States could have denied Taiwanese privileges by withdrawing immunity before its domestic courts, something states generally consider very important to gaining the recognition of other countries. Nevertheless, the point is that an unrecognized or derecognized state simply cannot be ignored totally by the nation that withdraws recognition, even if it so wishes. The extent of accommodation, informal contact, and transactions between the two countries will depend upon the attitude of the two governments involved.<sup>19</sup> Of

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<sup>16</sup> OAS Charter, *supra* note 14, art. 19; T.I.A.S. No. 2361.

<sup>17</sup> Congress created the Institute in section 6 of the Taiwan Relations Act, *supra* note 2, 22 U.S.C.A. § 3305 (West Supp. 1979). The Institute is incorporated under the District of Columbia Non-Profit Corporation Act. See D.C. CODE § 29-1001 to 10991 (1973).

<sup>18</sup> See JAFFE, *supra* note 3, at 121. The flexibility with which the United States can deal with domestic privileges for Taiwan was evidenced by judicial refusal to allow Taiwanese athletes to participate in the 1980 Winter Olympics in the United States under the flag and name of "Republic of China." See *Liang Ren-Guey v. Lake Placid 1980 Olympic Games, Inc.*, 72 App. Div. 2d 439, 424 N.Y.S.2d 535 (1980).

<sup>19</sup> See generally WHITEMAN, *supra* note 13, at 604-05. Several States, which do not recognize the German Democratic Republic nevertheless maintain an attitude of mutual cooperation with the G.D.R. Consequently they adopt the position that the G.D.R. became a party to the Nuclear Test Ban Treaty of 1963 by signing the copy provided to the Soviet Union. They consider East Germany to have committed itself, as a sovereign state, to abide by the provisions of the treaty in accordance with principles of international law. There is no question that a nation may engage in informal relations with an unrecognized State. See text accompanying note 13 *supra*. Indeed, in the late 1950's, the United States acknowledged this possibility with respect to its policies towards the Chinese communist regime long before extending recognition was likely. *British Television Interview With Secretary of State Dulles* (October 7, 1958), reprinted in 39 DEP'T ST. BULL. 735 & n. 4 (1958); Address by John Foster Dulles (June 28, 1957), reprinted in 37 DEP'T ST. BULL. 91, 93 (1957). In his address, Secretary Dulles made clear that the decision not to initiate informal trade or cul-

course, the United States presently does not intend to ignore Taiwan, or to cut off all forms of commercial, educational and cultural ties with it, and a future administration in Washington that wishes to do so will find it extremely difficult to accomplish such a goal. The intent of the legislation on the American side is to preserve existing commercial, cultural and other unofficial relations by authorizing the continuation of existing contracts, statutory programs and other relevant portions of federal law.<sup>20</sup> In this context, the purpose of the Institute will be to coordinate future relations between the two nations. The Institute, being a private corporation, organized under the Non-Profit Corporation Act of the District of Columbia,<sup>21</sup> can handle almost any kind of transaction, or exchange of goods and services, unofficially.<sup>22</sup> Its activities can be controlled easily by means of a contract between it and the Department of State.

The United States on many occasions in the past has conducted its business overseas through non-government organizations.<sup>23</sup> Past delega-

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tural relations with the unrecognized communists was based on perceived communist Chinese animosity towards the United States and China's Asian neighbors. *Id.* at 93. Thus where a nonrecognized state is hostile towards the country withholding recognition, permissible unofficial contacts that may strengthen the unrecognized state will be avoided. JAFFE, *supra* note 3, at 38. By logical extension, however, if the unrecognized state is not hostile, unofficial relations will be undertaken to the extent they comport with the best interests of the United States. In those situations, strengthening the unrecognized State not only may be a harmless consequence, but it may further foreign policy objectives.

<sup>20</sup> 22 U.S.C.A. § 3301(a) (West Supp. 1979); see S. REP. No. 7, 96th Cong., 1st Sess. 1, 7, *reprinted in* [1979] U.S. CODE CONG. & AD. NEWS 650, 656, 668 [hereinafter cited as SENATE REPORT]. The stated statutory purposes underlying the Taiwan Relations Act are:

(1) to help maintain peace, security, and stability in the Western Pacific;  
and

(2) to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people of Taiwan.

22 U.S.C.A. § 3301 (West Supp. 1979).

<sup>21</sup> 22 U.S.C.A. § 3301(a)(1)-(2) (West Supp. 1979). SENATE REPORT, *supra* note 20, at 25 [1979] U.S. CODE CONG. & AD. NEWS at 674.

