

## Taiwan

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### A. General Description and History

- 1 The question of Taiwan's international legal status is one of the most enduring problems in → *international law*. Based on → *effectiveness*, Taiwan appears to comply with the criteria of statehood, but it has not unequivocally asserted a separate legal status as a → *State*, and therefore it cannot be regarded as a State under international law. Moreover, the question of what entity acquired territorial → *sovereignty* over Taiwan needs to be addressed (→ *Territorial Integrity and Political Independence*). The contentious legal issues relating to Taiwan's participation in international organizations and its treatment in diplomatic relations as well as in municipal courts follow from its status as a non-State political entity.
- 2 The name of 'Taiwan' is commonly used to refer to the territories administered by the Republic of China ('ROC') (Chinese: *Zhonghua minguo*). The ROC governs the island of Taiwan, Orchid Island and Green Island in the Pacific off the Taiwan coast, the Pescadores in the Taiwan Strait, and the → *islands* Kinmen and Matsu off the coast of Fujian. The island of Taiwan, covering an area of 13,800 square miles, is located some 100 miles off the coast of the Fujian Province of the mainland People's Republic of China ('China'; 'PRC'; → *China*), bound to the east by the Pacific Ocean, to the south by the South China Sea, to the north by the East China Sea, and to the west by the Taiwan Strait. When Taiwan was first sighted by Portuguese ships in the 16<sup>th</sup> century, it was given the name of 'Ilha Formosa' ('Beautiful Island').
- 3 Taiwan has a population of about 23 million, of which 98% are of Han Chinese → *ethnicity*. Of these, 86% are descendants of early Han immigrants known as 'native Taiwanese', the remainder immigrated after 1948. Two per cent of the overall population consists of indigenous minority groups (→ *Indigenous Peoples*).
- 4 Beginning in the 14<sup>th</sup> century, the Pescadores became Chinese territory when they came under the jurisdiction of Jinjiang County in the Fujian Province. In 1624 Taiwan came under control of the Dutch, who established a commercial base and made Taiwan a colony. The Dutch were expelled from the island in 1662, when supporters of the deposed Ming dynasty made a strategic retreat to the island. The Ming forces surrendered to the Qing court in 1683, and Taiwan was incorporated into the Fujian Province of the Chinese Empire. In 1887 the Qing court upgraded Taiwan to the status of a province. As a consequence of the Sino-Japanese war, Taiwan was ceded to Japan in 1895.

### B. Developments after World War II

- 5 After losing the Chinese Civil War to the Communist Party of China in 1949, the Guomindang retreated from mainland China and moved the ROC government to Taiwan. Although it lost effective control of the Chinese mainland, it continued to claim sovereignty over all of China until the beginning of the 1990s. From 1948–87 Taiwan was governed by a party-state dictatorship and remained under martial law. In the 1990s the island transformed into a multi-party democracy. The first popular vote for the Taiwanese President was held in 1996. The relationship with the PRC, and the related issues of Taiwan independence and Chinese reunification, dominate Taiwan politics. Opinion polls indicate that there is little support for immediate unification on the terms of the PRC nor for an immediate declaration of independence.

6 The PRC, established in October 1949, claims to be the sole representative of China including the territory of Taiwan. The PRC government considers Taiwan as a province of the PRC, referring to it as the 'Taiwan Authority', and holds that the ROC government ceased to be legitimate following its retreat to Taiwan in 1949 (→ *Legitimacy*). However, the ROC government argues that it has continued to function as a 'sovereign political entity' or a 'de iure sovereign State', making the PRC-Taiwan relationship similar to that of other → *divided States*.

7 During the 1950s and 1960s, most western nations and the → *United Nations (UN)* regarded the ROC as the sole legitimate government of China. However, Taiwan was replaced as the representative of China by the government of the PRC by UNGA Resolution 2758 (XXVI) of 25 October 1971 (GAOR 26<sup>th</sup> Session Supp 29, 2; → *United Nations, General Assembly*; 'UNGA'). Consequently, many States recognized the PRC and severed formal diplomatic relations with Taiwan (→ *Diplomatic Relations, Establishment and Severance*). When the United States of America ('US') recognized the PRC government to be the sole de iure government of China including Taiwan, it passed the Taiwan Relations Act of 1979 under which the US committed itself in Sec. 2 (b) to the policy 'to provide Taiwan with arms of a defensive character' and:

[T]o maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan. (→ *Coercion*; → *Self-Defence*)

8 According to its 'One China' principle, the PRC requires States to give no recognition to the ROC as a condition of maintaining diplomatic relations with the PRC. The PRC opposes Taiwan's efforts to develop official diplomatic relations or to accede to international organizations (→ *International Organizations or Institutions, Membership*). This is a situation comparable to divided Germany in the 1950s and 1960s, when the government of West Germany announced that it would not establish or maintain diplomatic relations with any country that recognized East Germany (the Hallstein Doctrine; → *Germany, Legal Status after World War II*).

