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Some Reflections on the One-China Principle

Su Wei*

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Abstract

There is but one China in the world. Taiwan is a part of China and the Government of the People's Republic of China is the sole legal government representing the whole of China. This is the basic content of the one-China principle. As one of the world's few time-honored countries, China has fine traditions and a brilliant civilization that can be traced back to ancient times. Such a civilization and traditions have nourished a Chinese culture of national unity as well as a set of values cherishing and defending unity. Deeply rooted in these Chinese cultural and philosophical backgrounds, the one-China principle is fully justified on indisputable factual and legal grounds. The article also discusses a peaceful solution the Taiwan question.

SOME REFLECTIONS ON THE ONE-CHINA PRINCIPLE

*Su Wei**

INTRODUCTION

There is but one China in the world. Taiwan is a part of China and the Government of the People's Republic of China is the sole legal government representing the whole of China. This is the basic content of the one-China principle. As one of the world's few time-honored countries, China has fine traditions and a brilliant civilization that can be traced back to ancient times. Such a civilization and traditions have nourished a Chinese culture of national unity as well as a set of values cherishing and defending unity. Deeply rooted in these Chinese cultural and philosophical backgrounds, the one-China principle is fully justified on indisputable factual and legal grounds.

I. TAIWAN AS AN INALIENABLE PART OF CHINA

Geographically, as China's biggest island, Taiwan lies off the southeastern coast of the Chinese mainland and forms an integral whole with the latter. Taiwan has been a part of China's territory since antiquity, inhabited and developed by various ethnic groups of the Chinese nation like the mainland itself. Chinese governments of different periods had all set up administrative bodies with jurisdiction that covered Taiwan. As early as in the mid-twelfth century, the Song Dynasty formed a garrison in Penghu to exercise jurisdiction over Taiwan. In the following Yuan and Ming dynasties, special institutions were installed for the administration of Taiwan. In 1684, the Government of the Qing Dynasty established the Taiwan Prefecture, which was under the jurisdiction of the then Fujian Province. In 1885, the Qing Dynasty formally upgraded Taiwan to a full province of China.¹

In 1894, Japan launched a war of aggression against China.

* Legal Advisor to the Chinese Permanent Mission to the United Nations. The views stated are those solely of the Author in his personal capacity.

1. TAIWAN AFFAIRS OFFICE AND INFORMATION OFFICE OF THE STATE COUNCIL OF CHINA, WHITE PAPER ON THE TAIWAN QUESTION AND REUNIFICATION OF CHINA (Aug. 1993) [hereinafter 1993 WHITE PAPER], also in (visited Mar. 27, 2000) <[1169](http://mem-</p></div><div data-bbox=)

As a result, the Qing government was forced to conclude the Treaty of Shimonoseki with Japan, whereby Taiwan was ceded to Japan.² The Chinese people of all ethnic groups on the island never ceased rebelling and struggling against the Japanese occupation.

In 1937, when Japan began its all-out war of aggression against China, the Chinese people instituted a war of resistance against Japanese aggression. In its Declaration of War against Japan, the Chinese Government solemnly proclaimed that China would recover "Taiwan, Penghu and the four northeastern provinces." The Cairo Declaration issued by China, the United Kingdom, and the United States on December 1, 1943 states that "all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa [Taiwan] and the Pescadores [Penghu], shall be restored to China." Also the Potsdam Proclamation issued on July 26, 1945 reiterates that "the terms of the Cairo Declaration shall be carried out." In the instrument of surrender, Japan accepted the provisions of the Postdam Proclamation, including restoring Taiwan to China and other Chinese territories occupied by Japan at that time. On October 25 of the same year, the Chinese Government accepted Japan's surrender in Taipei and proclaimed that from that day onward Taiwan and the Penghu Archipelago would be reincorporated formally into the territory of China and that the territory, people, and administration would be placed under the sovereignty of China.³ That day signified that Taiwan, which had been occupied by the Japanese for as long as fifty years, was put back under the sovereignty of China and was restored as an inalienable part of China's territory.

In October 1949, the Chinese people won their New Democratic Revolution and established a new central government—the People's Republic of China. The Kuomintang ("KMT") ruling clique, having lost their status as the central government, re-

bers.xoom.com/liyoung/taiwan/Taiwan.html> (on file with the *Fordham International Law Journal*).

2. 1 WANG TIEYA, *ANTHOLOGY OF OLD TREATIES BETWEEN CHINA AND FOREIGN COUNTRIES* 614-15 (Beijing: Sanlian Bookstore, 1957). Article II (2) and (3) of the Treaty of Shimonoseki stipulate that the Qing government cedes Taiwan (Formosa) and the Pescadores (Penghu) to Japan, which can also be read as to attest that Taiwan has been an inherent part of China's territory.