<sup>22</sup> While the Institute was designed to serve as the principal vehicle through which unofficial relations with Taiwan would be maintained, the Senate Report makes clear that the Act is sufficiently flexible to authorize the use of other unofficial channels toward the same goal. SENATE REPORT, *supra* note 20, at 25 [1979] U.S. CODE CONG. & AD. NEWS at 674. The Senate Foreign Relations Committee felt that President Carter's initial proposal for the Taiwan Relations Act did not afford the requisite level of flexibility. *Compare* President's Message to Congress Transmitting Proposed Legislation, 15 WEEKLY COMP. OF PRES. DOC. 165, 166 (Jan. 26, 1979) with SENATE REPORT, *supra* note 20 at 25 [1979] U.S. CODE CONG. & AD. NEWS at 674.

<sup>23</sup> SENATE REPORT, *supra* note 20, at 20 [1979] U.S. CODE CONG. & AD. NEWS at 669. The Senate Report cites general examples of instances in which the United States has endeavored to pursue foreign policy objectives by contracting with non-governmental entities for them to engage in specific activities. Foreign aid programs have been augmented by American educational institutions agreeing to implement training programs, and private businesses have helped institute economic development programs. *Id.* The primary differences between past arrangements and the Institute are that the Institute was created specifically for a foreign policy purpose, and has been granted a substantially wider sphere of activity.



tions of these functions, however, have not been as extensive or diverse as the Institute's powers will be. The establishment of such an Institute does not make the United States the first country to have shifted diplomatic recognition from Taiwan to the People's Republic of China while seeking to maintain commercial relations with Taiwan in one form or the other. Other western industrial countries, including Japan, already have done that successfully. In each case, Taiwan has adapted to the changes in a flexible and imaginative manner with continued prosperity. Japan, for instance, shifted recognition to the People's Republic of China in 1972, but the Japanese worked out simple, and mutually advantageous ways to preserve unofficial relations with Taiwan.<sup>24</sup> Now the Japanese seem to be competing aggressively for the consumer market in the People's Republic also without giving up anything in Taiwan. On the other hand, the United States, for the first time, has received strong assurances from the People's Republic of China that it will not annex Taiwan by use of military force. Consequently, the United States was able to withdraw its military commitments to protect Taiwan<sup>25</sup> and concentrate its military resources in the Persian Gulf and the Indian Ocean region in order to contain Soviet military adventurism. Like Japan, the United States should be able to pursue its immediate national interests while retaining important ties to Taiwan notwithstanding its decision to derecognize the Island government.

#### AFTER DERECOGNITION: TAIWAN'S FUTURE RELATIONSHIP WITH THE UNITED STATES

There are indeed some serious implications for both Taiwan and the United States resulting from America's shift of recognition to the People's Republic of China. In the following pages the significance of each implication will be discussed briefly in light of the American legislation addressed to each point.

#### *Economic Implications*

In order to fully understand the economic implications of this shift of recognition one must examine the current trade relations between the United States and Taiwan, and assess its present and future value to both countries. If these relations promise to have continued value to both nations, the question of how the relationship can be preserved must be addressed. The value of maintaining the economic status quo between the United States and Taiwan, however, necessarily will depend on predictions based on present indications of the economic and commercial op-

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<sup>24</sup> Despite Japan's shifting recognition from the Republic of China to the People's Republic in 1972, unofficial accommodations between the two nations enabled Taiwan to maintain a healthy economy, including continuing increases in foreign trade. SENATE REPORT, *supra* note 20, at 5, [1979] U.S. CODE CONG. & AD. NEWS at 654.

<sup>25</sup> See note 10 *supra*.

portunities that will exist for the American business community in the People's Republic of China. Thus, cost-benefit analyses of fostering economic relations with Taiwan and the People's Republic must be carried out. Underlying such an analysis is the premise that there are fundamental differences in the role economic factors will play in both Chinas in the 1980's.

In the case of People's Republic of China, economic growth and rapid industrialization are turning that nation into a major world power faster than anyone anticipated. A recent decision by Congress to grant the People's Republic "most favored nation" status,<sup>26</sup> and a decision by Japan to provide it with several billion dollars worth of credit,<sup>27</sup> can only hasten this process of rapid growth. Although some international economists deny that this growth will turn the People's Republic into a great trading nation with the United States,<sup>28</sup> the magnitude of the economic developments cannot be ignored. It is not yet generally realized that People's Republic of China already has one of the world's largest gross domestic products (GDP), and despite several political disruptions and economic dislocations the GDP over the past two decades has grown on an average of six percent per year.<sup>29</sup> If the present leadership can consolidate its authority in the country, and avoid becoming involved in a military confrontation with the Soviet Union, prospects for a seven percent rate of economic growth for the People's Republic are very good.<sup>30</sup> This would in turn enhance the prospects for American business in certain areas in the *long run*.<sup>31</sup> Increases in international commerce in the People's Republic historically has paralleled increases in its GDP, despite statements from

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<sup>26</sup> Washington Post, July 8, 1979 at 1.