9 As of 2008, only 23 sovereign States have official diplomatic relations with Taiwan. However, many States have developed substitutes for diplomatic and consular relations and maintain private associations as unofficial representative offices in Taiwan. Similar institutions, called 'Taipei Economic and Cultural Representative Offices', are held by Taiwan in foreign States to maintain unofficial bilateral relations and provide consular services (→ *Consular Functions*). The use of substitutes for diplomatic and consular institutions serves to alleviate the consequences of Taiwan's status as a non-State entity. Unofficial or 'quasi-diplomatic' relations between the US and Taiwan are conducted through the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the US. Under Sec. 7 Taiwan Relations Act, the employees of the American Institute in Taiwan are authorized to provide notarial services, to conserve the estates of deceased citizens, and to perform such other consular acts as the President may specify. Such acts are as valid as if performed by any other person authorized under the laws of the US to perform such acts. Negotiations and the conclusion of agreements between Taiwan and the US are conducted through the American Institute and the Taipei Representative Office. The language and content of agreements concluded between the two unofficial agencies resemble those concluded directly between governments.

10 The National People's Congress of the PRC adopted the Anti-Secession Law of 14 March 2005 ('PRC Law'), formalizing the long-standing policy of the PRC of being prepared to use 'non-peaceful means' against Taiwan. The PRC Law reaffirms in Art. 2 that 'Taiwan is a part of China' and in Art. 3 that the Taiwan question is an internal affair of China. Art. 8 PRC Law provides that:

[I]n the event that the 'Taiwan independence' secessionist forces should act under any name or by any means to cause the fact of Taiwan's secession from China, or that major incidents entailing Taiwan's secession from China should occur, or that possibilities for a peaceful re-unification should be completely exhausted, the state shall employ non-peaceful means and other necessary measures to protect China's sovereignty and territorial integrity.

In reaction to the negative international response, the PRC maintained that the PRC Law preserved the status quo and created no new conditions for the use of force (→ *Use of Force, Prohibition of*).

### C. Question of Territorial Sovereignty

11 From at least 1683, China held sovereignty over Taiwan. Depending on how one interprets the history before that date, China may have assumed sovereignty earlier. As a result of China's defeat in the Sino-Japanese War in 1894, the Qing government signed the Treaty of Shimonoseki ([signed 17 April 1895, entered into force 8 May 1895] [1895] 181 CTS 217) with Japan, which, in Art. 2 (b) and (c), ceded the islands of Formosa and the Pescadores Group to

Japan. The period of Chinese sovereignty from 1683–1895 is only contested by PRC commentators who claim an earlier establishment of sovereignty over Taiwan or who regard the Treaty of Shimonoseki as invalid as an unequal treaty entered into by China under coercion (→ *Treaties, Unequal*).

