

The Feasibility of the ROC's (Taiwan's) Quest for Wider International Participation

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Since 1971, when the United Nations General Assembly adopted Resolution #2758, accepting the delegation of the People's Republic of China (PRC) as the representative of China, the Republic of China (ROC) on Taiwan has been exiled from the world organization and its affiliates.

This change-over was no small event, as the ROC had occupied the seat of China ever since the founding of the United Nations in 1945, and continued to do so despite its loss of the mainland in the Chinese civil war and its relocation to Taiwan in 1949. Even till this day, the name of the Republic of China remains in Article 23 of the U.N. Charter as one of the five permanent members of the Security Council.

For the people in Taiwan, this coup signifies not only their loss of representation in the United Nations and all U.N.-affiliated organizations, but, more important, their marginalization in the international community. Hence, the urge to break out of this international isolation has often surged into wild calls for "rejoining" the United Nations. Under mounting pressures from the people, egged on by the opposition DPP party, the Kuomintang (KMT) government mounted a series of unsuccessful campaigns to seek admission to the United Nations as a new member, beginning in 1993. The effort continued with even greater fervor after the opposition DPP party took power in 2000. During the SARS attack season in 2003, the DPP government made another spirited attempt, this time at the World Health Organization. Despite its imaginative plea that access to WHO was imperative for the protection of Taiwan people's human right to good health, the attempt proved to be an exercise in futility. Nor did its bid get anywhere to even attend as an observer at the WHO's annual meeting, known as World Health Assembly (WHA). This humanitarian appeal failed in the face of strong objection from Beijing, which was able to line up enough votes to kill Taiwan's bid. What prompted Beijing's obstructionism was the DPP government's unmistakable policy of seeking a separatist route for Taiwan, rejecting

the One China principle that had until then held together the two sides straddling the Taiwan Strait.

After the DPP lost the 2008 Presidential election, however, Taiwan has a new Administration under President Ma Ying-jeou from the KMT party. He reversed Taiwan's separatist course begun under the ousted DPP government. As a result of his earnest efforts to improve relations with the mainland and his acceptance of the One China concept, although stopping short of reunion with the mainland in the short run, Ma has been able to establish a rapport with Beijing to an extent not seen before. Hence, in the face of the swine flu scare, and with the connivance of the PRC, Taiwan was able to be invited to attend the WHA meeting in May this year (2009). Yeh Jin-chuan (葉金川), Taiwan's Minister of Health, was seated as an observer at the annual meeting of the World Health Organization. Slightly overcome by emotions, Minister Yeh took his seat as the first ROC official admitted to an event hosted by a U.N.-affiliated agency in 38 years. He attended the five-day meeting that had swine flu and the possibility of a vaccine topping its agenda. Later, he told reporters that now Taiwan could have access to information from WHO and other help that it could render in fighting the swine flu, something that Taiwan was not privy to during the SARS outbreak before.¹

While all this is good news for Taiwan, the fact that an ROC delegation was able to attend WHA as an observer this year was a one-shot deal, an isolated event. It does not mean that the ROC will necessarily be invited again next year. Nor does it mean Taiwan will have a precedent to allow it to be able to attend other U.N.-affiliated organizations as an observer in the future. I have done an in-depth study over the years, and I think the best and most feasible way for Taiwan's bid to "return to the world community," or widen its elbow space internationally, is to seek to gain an observer status before the U.N. General Assembly. As such, Taiwan will then be able to participate in all other organizations within the U.N. family as an observer ipso facto. This is based on my study of the history of U.N. General Assembly observers,

¹ CNA dispatch from Geneva, dated May 18, 2009, sourced from
<<http://www.globalsecurity.org/wmd/library/news/taiwan/2009/taiwan-090518-cna01.htm>>.

which is discussed in the attached article. In it I began by assessing the hardships that Taiwan has encountered trying by other ways to break out from its international isolation. After showing why other alternative ways are dead-ends, the article unfolds what I have found from my study of the U.N. General Assembly observers overtime that might serve as a guide for Taiwan. The solution will make it possible for Taiwan to "return to the U.N.," not as a new member, but as an observer. The article also explains why this solution in effect will fulfill Taiwan's dreams of rejoining the world community. The only catch, however, is that there must be iron-clad prior assurance on Taiwan's part that it will not use this U.N.-G.A. observer status as a stepping stone to seeking full membership in the United Nations per se.