<sup>27</sup> See "China-Japan Import Financing Accord Nears," N.Y. Times, Feb. 2, 1979, IV, at 2, col. 1; "China Seeks Major Loan," N.Y. Times, Feb. 5, 1979, IV, at 4, col. 3; "China Asks Japan For \$5.5 Billion Loan For Rail, Port and Power Projects," N.Y. Times, Sept. 9, 1979, IV at 5, col. 4. China's recent admission to the International Monetary Fund creates another source of international financial assistance for the People's Republic. See note 59 *supra*.

<sup>28</sup> See, e.g., *Hearings Before the Subcommittee on Asian and Pacific Affairs of the Senate Foreign Relations Committee*, 95th Cong., 1st Sess. (1977) (statement of Professor D. H. Perkins). For an exhaustive treatment of the issues surrounding United States trade relations with the People's Republic, see Dernberger, *Prospects for Trade Between China and the United States*, in CHINA TRADE PROSPECTS AND U.S. POLICY 183 (A. Eckstein ed. 1971) [hereinafter cited as Dernberger].

<sup>29</sup> The estimated gross domestic product of the People's Republic in 1976 was \$340 billion. NEWSPAPER ENTERPRISE ASSOCIATION, INC., THE WORLD ALMANAC & BOOK OF FACTS 525 (1980).

<sup>30</sup> At roughly a 7% yearly growth rate, gross domestic product doubles every ten years. Thus, by the year 2000, the People's Republic could have a gross domestic product of over \$1,000 billion.

<sup>31</sup> The current leadership in the People's Republic is the most economic growth oriented that China has had in a very long time. Thus, factors that could preclude a sudden dramatic increase in American trade relations with the Peoples' Republic, see Dernberger, *supra* note 28; text accompanying notes 40-41 *infra*, will not necessarily cloud the long term prospects. These may hinge on the extent to which the present Chinese leadership can retain power and make economic growth a permanent major policy objective.

the Chinese leadership from time to time about reducing their country's dependence on foreign trade. If anything, it is likely to go up as China seeks highly sophisticated American and Japanese technology and initiates major investment devices in certain sectors of its economy.<sup>32</sup> The United States will benefit by those devices.

Unlike the People's Republic, while Taiwan will never become a major world power, it is already an important trading partner of the United States. If we characterize economic growth in the People's Republic as "better than respectable" over the past 20 years, by comparison Taiwan's growth has to be regarded as "spectacular." This small island country has brought about its miracle in economic growth generally and in the import-export trade in particular. In the 20 year period from 1955 to 1975, Taiwan's gross domestic product grew at an average rate of eight percent per year.<sup>33</sup> American economic assistance, of course, contributed substantially to this growth, but only in the period from 1950-1965. In the most recent decade, and without the American assistance, Taiwanese growth has been even higher,<sup>34</sup> an even more impressive achievement given the devastating blow OPEC oil prices have dealt to most Third World economies. During the past twenty year period, Taiwan's exports in money terms have grown at a fantastic rate of twenty-six percent per year.<sup>35</sup> Throughout the later half of this period the United States has been the major market for Taiwanese exports and its share of Taiwanese imports has also been rising in recent years as Taiwan continues to cut back on its purchases from Japan.

Briefly put, for the present Taiwan remains an economic bonanza for the American business community but a liability in terms of world politics.<sup>36</sup> The People's Republic, on the other hand, presents a promise of

<sup>32</sup> See text accompanying notes 41-42 *infra*.

<sup>33</sup> Taiwan's gross domestic product for 1978 was \$24.13 billion. *WORLD ALMANAC*, *supra* note 29, at 526.

<sup>34</sup> Since 1965, Taiwan's real economic growth has, on the average, exceeded 10%. Estimates for 1978 place the figure at 13%. See *SENATE REPORT*, *supra* note 20, at 22, [1979] *U.S. CODE CONG. & AD. NEWS* at 671.

<sup>35</sup> The fact that Taiwan's general economic growth has been tied to impressive export figures is a reflection of the unique character of the Taiwanese economy. Since the Island has a limited domestic market, and domestic natural resources it relies heavily on importing raw materials and exporting finished manufactured items. *SENATE REPORT*, *supra* note 20, at 22, [1979] *U.S. CODE CONG. & AD. NEWS* at 671. According to the data compiled by the Senate Foreign Relations Committee in connection with the promulgation of the Taiwan Relations Act, 32.3% of Taiwan's foreign trade in the first half of 1978 was attributable to the United States. Of Taiwan's total exports for that period, 40.9% went to the United States, while 22.3% of its imports came from the United States. Japan accounted for 11.8% of Taiwan's exports, and 33.4% of its imports for a total share of Taiwan's foreign trade of 21.9%. *Id.*

<sup>36</sup> The People's Republic's desire to move towards normalizing relations with the United States likely was motivated in part by a rift with the Soviet Union over spheres of influence in Indochina. To the extent that continued recognition of Taiwan stood in the way of the United States benefiting from this Sino-Soviet rivalry, Taiwan constituted a political liability for the United States.