- 12 When the ROC government declared war on Japan on 12 December 1941, it issued a proclamation abrogating all treaties with Japan, including the Treaty of Shimonoseki (see also → *Treaties, Termination*). However, unilateral proclamations to abrogate a treaty are regarded as ineffective with respect to territorial treaties. Further, treaties of → *cession* are not affected by the outbreak of war between the contracting parties (→ *Armed Conflict, Effect on Treaties*). Apart from the argument mentioned above, it is largely undisputed that Japanese sovereignty over Taiwan ended with its defeat at the end of World War II; however, what entity succeeded to sovereignty over Taiwan after World War II has long been an object of controversy due to the fact that none of the subsequent peace treaties explicitly ceded sovereignty over Taiwan to any specific State (→ *Peace Settlements after World War II*).
- 13 On 1 December 1943 the representatives of the US, the United Kingdom ('UK') and China issued the Cairo Declaration (United States Department of State 'Conference of President Roosevelt, Generalissimo Chiang Kai-shek, and Prime Minister Churchill in North Africa' [1 December 1943] [1943] 9 DeptStBull 393), which stated, in part, that 'the Great Three Allies ... have no thought of territorial expansion. It is their purpose ... that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China.' After Germany surrendered in 1945, the Allied Powers conferred in Potsdam on the post-war disposition of Europe (→ *Potsdam Conference [1945]*). On 26 July 1945, the representatives of the US, the UK, and China issued, as part of the Potsdam Declaration, the Proclamation Defining Terms for Japanese Surrender (United States Department of State [26 July 1945] [1945] 13 DeptStBull 137; 'Terms Proclamation'). Para. 8 Terms Proclamation reiterated the policy on Japanese territorial sovereignty, stating that '[t]he terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine'. Both the Cairo and Potsdam Declarations indicate that the Allied Powers regarded Taiwan before its cession to Japan as an integral part of China and intended to return it to China. However, as statements of common foreign policy goals, the Declarations did not legally bind the States of the declaring governments.
- 14 The Treaty of Peace with Japan ('Treaty of San Francisco'), including 48 Allied Powers (excluding the Union of Soviet Socialist Republics ['USSR'] and China), was signed on 8 September 1951 (→ *Peace Treaty with Japan [1951]*). Art. 2 (b) Treaty of San Francisco stated: 'Japan renounces all right, title and claim to Formosa and the Pescadores'. Similarly, Art. 2 Treaty of Peace Between the Republic of China and Japan ('ROC-Japan Treaty'), signed on 28 April 1952, provided that:

It is recognized that under Article 2 of the Treaty of Peace with Japan signed at the city of San Francisco in the United States of America on September 8, 1951 ... Japan has renounced all right, title and claim to Taiwan (Formosa) and Penghu (The Pescadores) as well as the Spratly Islands and the Paracel Islands.

China did not receive title to Taiwan under the language of the treaties because neither used the term 'to cede' nor specified the entity that was to acquire title to the territory of Taiwan. According to Art. 23 Treaty of San Francisco, China was neither a party to the Treaty of San Francisco nor an Allied Power under its terms. The ROC-Japan Treaty was a confirmation of the earlier position of Japan renouncing title to Taiwan but not transferring it to China. Moreover, the ROC government also accepted in the ROC-Japan Treaty the disposition of Taiwan by the Treaty of San Francisco without claiming the island as China's territory. As far as the intent of the parties to the Treaty of San Francisco was concerned, a significant change in the original position announced in the Cairo Declaration took place due to the outbreak of the → *Korean War (1950–53)* in June 1950. In 1954 US Secretary of State JF Dulles stated that 'technical sovereignty over Formosa and the Pescadores has never been settled' and that 'future title is not determined by the Japanese peace treaty, nor is it determined by the peace treaty which was concluded between the Republic of China and Japan' (United States Department of State 'Purpose of Treaty with Republic of China' [1 December 1954] [1954] 31 DeptStBull 896). The British and French governments held a similar view that even after the ROC took control of Taiwan the *de iure* sovereignty over the territory was yet to be determined.

- 15 If title to sovereignty over Taiwan was not ceded through a peace treaty, it may have been acquired through other modes of acquisition of title (→ *Territory, Acquisition*). It cannot be argued that China recovered Taiwan by virtue of → *annexation* because—apart from the question of legality of title acquired by means of annexation—the Allied Powers were the conquering party and not China. It is further alleged that China acquired title by occupation when the Commander-in-Chief of the ROC accepted the surrender of Japanese forces in Taiwan in October 1945 (→ *Occupation, Belligerent*). Occupation can only be affected in respect of a *terra nullius*, but at the time of the Japanese withdrawal, Taiwan was still

controlled by an effective government. Therefore, the withdrawal cannot be regarded as an abandonment of territory (→ *Territory, Abandonment*). The ROC government took control over Taiwan as an agent of the Allied Powers for the purpose of post-surrender operation and Taiwan remained de iure territory of Japan until the settlement in the Treaty of San Francisco. If one holds that a final settlement was only reached on the question of Japan renouncing the title to Taiwan, the ROC government would still continue today to administer the affairs of Taiwan on behalf of the Allies (Chiang 42). It does not seem appropriate to regard Taiwan as a condominium of the 48 signatories to the Treaty of San Francisco because the establishment of a condominium or a joint power of disposition to determine the status of Taiwan in the future was neither expressly envisaged by that treaty nor claimed by the parties. If Taiwan is not a territory subject to a condominium or a territory with undetermined title, the present status of Taiwan is that it is Chinese territory. The only reason why the Treaty of San Francisco did not expressly cede sovereignty over Taiwan to a specific entity was lack of agreement between the signatories as to which government represented China. Therefore, the most convincing view is:

[T]hat Japanese relinquishment, which took place against a background of a commitment to return Taiwan to 'China', and the continued occupation of Taiwan by a recognized government of 'China', operated to re-vest sovereignty in China as a State without taking any position as to the government entitled to exercise that sovereignty. (Crawford 209)

- 16 Most States have recognized the status of Taiwan as Chinese territory. This recognition and the failure of any State to maintain diplomatic relations with both governments entails → *acquiescence* in the Chinese claim that the territory of Taiwan is part of China. For example, in the Joint Communiqué of the United States of America and the People's Republic of China ([27 February 1972] [1972] 11 ILM 443), it was stated that:

The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is part of China. The United States Government does not challenge that position. (at 445)

#### D. International Legal Status

- 17 The above discussion of the questions on acquisition of territory and the government representing China was conducted on the assumption that Taiwan does not constitute a separate State in international law. Even if the question of whether Taiwan is part of the China represented by the PRC government is answered in the affirmative, it is still necessary to determine the status of Taiwan which has been a distinct and de facto independent territorial unit for more than 50 years.

##### 1. Lack of Statehood

- 18 Certainly, Taiwan appears to comply with the criteria of statehood. It has a population, a territory under its control, a government, and the capacity to enter into international relations independent of any other government. Although most States agree that Taiwan is not a separate State but part of a larger China, it is decisive whether Taiwan itself has expressed a claim to statehood. The reason for relying on the designation of a 'political entity' rather than formally to declare de iure statehood is the threat that the PRC would invade Taiwan in the case of a formal declaration of independence. This particular situation may lead to the objection to the traditional application of statehood. But there is no legal basis for conferring statehood in exceptional situations.
- 19 Since Taiwan gradually changed the way it describes its status and has amended its Constitution in the 1990s, the question arises as to whether the new developments can be regarded as a claim to statehood. The amendments introduced an election of the Members of the National Assembly, the Legislative Yuan, the President and Vice President by the entire populace of the 'free area' and a provision which states that the '[r]ights and obligations between the people of the Chinese mainland area and those of the free area, and the disposition of other related affairs may be specified by law' (Art. 11 Additional Articles to the Constitution of the Republic of China [adopted 25 April 2000] in GH Flanz [ed] *Constitutions of the Countries of the World: A Series of Updated Texts, Constitutional Chronologies and Annotated Bibliographies* [Oceana Dobbs Ferry] vol 18 [at 2005-7] 1–37). Although it can be stated in general that the new constitutional arrangements tend towards greater separation, it is difficult to regard them as an unequivocal declaration of separation. The territory of mainland China is not treated as 'foreign' territory and, according to the Constitution, the State of China has a 'free area' and a 'mainland area'. The introduction of democratic accountability of the ROC legislative and executive organs to an essentially Taiwanese constituency is not sufficient. The coexistence of two distinct entities with their own constitutional systems and electorates does not necessarily entail the existence of two States in international law (Crawford 216).

The President of Taiwan said in an interview on German radio on 9 July 1999, that the 1991 constitutional amendments:

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[H]ave designated cross-strait relations as a state-to-state relationship or at least a special state-to-state relationship, rather than an internal relationship between a legitimate government and a renegade group or between a central government and a local government. (President of the Republic of China 'Responses to Questions Submitted by Deutsche Welle' [9 July 1999] <<http://www.fas.org/news/taiwan/1999/0709.htm>> [4 November 2008])

The President's statement is not unequivocal and cannot be regarded as a declaration of independence. It is not impossible that special inter-governmental relations exist on the basis of independence and without systematic coordination between entities which are still part of a single State (Crawford 217). Because claims to statehood are not to be inferred from statements or actions short of explicit declaration, the conclusion must be that Taiwan is not a State.