I will let the attached article of mine do the talking below.

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The ROC'S (Taiwan's) Quest for Wider International Participation*

James C. Hsiung

Introduction

This article examines the chances of Taiwan's bid to widen its international contacts and elbow room within the United Nations family and in regional groupings such as the Association of South East Asian Nations (ASEAN) and the European Union (EU). A few words clarifying the terms used in the article are in order. First, "international participation" instead of more restrictive terms such as "membership" is used because it allows discussions of alternative avenues of access while the door of formal admission to membership is closed.

Second, the term "ROC, or the Republic of China," rather than the nifty name Taiwan is used for three reasons: (1) Under the effects of UN General Assembly Resolution 2758 (1971), it was the representation of the Republic of China, not of Taiwan per se, that was effected at the United Nations (see the explanations to follow). The seat of China has since been occupied by representatives from Beijing, the People's Republic of China (PRC). (2) The government seated in Taipei has a president elected under the Constitution of the ROC, not that of Taiwan. It is logical to identify Taiwan by its official name, which is the Republic of China. (3) The third reason involves considerations of political prudence. As is well

known, Taiwan's increasingly curtailed freedom of participation in international forums—from international governmental organizations (IGOs) to free trade areas (FTAs)—stems largely from the obstructionism of the PRC. Beijing's obduracy in trying to block Taiwan from international forums is prompted by the expressed fear, rightly or wrongly, that the island is out to "internationalize" its division with the mainland as a first step toward cutting off its legal umbilical cord from (the concept of) China. Keeping this in mind, therefore, Taiwan might develop a more sensible approach toward seeking wider international breathing space by avoiding the use of a name that would reinforce a perceived quest for separatism in the eyes of the international community. Moreover, there seems to be wide consensus—from the United States, the EU, and a majority of UN members—supporting the one-China concept. It would be prudent for Taiwan to strike a pose as the ROC and when circumstances so warrant take the option of falling back on some nomenclature resembling "Chinese-Taipei," the name Taiwan is using to participate in the Asia Pacific Economic Cooperation (APEC) forum, the Asian Development Bank (ADB), the Olympic Games, and other enterprises.

Although no one can guarantee how a name-choice strategy would help to overcome Beijing's obstructionist reflex, all things being equal, it is

*This article is based on a paper that the author delivered at the conference on "Taiwan and the World: External Relations in a Time of Transition" held at Missouri State University, Springfield, Missouri, April 1–2, 2006.

obvious that a name that does not suggest a rupture with the island's Chinese roots would be less likely to provoke Beijing's instinctive revulsion. At least it would be much harder for Beijing to make the antiseparatist argument stick as a ground for blocking Taiwan's bid to widen its international participation.

A dual disclaimer should follow the aforementioned clarifications. First, this article does not purport to be a full-fledged treatise. Instead, it should be treated as a think piece meant to be thought provoking while sizing up what looms on the broad horizon. Second, this article reflects the effects of what an honest analyst should do, weigh the known facts and try to see how they bear on the topic at hand. No sides, one way or the other, will be taken to judge the odds against Taiwan and the alternatives it might have to cope with its international isolation.

This article will proceed in three parts. First, because to many in Taiwan, including the government of President Chen Shui-bian, the United Nations is of the topmost priority in the island's fight against international isolation, the UN will be dealt with before other international forums. Second, next to the UN, many in Taiwan who are genuinely concerned about being marginalized in the region are eager to see Taiwan develop a participatory relationship with ASEAN. The second section therefore will address the likelihood of a Taiwan affiliation with that organization. Third, because Taiwan is the third-largest trading partner of the EU and the latter seems to have a more than casual concern for the island, the next section will incorporate a discussion of the prospect of a Taiwan-desired wider association with the EU.