future trade and investments and is already becoming a very important asset to the United States in world politics. Now, more than one year after the shift of American recognition to the People's Republic, a central question remains in the minds of American businessmen. Will the economic situation in both Chinas continue as it has in the past or will derognition of Taiwan bring about profound economic changes in the 1980's? The answer depends to a large extent on the political forces of our times.<sup>37</sup> In one respect, Soviet adventurism outside its borders bears directly on future American relations with Taiwan and the People's Republic. A Soviet threat to American interests in the Persian Gulf and Indian Ocean has been made explicit by their invasion of their helpless neighbor, Afghanistan.<sup>38</sup> What the Russians do beyond that and how the United States responds in the future will have economic consequences for the People's Republic and indirectly for Taiwan. If, for reasons of our national security and defense of Persian Gulf oil producing states, we are drawn closer economically and militarily to the People's Republic, the Chinese may emerge as being in a position to demand a partial or complete elimination of our economic relations with Taiwan.

Another important political force that could shape American economic relations with the two countries is the issue of Taiwan's internal security. Having terminated the Defense Treaty, the United States holds a "promise" from the People's Republic not to annex the island by military force.<sup>39</sup> Yet unpredictable events in world affairs could lead the People's Republic to incorporate Taiwan by force, destroying its economy as we know it today and souring our relations (including economic relations) with the Mainland. On the other hand, the United States can control, at least partly, its own course in the face of this possibility. If domestic legislation maintains strong American economic ties to Taiwan while the United States moves rapidly to develop strong economic and political relations with the People's Republic, the Chinese may spare Taiwan in deference to a strong need for cooperation with the United States.

It appears the United States is moving in this direction. Taiwan will be the beneficiary of such a move, however, only if the Chinese fully understand that Taiwan is important to us. Specific acts taken by the

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<sup>37</sup> See Dernberger, *supra* note 28, at 189-95. President Carter recently proclaimed the effectiveness of a trade agreement between the United States and Taiwan. Pres. Proc. No. 4697, reprinted in [1979] U.S. CODE CONG. & AD. NEWS 2957. See Agreement on Trade Relations Between the United States of America and the People's Republic of China, reprinted in [1979] U.S. CODE CONG. & AD. NEWS 2958.

<sup>38</sup> See "U.S. Reports Soviet Flying Many Troops to Afghan Conflict," N.Y. Times, Dec. 27, 1979 at 1, col. 6.

<sup>39</sup> International statements and private comments to United States officials made by Chinese officials have reflected a desire to resolve the Taiwan issue peacefully. Nevertheless, official Chinese statements intended for the Chinese people have not dismissed the possibility of reunification through force. In fact, however, the assurances made by the People's Republic not to annex Taiwan forcibly are buttressed by the Mainland's failure to develop the amphibious military capacity to mount an attack on the Island regime. See SENATE REPORT, *supra* note 20, at 6, 11 [1979] U.S. CODE CONG. & AD. NEWS at 655, 660.

United States domestically will clearly put the Chinese on notice. Domestic legislation will allow Taiwan to maintain commercial ties with this country, something both sides want. Taiwan will continue to grow and prosper in the future, albeit with a somewhat diminished rate of growth.<sup>40</sup>

By giving the People's Republic the "most favored nation" status, the United States has already made clear that it intends to increase its trade with that country and to foster cooperation in other areas of mutual concern. In the 1980's, prospects are that any rise in trade with China will not be dramatic. General economic indications point to this conclusion. To begin with, America is a latecomer on the China scene. Western European nations and Japan recognized China long before the United States did and have a headstart as far as trade is concerned.<sup>41</sup> Our strongest competitor in consumer technology will be Japan while England and France will vie for the Chinese market in military weapons technology. Secondly, China, like any other underdeveloped country, is looking for more aid than trade with the United States. Thirdly, revamping the Chinese import economy to bring it in line with American technology, products and spare parts will take time, and there still remains the underlying question of whether the Chinese want to be entirely dependent on American technology alone. On the brighter side, one can confidently say that in some industries American products are so superior to others that the Chinese will be extremely anxious to buy them. Notable among these products are commercial aircraft, computer technology, communication technology, and the necessities for a mechanized agricultural industry. The Chinese are most likely to invite foreign technical assistance first in their oil industry. They need American technology and expertise in order to accelerate development of their offshore oil reserves. America's interest in assisting in this endeavor is far from being limited to an economic one. Nevertheless, the American business community will have to keep in mind the fact that there will be little or no immediate prospects for private investment in the People's Republic. Foreign ownership of plants in China at the moment is illegal under Chinese law.<sup>42</sup> Most likely, the Chi-

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<sup>40</sup> The expected reduction in the growth rate of Taiwan's economy stems less from the fact of American derecognition than other world economic factors. Principally, there is a growing protectionist sentiment in Western Europe and the United States, which will combine with the over-inflated state of Taiwan's foreign trade to retard Taiwan's economic growth. See text accompanying note 25 *supra*.