## 2. *De facto Regime*

- 21 At present, Taiwan is a political entity under the authority of a de facto government, which effectively controls its territory and discharges the usual functions of government including the responsibility of international relations. Although not a State, Taiwan, as a → *de facto regime*, is a partial subject of international law with certain international legal rights and duties (→ *Subjects of International Law*). As such, Taiwan may participate in international organizations, bear international legal responsibility for its unlawful acts (→ *State Responsibility*), is capable of maintaining and concluding treaties (→ *Treaty Making Power*), and is entitled to claim sovereign immunity (see also → *State Immunity*). As far as treaty relations are concerned, Taiwan participates, for example, as a 'fishing entity' in the Convention for the Conservation of Southern Bluefish Tuna ([signed 10 May 1993, entered into force 20 May 1994] 1819 UNTS 359).
- 22 Whether any threat of use of force by the PRC against Taiwan would constitute a violation of Art. 2 (4) UN Charter depends on both the interpretation of the prohibition of the use of force and the international legal status of Taiwan (→ *Use of Force, Prohibition of Threat*). Taiwan has been at least de facto independent of mainland China for many decades and does not need to achieve a change in the status quo in order to exercise → *self-determination*. While it may find support in international law to use military force to resist the force of secessionist groups, the initiation of force by the 'mother country' to recapture a territory which, for one century, was not under its de facto control, has no basis in international law (Charney 471). Art. 2 (4) UN Charter protects Taiwan as a de facto regime against the threat or use of force by the PRC government.

## 3. *International Organizations*

- 23 The 1971 decision of the UNGA to replace Taiwan as the representative of China with the government of the PRC ended its membership in all UN agencies (UNGA Res 2758). In 1993 seven Central American and Caribbean States, who maintained diplomatic relations with Taiwan, requested the UN Secretary-General to include an item in the agenda of the 48<sup>th</sup> session of the UNGA, entitled 'Consideration of the exceptional situation of the Republic of China in Taiwan in the international context, based on the principle of [-→ *universality*] and in accordance with the established model of parallel representation of divided countries at the United Nations' (UNGA 'Request for the Inclusion of a Supplementary Item in the Agenda of the Forty-Eighth Session' [9 August 1993] UN Doc A/48/191). This proved as unsuccessful as comparable requests in the following years. Similarly, applications for membership in the → *World Health Organization (WHO)* have been blocked by the PRC. Taiwan is either a member of organizations which are not limited to States, like the → *Asia-Pacific Economic Cooperation (APEC)*, or the ROC's membership is qualified in some key respect. Both Taiwan and the PRC were admitted to APEC in 1991. Taiwan acceded to APEC as an economic entity under the name of 'Chinese Taipei'. But in annual summits where the heads of State attend, the PRC government regularly exercises political pressure in order to prevent the participation of the ROC President. Taiwan is normally represented by its chief economic planner or central bank governor.
- 24 An exception in this regard is Taiwan's membership of the Asian Development Bank ('ADB'; → *Regional Development Banks*). Although Taiwan was no longer eligible for membership of the ADB under Art. 3 Agreement Establishing the Asian Development Bank ([done 4 December 1965, entered into force 22 August 1966] 571 UNTS 132), Taiwan continued to participate as a full member when the PRC joined the ADB in 1986. When the PRC government and the ADB reached an agreement that recognized the PRC as the sole legal representative of China, Taiwan remained in the ADB with the altered designation of 'Taiwan, China'. Taiwan protested against the decision of the ADB to change its designation but remained within the international organization. In 1988, both governments attended the annual ADB meeting; the first time that both governments attended a meeting of an international organization.