In each section the obstacles will be identified, and the remedies if any will be ascertained.

Taiwan and the UN

Between 1949 and 1971, the ROC occupied the China seat in the UN despite its relocation

to Taiwan on losing the civil war on the mainland, leaving it to its Communist nemesis. The latter established a new regime seated in Beijing and known as the People's Republic of China in October 1949. When the PRC tried to send a delegation to the UN, however, it was rejected by the General Assembly. Every year until 1971 the Chinese representation question was shelved under the "moratorium" formula first suggested by Canada in 1950.

The seating of the PRC in the UN in 1971 was treated not as an admission issue but as one of representation, namely: Which government, between Taipei (ROC) and Beijing (PRC), should be accepted by the world body as the rightful representative of China? In the one-sentence operative part of Resolution 2758 (1971) that was adopted, the General Assembly "[d]ecides to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations..." Thus the PRC simply took over the China seat from the ROC in the UN. As such, the state of China, as an original member of the UN as defined by Article 3 of the Charter, remains legally unchanged, despite the change in representation.

Now, 25 years later, a reexamination of Resolution 2758 reveals some eerie imperfections in wording that seem to have escaped attention thus far. As background for this article, they deserve a fresh scrutiny. First, in its preamble, the resolution declares in part: "Recognizing...that the People's Republic of China [sic] is one of the five permanent members of the Security Council..." Obviously, the drafters and their supporters did not double-check the original wording in the UN Charter. If they had, they would have found that Article 23 of the Charter explicitly states that "The Republic of China" (ROC), not the People's Republic of China (PRC), heads the listing of the five permanent members of the Security Council. In fact, the PRC was not even in existence when the UN Charter was drafted and

signed; hence its name could not possibly have been included in the Charter as a permanent member. The ROC, on the other hand, was one of the four powers (along with the United States, the United Kingdom, and the Soviet Union; France was in exile) that in 1944 drafted the original text known as the Dumbarton Oaks Proposals. After revisions made at the 1945 UNCIO conference¹ in San Francisco, this text became the UN Charter. That is why the Republic of China's name is inscribed in Article 23 of the Charter. (It still is.)

Second, after naming the PRC's delegation as the rightful occupant of the China seat in the UN, the one-sentence operative part of Resolution 2758 went on to say: "...to *expel* forthwith the *representatives of Chiang Kai-shek* from the place they unlawfully occupy at the United Nations and in all the organizations related to it" (emphasis added). This part is not only redundant; it contains a serious flaw and loophole, as will be explained later.

That the language used ("to expel") is less than parliamentary and diplomatic is beside the point. The flaw is that the delegation to be "expelled," as stated in the document, is identified as "the representatives of Chiang Kai-shek," not of the Republic of China. The loophole is that by its explicit expulsion of the "representatives of Chiang Kai-shek," the resolution in effect keeps the door open for Chiang Kai-shek's successors. Strictly speaking, according to the language of the resolution, the representatives sent by any successor to Chiang Kai-shek in the ROC government are not to be barred from taking the seat of "the Republic of China" that Article 23 of the Charter identifies as a permanent member of the UN.

The issue of legal nicety and nuances is being raised for two reasons: First, it is hoped that students can be taught to draft more professional and airtight documents. The second reason is really a rhetorical question for Taiwan: If it was so serious about "returning" to the UN, did these issues ever occur to anyone

in Taiwan's foreign policy establishment? Did anyone ever wonder what would happen if a ROC delegation were sent to the UN by a successor of President Chiang Kai-shek to claim the "Republic of China" seat as named in Article 23 of the Charter? Like any other General Assembly resolution, Resolution 2758 did not and could not possibly amend Article 23 or any part of the Charter because amendments have to follow procedures explicitly spelled out in Article 108 of the same document.²

If none of these points crossed the mind of anyone in Taiwan's foreign policy establishment or of its academics (and even if it did, it was not followed by action), one obvious reason could only be that they realized, quite correctly, that Taiwan's UN bid is a political battle and not a matter of legal or moral debate. If that is true, and I believe it is, let us talk about the *politics* of Taiwan's participation in the UN, that is, from a perspective that is politically realistic.