<sup>41</sup> The advantage Western Europe and Japan enjoy in trading with the People's Republic is the result of two interrelated economic factors aside from their earlier commencement of normalizing relations. The first is that items China presently imports from those two regions will continue to be available from those sources regardless of whether the United States can and does offer them also. Moreover, estimates indicate that the rate of growth of Chinese demand for these items is only slightly greater than the future ability of present sellers to provide an adequate supply. Thus the prospects for substantial American trade with China in these areas will depend on aggressive selling practices rather than on any shift in Chinese demand. See Dernberger, *supra* note 28, at 238-40.

<sup>42</sup> On the general question of alien ownership of means of production and other capital see J. COHEN & H. CHIU, 1 *PEOPLE'S CHINA AND INTERNATIONAL LAW* 681-741 (1974).

nese will open the door very slowly and carefully by allowing some approximation of joint ventures in some select areas of their economy. American business will have to be ready, willing and waiting for such opportunities.

#### FUTURE COMMERCIAL RELATIONS WITH TAIWAN—PROBLEM AREAS AND LEGAL REMEDY

Taiwan's status as an economic asset and political liability to the United States presents a significant challenge to American policy makers seeking to capitalize on the beneficial aspects of continued relations with the Island government. The Taiwan Relations Act<sup>43</sup> is based upon the premise that for domestic purposes the United States recognizes Taiwan as a separate political entity subject to specific legal treatment under proper American laws without reference to the People's Republic of China.<sup>44</sup> In other words, the United States is assuming, as it must, that any benefits to be conferred on Taiwan by statute may be conferred without regard to Taiwan's international legal identity. This premise is legally sound. No nation is obliged to try to define Taiwan's international legal status for domestic treatment purposes. Instead, the United States simply has tried to spell out the specific manner in which future relationships with Taiwan will be maintained by the United States. The most logical way to do this was through legislation designed to resolve the legal problems associated with certain types of unofficial future contact with the Taiwanese people.

#### *Taiwanese Government and Peoples Right to Sue in American Courts and be Sued*

One problem area that inevitably will arise in the context of continued economic relations with Taiwan is the extent to which organizations and governments of the two countries may have recourse to each other's domestic courts. Under current legal practices, only a recognized government has the capacity to sue in the courts of the *recognizing state*. In *Republic of China v. Merchants Fire Assurance Corporation*<sup>45</sup> the court ruled in 1929 that the Republic of China was entitled to sue in the courts of the United States *after* that country had been recognized by the United States. American recognition was evidenced by the conclusion of a commercial treaty between the two countries and America's reception of the Chinese envoy.<sup>46</sup> On the other hand, an unrecognized government

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<sup>43</sup> See note 20 *supra*.

<sup>44</sup> SENATE REPORT, *supra* note 20, at 7, [1979] U.S. CODE CONG. & AD. NEWS at 656.

<sup>45</sup> 30 F.2d 278 (9th Cir. 1929).

<sup>46</sup> The court accepted the commercial treaty as partial evidence of an implied recognition by the United States of the new Republic of China. *Id.* at 279. Notably, however, the Senate had not ratified the treaty at the time of the court's decision. *Id.* For a general discussion of the doctrine of implied recognition, see LAUTERPACHT, *supra* note 4, at 369-408; 2 WHITEMAN, *supra* note 13, at 48.

cannot sue in the courts of the United States, regardless of how viable it may be in the world's affairs.<sup>47</sup> Recognition has retroactive effect to the date of inception of the new recognized government. This principle frequently has been applied in cases decided by United States courts.<sup>48</sup> However, it is important to note that recognition of a new government does not invalidate the legal acts of a formerly recognized *de jure* government.<sup>49</sup>

What is being pointed out above simply suggests that under the domestic laws of the United States, problems could have arisen as to the legal status of the specific rights and obligations of the state of Taiwan. In the absence of an enabling law, Taiwan could not enjoy any rights before the American courts. The Taiwan Enabling Act has secured for Taiwan the procedural capacity to sue in American courts.<sup>50</sup> Taiwan also is entitled to jurisdictional immunities<sup>51</sup> and to claim possession of property it previously held before derecognition.<sup>52</sup> Finally, there arises the question of what effect American courts should give to Taiwan's future legislation, judicial or executive acts.<sup>53</sup> Comparable legislation will be

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<sup>47</sup> *Russian Federated Soviet Republic v. Cibrario*, 235 N.Y. 255, 139 N.E. 259 (1923). *Cibrario* was a suit for damages. In other cases, in which an unrecognized state merely sought to maintain an existing state of affairs by seeking injunctive relief, American courts have permitted the plaintiff to bring suit. Thus where the protection of a state's property, or its true ownership, is at issue, and giving access to American courts will not aid the unrecognized government, courts may not follow the general rule of *Cibrario*. See JAFFE, *supra* note 3 at 124-26, 152.