3. 1993 WHITE PAPER, *supra* note 1.

treated to Taiwan Province, a part of China's territory. With foreign support, the KMT became entrenched in a confrontation with the Central Government, resulting in a separation between Taiwan and mainland China. That is where the question of Taiwan comes from: the Taiwan question originated from the Chinese civil war half a century ago and is a left-over from this war. The question of Taiwan involves China's sovereignty and territorial integrity and has a bearing on the national interests of the entire people of China. How to settle this question is completely an internal matter of China. Any act of supporting local authorities of a State to go against the central government of that State or supporting the efforts of local authorities to secede from a State is an interference into the internal affairs of that State and constitutes a serious infringement on sovereignty and territorial integrity of the latter. Such an infringement is a wrongful international act that gives rise to State responsibility on the part of the actor State.

As Taiwan is an integral part of China's territory from which it is not separable, the application of the international law principle of self-determination of a people is totally out of the question. There are certain defined contexts within which the right to self-determination of peoples can be legitimately exercised in accordance with rules of international law, as in the case of a territory being under either colonial rule or foreign occupation.⁴ Clearly, Taiwan is neither under colonial rule, nor subject to alien domination or foreign occupation. Rather, being an integral part of China's territory, Taiwan is now in a state of confrontation with the main part of the State as the result of a civil war. Such a temporary and abnormal state of confrontation neither leads to a change in Taiwan's status as an integral part of China's territory, nor does it entitle Taiwan to a right to secede from China or to an independent status under international law. Furthermore, it must be pointed out that the right to self-determination of a people does not imply at all that a part of a sovereign and independent State has the right to secede from the State in question. This point has been made crystal clear in the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of*

4. ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* 334 (Cambridge University Press, 1995).

the United Nations,⁵ which states, immediately after affirming a people's right to self-determination, that such a right is not to be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of a sovereign and independent State.⁶ The Helsinki Final Act⁷ adopted by the Conference on Security and Co-operation in Europe in 1975 also includes unequivocally the commitment to observing strictly and effectively the principle of the territorial integrity of States.⁸

A referendum is a device to make important decisions by the people. Sometimes, it is also used in the context of self-determination of peoples. But it must be pointed out that the legal status of Taiwan as a part of China is very clear in terms of either national law or international law. There is no basis whatsoever for a referendum in Taiwan to decide upon an issue that concerns the sovereignty and territorial integrity of China as a whole and the vital national interests of the whole Chinese nation. A referendum as such would deprive the overwhelming majority of the Chinese population from expressing their opinion on a matter concerning their security, dignity, and welfare. Indeed, a referendum represents the concept that sovereignty belongs to the people—a sort of “people's sovereignty.” But the concept must always be closely linked to the notion of statehood.

A State comprises the entire population of the land constituting the territory of that State. Only the people as a whole of a given State could own sovereignty. In other words, sovereignty is a collective right that can only be entitled to and exercised by the entire people as a whole of a State. Sovereignty cannot be divided amongst individuals or various parts of the population. Therefore, the concept of “people's sovereignty” does not provide any support to determining or changing the status of a certain part of a State through a referendum by the residents of that part of the territory of the State themselves. In practice, there

5. *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 123, Doc. A/8028 (1970).

6. *Id.*; *Declaration on the Occasion of the Fiftieth Anniversary of the United Nations*, G.A. Res. 50/6, U.N. GAOR, 50th Sess., 40th plen. mtg., at 13, A/RES/50/6 (1996).

7. The Final Act of the Conference on Security and Co-operation in Europe (Helsinki Final Act), 14 I.L.M. 1292 (1975), 73 DEP'T ST. BULL. 323 (1975)

8. *Id.* Principle 5.

were cases where the population of a given territory could decide through referendum the status of the territory, but they were in the context either of colonial rule, alien domination, or foreign occupation. That certainly is not the case for Taiwan, as the legal status of Taiwan as a part of China is indisputable both in terms of law and facts.

It is beyond any doubt that Taiwan has been an inseparable part of China ever since China recovered it in 1945. Such a determined status of Taiwan does not change at all with the change of the central government within China. Even though a referendum could be held to decide upon the separation of a part from the whole of a State, such a decision, which bears on the overall interests of the whole nation and affects the equally legitimate rights of the rest of the whole population, should by no means be taken through a referendum participated by the residents on that part of the territory alone. The will of a small part of the population of a State obviously can neither represent that of the entire people, nor should it override that of the majority of the population of the State. Otherwise, it would be totally against the principle of democracy and the concept of "people's sovereignty."⁹

II. *THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AS THE SOLE LEGAL GOVERNMENT REPRESENTING THE WHOLE OF CHINA.*