- 25 Taiwan is neither a member of the → *Universal Postal Union (UPU)* nor of the → *International Telecommunication Union (ITU)*. Membership of the ITU is open to States, and only entities authorized by Member States may accede as 'sector members'. In order to serve Taiwan's practical needs to participate in international telecommunications, the international dialling code for Taiwan has been allocated 'informally' by listing the relevant dialling code as 'reserved' but not expressly assigning it to Taiwan.
- 26 In 1990 Taiwan applied for membership to the General Agreement on Tariffs and Trade ([adopted 30 October 1947, entered into force 1 January 1948] 55 UNTS 187; 'GATT'; see also → *General Agreement on Tariffs and Trade [1947 and 1994]*), but due to PRC opposition, the GATT Secretariat did not take action to review Taiwan's application. After the accession of the PRC, Taiwan was admitted to the WTO as the 'Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu' on 1 January 2002. Taiwan became the 144<sup>th</sup> WTO member under the abbreviated designation of 'Chinese Taipei'. The ROC was already one of the contracting parties to the GATT in 1947 but it withdrew in 1950. The accession of Taiwan as a separate customs territory has been possible because the PRC government changed its point of view from strict opposition to Taiwan's membership to a position that Taiwan could only accede to the WTO after the accession of the PRC. The PRC government favoured the designation of Taiwan as a 'Separate Customs Territory of China' but did not succeed with this proposal. Further, in 2003 the WTO Director-General demanded that Taiwan change the name of its mission from 'Permanent Mission' to 'Economic and Trade Office' to parallel the designation used by the PRC Special Administrative Regions of Hong Kong and Macau. As a WTO Member, Taiwan has access to the WTO dispute resolution mechanism. Under the 'One China' principle, the PRC government has understood cross-straits trade disputes as 'internal affairs' and has been reluctant to enter into → *negotiations* with Taiwan under the WTO framework. In 2002, the PRC launched an anti-dumping investigation into the cold rolled steel sheet imported from Taiwan, along with the Russian Federation, the Republic of Korea, and the Republic of Kazakhstan, and another anti-dumping investigation into polyvinyl chloride imported from Taiwan. In both cases, the PRC government notified the governments of interested parties except the government of Taiwan. In relation to Taiwan, the Chinese steel and plastic industries directly informed the relevant Taiwanese industries. WTO membership for Taiwan can be regarded as a major breakthrough in economical and political terms. While the PRC's actions within the WTO aim at avoiding the impression of Taiwan's separate status under international law, the Taiwan government uses cross-strait trade issues to prove its autonomy from China.

#### 4. Municipal Courts

- 27 The recognition of the PRC government as the sole legal government of China and the simultaneous de-recognition of the ROC government despite the fact that Taiwan continued to exist as an independent political entity and maintained substantial relations with the de-recognizing countries, confronted the → *international community* with novel legal problems. In order to reconcile the rigidity of the law of → *recognition* with practical needs, the US enacted the Taiwan Relations Act. It provides that 'the absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan' (Sec. 4 (a) Taiwan Relations Act), as they applied before de-recognition, and that the laws of the US that relate to 'foreign countries, nations, states, governments, or similar entities' shall apply also with respect to Taiwan (Sec. 4 (b) (1) Taiwan Relations Act; → *Non-Recognition*). The Taiwan Relations Act further provides that treaties in force between the US and Taiwan prior to the date of de-recognition are to continue in force (Sec. 4 (c) Taiwan Relations Act). Accordingly, US courts treat Taiwan as a State for the purposes of sovereign immunity and the → *act of State doctrine*. When confronted with the question whether Taiwan is bound by treaties of the PRC which affect the rights of litigants, it was held in *Mingtai Fire and Marine Insurance Co Ltd v United Parcel Service* ([9<sup>th</sup> Cir 1999] [1999] 38 ILM 1274) that the US should continue to deal separately with Taiwan and that China's adherence to the Convention for the Unification of Certain Rules Relating to International Carriage by Air ([signed 12 October 1929, entered into force 13 February 1933] 137 LNTS 11) did not bind Taiwan.

#### E. Future Prospects

- 28 If one were to conclude that the PRC has sovereignty over Taiwan, one future scenario may be a unilateral → *secession* of Taiwan (see also → *Unilateral Acts of States in International Law*). However, the right of self-determination gives no general right to secession and no consistent pattern of → *State practice* exists with regard to the prerequisites of a right to secession. There is enough evidence which suggests that the population of Taiwan can be regarded as a 'people' for purposes of self-determination. Although the majority of the population migrated from mainland China and may therefore be considered ethnically and culturally identical to the population of the PRC, it may well be argued that the society on Taiwan developed differently under 50 years of Japanese rule and another 50-year rule of the ROC government. The case of Taiwan is different from the typical situation where the population of a territory under actual control of a mother country seeks to change the status quo and obtain independence. Taiwan has been at least de facto independent of mainland China for many decades and does not need to achieve a change in the status quo in order to

realize its self-determination. Although there may be little support in State practice, the significance of the application of the self-determination principle lies in the consequence that Taiwan may not be transferred to the control of the PRC without the → *consent* of the Taiwanese people.

- 29 One amicable solution of the dispute would be to regularize the status quo by Taiwan renouncing any intention to declare independence and the PRC giving up its threat of the use of force. It is arguable whether the 'one country, two systems' model of constitutional pluralism, which was originally developed for Taiwan and later implemented in the Basic Laws of → *Hong Kong* and → *Macau*, would be an appropriate legal framework for Taiwan given its size and diversity, different political culture, and history of self-governance.

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