<sup>48</sup> See *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302-03 (1918). The fact that recognition has retroactive effect raises serious questions regarding the efficacy of the constitutive theory of recognition. See text accompanying note 3 *supra*. Since an unrecognized government's actions can be validated retroactively, it is clear that refusal to acknowledge those actions when they are taken is motivated largely by political considerations.

<sup>49</sup> See *Civil Air Transport, Inc. v. Central Air Transport. Corp.* [1953] A.C. 70. See also *Boguslaweki v. Golyinia Amergka Linie, C.A.* [1950] 1 K.B. 157.

<sup>50</sup> 22 U.S.C.A. § 3303(b)(7) (West. Supp. 1979). Taiwan's right to sue and be sued in the courts of the United States is not conditioned upon a reciprocal right for the United States in Taiwan. This right is guaranteed by another treaty. Treaty of Friendship, Commerce, and Navigation, November 4, 1946, United States - Republic of China, art. VI(4), 63 Stat. 1299, T.I.A.S. No. 1871.

<sup>51</sup> 22 U.S.C.A. § 3309 (West Supp. 1979). Section 10(c) of the Taiwan Relations Act, 22 U.S.C.A. § 3309(c) (West Supp. 1979), authorizes the President to grant privileges and immunities to the Taiwanese counterpart of the American Institute of Taiwan. They may extend to that instrumentality and its personnel to the extent necessary for the "effective performance of their functions." *Id.* Such privileges and immunities, however, may be granted only if and to the extent that Taiwan grants "comparable privileges to the Institute and its personnel." *Id.* The Senate version of the Act would have further defined the nature of these privileges and immunities as being "comparable to those provided to missions of foreign countries." As finally enacted, however, the Act contains no such limiting language. *Id.*; see H. CONF. REP. No. 71, 96th Cong., 1st Sess. 18, reprinted in [1979] U.S. CODE CONG. & AD. NEWS 709, 716.

<sup>52</sup> 22 U.S.C.A. § 3303(b)(3)(B) (West Supp. 1979).

<sup>53</sup> See *id.* § 3303(b)(4) ("Whenever the application of the laws of the United States depends upon the law that is or was applicable on Taiwan or compliance therewith, the law applied by the people on Taiwan shall be considered the applicable law for that purpose.")

needed in Taiwan to give the United States government and citizens the same rights and protections that the Taiwan Enabling Act affords Taiwan.

*Protection of Private and Public Property Rights of Entities and Persons in Both Countries*

Significant economic relations cannot continue between the United States and Taiwan in the face of derecognition without some assurances that derecognition will not affect the Taiwanese government's ownership rights in property it held in the name of the "Republic of China" as of December 31, 1978 or that it acquired or earned after that date.<sup>54</sup> However, such a provision need not apply to the ownership of diplomatic real property located in the United States that the government of Taiwan was allowed by us to take over before October 1, 1949. Similarly, there should be protections afforded to United States citizens<sup>55</sup> who, prior to January 1, 1979, acquired property or contract rights or claims against the government of Taiwan and its various instrumentalities or agencies while it was recognized as the "Republic of China." Debts and all other contractual obligations between the two countries that have arisen in the past or may occur in the future must remain enforceable in the courts of both countries. The Foreign Sovereign Immunities Act of 1976 should continue to apply to the authorities in Taiwan.<sup>56</sup> The purpose of these provisions will be to make sure that property rights, interests and contractual obligations will not be affected in any way in the absence of diplomatic recognition.

*Continued Economic Assistance and Loans to Taiwan*

The continued stable existence of Taiwan after derecognition required that Taiwan continue to receive credits from the United States Ex-

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See also SENATE REPORT, *supra* note 20, at 27, [1979] U.S. CODE CONG. & AD. NEWS at 676 ("The Committee expects that courts in the United States will continue to enforce judgments rendered by courts on Taiwan and that, on a reciprocal basis, the courts in Taiwan will continue to enforce judgments rendered by the courts in the United States").

<sup>54</sup> 22 U.S.C.A. § 3303(b)(3)(B) (West Supp. 1979).

<sup>55</sup> Throughout the Taiwan Relations Act, reference is made to the "people on Taiwan." Despite initial disagreement between the House and Senate on the proper means to provide a broad definition of that phrase, CONFERENCE REPORT, *supra* note 51, at 19, [1979] U.S. CODE CONG. & AD. NEWS at 717, the final decision to define only the term "Taiwan" achieved that goal. *Id.*, 22 U.S.C.A. § 3314(2) (West Supp. 1979).