In 1949, the democratic revolutionary forces led by the Chinese Communist Party defeated the reactionary KMT forces and took control of the entire Chinese territory except for Taiwan. A new government of China, the People's Republic of China, was founded and proclaimed to replace the previous government, the Republic of China, to become the sole legal government of the whole of China, and thereby bringing the historical status of the Republic of China as the central government to an end. Thus, a shift of government had occurred within the territory of China while China remained unchanged as a State and a subject of international law. It is a well-established rule of international law that a shift of government in a State neither changes that State's legal personality, nor does it affect the sovereignty and

9. *Cf. Canada Supreme Court: Reference Re Secession of Quebec*, 37 I.L.M. 1340, 1371 (1998).

territorial integrity of that State. The new regime shall take the place of the former regime in all aspects affecting the international rights and obligations of the State.¹⁰ The Government of the People's Republic of China, as the new regime, therefore has since become the sole legal representative of China as a subject of international law, and has automatically succeeded the former regime in exercising the sovereignty of China, which extends over China's whole territory, including Taiwan. Although the KMT clique that has retreated to Taiwan continues to use the names of "the Republic of China" and "the Government of the Republic of China," from the moment the People's Republic of China was founded, these phrases have ceased to mean anything as the representative of China as a subject of international law. The regime existing in Taiwan has since become local authorities within the territory of China.

The Government of the People's Republic of China as the sole legal government representing the whole of China is in fact independent of any recognition to that effect by other States or governments. In international law practice, recognition is considered more to be a matter of political decision on the part of the recognizing State than to be constitutive of the government or State in question. Nevertheless, a political decision as such by a State is not without any legal consequence. The recognition of a State or a government implies that the recognizing State or government considers the State so recognized as an equal international person under international law, or the government so recognized as the legal representative of the State, and signifies its willingness to develop inter-state relations with the latter on the basis of international law. One of the most important principles of international law is equality among sovereign States. Since all States are sovereign and no one is superior to another, States should in their relations with each other mutually respect sovereignty and territorial integrity and refrain from interfering in the internal affairs of others. It has been a basic principle for the People's Republic of China that, when it establishes diplomatic relations with a foreign country, the latter recognizes the Government of the People's Republic of China as the sole legal government representing the whole of China and severs or re-

10. 1 OPPENHEIM INTERNATIONAL LAW 234-35 (Robert Jennings & Arthur Watts eds., 9th ed., 1992).

frains from establishing diplomatic relations with the Taiwan authorities. It is on this very basis that the People's Republic of China has established or maintained diplomatic relations with more than 160 States. Consequently, by recognizing the Government of the People's Republic of China as the sole legal government representing the whole of China and Taiwan as a part of China, these States undertake obligations under international law to respect the sovereignty and territorial integrity of China and to refrain from any act that might contribute to Taiwan's secession from China, including refusing to lend support or recognize any separatist move of the Taiwan authorities.

In 1971, the U.N. General Assembly passed Resolution 2758¹¹ by an overwhelming majority, recognizing the representatives of the People's Republic of China as the only legitimate representatives of China to the United Nations and restoring all rights of the People's Republic of China in the United Nations. The legal implication of this resolution is that the U.N. General Assembly has recognized the Government of the People's Republic of China as the sole legal government representing the whole of China. This has been convincingly elaborated in a legal opinion issued by the U.N. Secretariat, which states as follows:

It is to be observed that when the General Assembly of the United Nations decides, for its purposes, that certain representatives are the only lawful representatives of a Member State to the United Nations, it follows automatically that the authorities accrediting those representatives constitute in the view of the General Assembly—again for its purposes—the only lawful Government of that Member State. This is the only possible conclusion which has any meaning. If the General Assembly were to determine questions of representation without reference to the status of the accrediting authority, no criteria would exist and decisions would be entirely arbitrary. The conclusion cannot therefore be escaped that a decision on recognition of a Government was taken when General Assembly resolution 2758 (XXVI) was adopted and it is irrelevant that, in their bilateral relationships, some Member States may take a different stand. By that resolution, the General Assembly determined for its own purposes that the Government of the People's Republic of China was the only legiti-

11. Resolution 2758, G.A. Res. 2758, U.N. GAOR, 26th Sess., Supp. No. 29, at 2, U.N. Doc. A/8439 (1971), *reprinted in* 11 I.L.M. 561 (1972).

mate Government of China and that the authorities on Taiwan had no lawful claim to that Government.¹²

III. *PEACEFUL SOLUTION TO THE TAIWAN QUESTION AND THE USE OF FORCE*

After the White Paper on the One-China Principle and the Taiwan Issue ("White Paper") was issued last February, many have come to believe that there has been a change in the policy of the Government of the People's Republic of China on the question of Taiwan. Such a reading of the White Paper is far from correct. As a matter of fact, the White Paper is quite consistent with the basic policy of "peaceful reunification and one country, two systems." This basic policy, which was initiated by the late Chinese leader Mr. Deng Xiaoping, is composed of the following key elements:

- to make every effort to achieve a peaceful reunification while not to commit to forgoing the use of force as a last resort;
- to promote actively personnel, economic, cultural, and other cross-strait exchanges and work for the early realization of the "three direct links" between the two sides of the Taiwan Strait;
- to conduct peaceful negotiations for reunification, where, within the overall framework of one-China principle, any issue can be addressed;
- to adopt "one country, two systems" after reunification, by which the main body of China (the mainland of China) will stick to its socialist system while Taiwan will maintain its existing capitalist system for a long time to come;
- to give Taiwan a high degree of autonomy after reunification while the Central Government will not station any troops or administrative personnel in Taiwan; and
- to solve the question of Taiwan is an internal matter of China and it is up to the Chinese people themselves to find the solution without any foreign involvement.

12. *Decision of the Secretary General To Withdraw the Accreditation of Correspondents of the "Central News Agency of China"—Accreditation Policy of the United Nations—By Deciding in Resolution 2758 (XXVI) To Recognize the Representatives of China to the United Nations*, the General Assembly ipso facto Decided on Recognition of a Government, 1972 U.N. Jurid. Y.B. 154, 155, U.N. Doc ST/LEG/SER.C/10.

These basic points above embody the essential spirit of the one-China principle and fully respect the Taiwan compatriots' wish to govern and administer Taiwan by themselves.¹³

The core element of "peaceful reunification" is to adhere to the one-China principle under which all kinds of questions can be raised for negotiation. President Jiang Zemin pointed out explicitly, when he put forward the *Eight-point Propositions on the Development of Cross-strait Relations and the Promotion of the Reunification of the Motherland* in January 1995, that "to adhere to the one-China principle is the basis and prerequisite for the realization of peaceful reunification." Without such a basis and prerequisite or in the extreme case of advocating Taiwan's independence or Taiwan being subject to foreign occupation, peaceful reunification would be out of the question and the Chinese Government could do nothing but to adopt all drastic measures possible, including the use of force, to safeguard China's sovereignty and territorial integrity.

The Taiwan question cannot remain unresolved indefinitely. It is the set policy of the Chinese Government to solve the question of China's reunification peacefully through negotiations between the two sides of the Taiwan Strait as equals. This policy represents the common aspirations and conforms to the highest interests of the entire Chinese people on both sides of the Taiwan Strait. A peaceful solution is the best solution.

If, however, efforts eventually fail to find a peaceful way to protect China's sovereignty and territorial integrity and the two sides of the Taiwan Strait must resort to a non-peaceful solution to the Taiwan question, resulting in a situation where sisters and brothers were to draw swords on each other and engage in a fratricidal fight, then it would be most unfortunate and disastrous¹⁴ for the Chinese people on both sides of the Taiwan Strait. Peaceful reunification, in contrast, would be conducive to Taiwan's economic and social stability and development, so would it be to the rejuvenation and prosperity of China as a whole. Only with peaceful reunification can there be a win-win situation for both sides of the Taiwan Strait.

The question of Taiwan is an internal matter of China and

13. TAIWAN AFFAIRS OFFICE AND INFORMATION OFFICE OF THE STATE COUNCIL OF CHINA, WHITE PAPER ON THE ONE-CHINA PRINCIPLE AND THE TAIWAN ISSUE (Feb. 2000).

14. *Id.*

how to solve it is purely a decision to be made by the Chinese Government independently and in accordance with the fundamental interests of the entire Chinese people. The Chinese Government has no obligation whatsoever to commit itself to rule out the use of force in achieving China's national reunification. The present state of affairs across the Taiwan Strait is in fact the continuance of the state of civil war that existed more than fifty years ago. Although at present there is no actual fighting between the two sides, the state of hostility resulting from the civil war has not formally ended. The Central Government, as one party to the civil war, is entitled to reopen fighting in order to safeguard the State sovereignty, secure territorial integrity, and eventually achieve national reunification.

Therefore, legally speaking, the Chinese Government has the option to solve the question of Taiwan by force. However, the Chinese Government will not too easily exercise that option and will only be forced to do so in the extreme cases. The Chinese Government has emphasized time and again that it will work hard and strive for national reunification through peaceful negotiations. The reason why the Chinese Government does not commit itself to rule out the use of force under all circumstances in achieving national unification is absolutely not because it wants to solve the question of Taiwan by force, but because only in this way will it be able to handle all possibilities, guarantee a peaceful solution, and ensure national unity and territorial integrity.