Similarly, the "United States citizens" whose property, contract and legal rights against the Republic of China should remain unaffected by derecognition must be defined broadly. The definition of the term "United States Persons" contained in the Export Administration Act of 1969 is appropriate. It should be interpreted to include *all persons* doing business in the United States who may become involved in litigation in the United States relating to Taiwan.

<sup>56</sup> See 22 U.S.C.A. § 3303(a) (West Supp. 1979); CONFERENCE REPORT, *supra* note 51, at 15, [1979] U.S. CODE CONG. & AD. NEWS at 713 ("provisions applying United States Laws to Taiwan are to be construed as all-inclusive . . .").



port—Import Bank. Most importantly, Taiwan has to be assured of access to insurance, loans and loan guarantees from the Overseas Private Investment Corporation<sup>57</sup> to avoid any special or discriminatory criteria stemming from the transfer of diplomatic recognition to the People's Republic. Specifically, Congress has required the Overseas Private Investment Corporation to provide investment guarantees for projects in Taiwan without regard to its provision that restricts eligibility for OPIC programs in countries with per capita income of \$1,000 in 1975 dollars.<sup>58</sup> American business in Taiwan probably will need a fairly healthy amount of insurance against war risks, expropriation and inconvertibility insurance in order to continue to do business on the island. These and other steps will help assure that Taiwan will in fact continue to have the "prosperous future" that the Carter Administration says it foresees for Taiwan.<sup>59</sup> As a result, Taiwan will continue to provide good investment and trade opportunities to the American business community.

#### *The Creation of the American Institute in Taiwan and Its Competence*

The uniqueness of the United States' position after derecognition and the tremendous importance of both normalizing relations with the People's Republic of China and maintaining economic relations with the people of Taiwan requires the elaborate arrangement of establishing a private institute to look after the extensive and varied relations between the two countries.<sup>60</sup> Nevertheless, despite the need for such a body, its existence may be challenged as an "excessive delegation of governmental powers" to a private body. There certainly is merit to concerns expressed by the Carter administration that too many governmental controls would destroy the unique utility of a private institute by effectively transforming it into an administrative agency of the federal government. On balance, however, the Administration's proposal in this area did not go far enough to guarantee the Institute's accountability.<sup>61</sup> Therefore, before

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<sup>57</sup> See 22 U.S.C. § 2191 (1976).

<sup>58</sup> 22 U.S.C.A. § 3304(a) (West Supp. 1979). Aside from the per capita income requirement under the Foreign Assistance Act of 1961, all the criteria governing the activities of the Overseas Private Investment Corporation apply with regard to Taiwan. *Id.*(b).

<sup>59</sup> See President's Message, *supra* note 22. The United States recently has been faced with a challenge to its ability to foster a prosperous economic future for Taiwan, as the International Monetary Fund admitted the People's Republic and removed Taiwan. "China Admitted to I.M.F.," *New York Times*, April 18, 1980 at D1, col. 6. Although American officials supported the move, they have held out the possibility of a special membership or affiliation for Taiwan in the Fund. Nevertheless, Fund officials apparently are unreceptive to such an arrangement. *Id.*

<sup>60</sup> Although the practice of engaging in foreign policy activities through unofficial organizations is not new in the United States, see text accompanying note 23, *supra*, the breadth of the Institute's activities makes it a unique entity. SENATE REPORT, *supra* note 20, at 20, [1979] U.S. CODE CONG. & AD. NEWS at 669.

<sup>61</sup> Neither the Administration proposal nor the House version of the Act provided for any extensive reporting requirements in connection with the Institute. See CONFERENCE REPORT, *supra* note 51, at 18, [1979] U.S. CODE CONG. & AD. NEWS at 716.

any such institute could be created in final form, certain characteristics were necessary in order to balance its suitability to its special function and adequate protections from the dangers of unrestrained authority. Thus, the Act provides for congressional oversight through mandatory reporting of agreements concluded through the Institute, consultations with the legislature on the appointment of the Institute's trustees and officers, and annual legislative review of its operating budget.<sup>62</sup> Finally, provisions were made for granting whatever necessary privileges and immunities to the members and officers of the Taiwanese counterpart of this Institute in the United States on a reciprocal basis.<sup>63</sup>

#### *Issues of Weapons Sale to Taiwan*

The absence of a mutual defense treaty heightens the importance of the United States carefully formulating a policy concerning arms sale to Taiwan. Policy decisions in this area must strike a balance, however, between economic and political interests that do not necessarily coincide. Arms sale to Third World countries is a very lucrative business in the United States and the government indeed will be under considerable pressure from the arms manufacturers not to impose too many restrictions on sales to Taiwan. In the past, weapons sales have also helped the United States' balance of trade. The grain embargo against the Soviet Union, the almost total elimination of a weapons market in Iran and steadily rising foreign oil prices may create the temptation to sell weapons to any country that can pay the price. Understandably, however, China's sensitivity in this area may dictate that arms sales to Taiwan be restricted strictly to defensive weapons. Weapons sales must not create roadblocks in the way of any future peaceful resolution of the "Taiwan issue" by upsetting the balance of power in the region. Taiwan, of course, now has, or is demanding, sophisticated weapons as if it were preparing to invade the mainland.<sup>64</sup> The need for American restraint also is vitally necessary to deter Taiwan from reconsidering its nuclear option.<sup>65</sup> All concerned parties agree that because of American assistance in providing nuclear power plants Taiwan has the capability to develop and produce a nuclear device in a short period of time. At the moment, the national power company of Taiwan has two nuclear power plants almost completed. Two more are under construction and another two planned for operation in 1985. Spent fuel discharged from these plants will produce more than sufficient plutonium to make low yield nuclear devices. Taiwan

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<sup>62</sup> 22 U.S.C.A. § 3311 (West Supp. 1979); *see id.* § 3313.

<sup>63</sup> *See* text accompanying note 51 *supra*.

<sup>64</sup> SENATE REPORT, *supra* note 20, at 15-16, [1979] U.S. CODE CONG. & AD. NEWS at 664-65.

<sup>65</sup> *Id.* at 10-14, [1979] U.S. CODE CONG. & AD. NEWS at 659-63. Congress made clear that its primary concern in connection with all security issues surrounding the derecognition of Taiwan was with striking a balance between enhancing relations with the Peoples' Republic and assuring Taiwan an adequate self defense capacity. *Id.* at 10, [1979] U.S. CODE CONG. & AD. NEWS at 659.

of course does not, at the moment, have chemical facilities to recover this plutonium.<sup>66</sup> Thus, in the interest of maintaining amicable relations with the People's Republic, and thereby securing certain international strategic advantages, America's economic interest in promoting Taiwan's military growth will have to be subordinated. Even within this framework of restraint, however, derecognition of Taiwan required that additional legislation be created to permit future arms sales to the Island government under the Arms Export Act.<sup>67</sup> Yet Congress should enact more extensive, although ultimately more controversial, legislation to keep Taiwan a member of the Foreign Military Sales Trust Fund and to allow Taiwan's continued use of the Defense Department's computerized system for ordering arms, continued visitations by American military mobile training teams and the continued use of American military installations for training Taiwanese military personnel.<sup>68</sup> Other forces of economic cooperation can continue if both sides show enough imagination and understanding of the other's legitimate, yet conflicting, interests in this most sensitive area.

#### CONCLUSION

The changes that have taken place in the last twenty years have made it impossible for the United States, consistently with the pursuit of its national interests to ignore the People's Republic of China. Consequently, establishing full diplomatic relations with the mainland was a rational and important decision. Defense of the same national interest nevertheless demands that the United States do everything reasonably possible to maintain mutually beneficial economic and commercial ties with the Island of Taiwan. These policies are by no means necessarily antagonistic, but their independent success, and ultimate accommodation will depend on the parties giving close attention to the areas discussed above and many others. Beyond the specific questions, American policy in the 1980's should be guided by more general objectives. Any list of these objectives should include 1) an active search for a long-term position of some compromise between the United States and the People's Republic that might ensure Taiwan's totally non-offensive economic and political survival as a separate entity, perhaps along the lines of a prosperous Hong Kong with some American supervision; 2) fostering a continued positive attitude and

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<sup>66</sup> Taiwan has conducted laboratory scale experiments in the recovery of plutonium from nuclear power plant fuel discharge. Under threat of American sanctions, however, Taiwan discontinued these experiments. In this context it is important that the United States continue to cooperate with the United Nations International Atomic Energy Agency in inspecting Taiwan's nuclear power facilities. Derecognition has not affected the inspection arrangements so far. Moreover, the Act specifically limits the effect derecognition will have on applications for export licenses for nuclear exports to Taiwan. 22 U.S.C.A. § 3303(b)(5) (West Supp. 1979).

<sup>67</sup> SENATE REPORT, *supra* note 20, at 14, [1979] U.S. CODE CONG. & AD. NEWS at 663; see 22 U.S.C.A. § 3303(a) (West Supp. 1979); text accompanying note 56 *supra*.

<sup>68</sup> SENATE REPORT, *supra* note 20 at 16-17, [1979] U.S. CODE CONG. & AD. NEWS at 665-66 (includes procedural scenario for future permitted arms sales to Taiwan).

active cooperation with China in all walks of life, which will be both mutually beneficial and costly to the People's Republic to lose should they attempt to annex Taiwan through military aggression; and 3) finally determining whether and to what extent it wishes to promote actively or bring about a long-term solution of the existing tensions between the People's Republic and Taiwan. Perhaps the United States could encourage trade and exchanges or even informal political discussions between the two countries.