During the last 25 years, two measures have most frequently been discussed in Taiwan as a possible way to secure a "return" to the UN. One is for Taiwan (under the name of "Taiwan" and not the ROC) to apply *ad novo* for admission as a new member. The other is to try a reverse representation coup, getting the ROC's representatives accepted in the UN in lieu of the delegation from the PRC.

For obvious political reasons, neither measure would have a chance. The first measure (application as a new member) would be vetoed by the PRC in the Security Council when Taiwan's application came before the Council for the review required before it makes a recommendation to the General Assembly as specified by Article 4(2) of the Charter. In fact, as has happened to several attempts by Taiwan, working through some of its few remaining friends in the UN, Taiwan's application would not even get onto the agenda. The second measure (reversal of the representation coup) would require a new General Assembly resolution; but it would not have enough votes

there to support it; 170 of the 191 members now recognize the PRC.

Despite these odds, government leaders in Taiwan refuse to be stopped in their urge and drive to join the United Nations. In his Lunar New Year's message of January 29, 2006, for example, President Chen Shui-bian made a spirited plea for Taiwan to "enter" the UN under the name of "Taiwan" (thus an application *ad novo*). Unexpectedly, however, the idea was shot down by friendly fire as soon as it was floated. Adam Ereli, acting spokesman of the State Department, told the media the next day that the United States opposed Chen's goal of promoting Taiwan's participation in the UN (particularly using the name of Taiwan) because it would run afoul of the U.S. policy of not encouraging any unilateral change in the status quo across the Taiwan Strait.³ He called the remark "explosive," suggesting that it was provocative to the PRC as well as contrary to U.S. policy.

Without the backing of the United States, Taiwan's most important supporter, the island will not have access to the formal mode of participation in the UN (membership) that President Chen may have in mind. Under the circumstances, a realistic solution would be to explore *alternative* modes of participation. The three most often mentioned alternatives are the following.

1. "Parallel membership," patterned after the former model provided by Ukraine and Byelorussia, which, as two component republics of the Soviet Union, were members of the UN alongside the Soviet Union until 1991. This formula was originally a concession to Stalin for his country's support for the UN. After the collapse of the Soviet Union, both of these former Soviet republics became separate and independent members of the UN in their own

right.⁴ There is no reason to expect that the PRC will accept this model for Taiwan.

2. Associate membership, which would allow Taiwan's representatives to participate as part of the PRC delegation in the UN. This would be acceptable to Beijing, which, during the SARS outbreak in 2003, openly invited Taiwan's representatives to join the PRC's delegation to the World Health Organization (WHO) to help the island in its fight against the pandemic. But Taiwan balked at the suggestion because it would reduce Taiwan to a status comparable to Hong Kong's, whose representatives sit on many PRC delegations in international organizations.
3. Observership. Some findings derived from a study of cumulative observer cases in the history of the United Nations, based on interviews and case studies conducted some time ago,⁵ may offer food for thought.

First, an observer at the United Nations (and other organizations in the UN family) has what is known as "access to fora" and the "right of participation" and hence enjoys almost the same status as a member except for the right to vote and, for that matter, the obligation to pay dues. An observer may have the discretion of working through member states to place items on the agenda or to draft resolutions for debate and a vote by the members. Observer status, however, does not impute sovereignty; nor is sovereignty a prerequisite for enjoying the status.

Second, without regard to sovereignty, an observer enjoys the same complement of diplomatic immunities and privileges; although they

Table 1.

Permanent Observers (State and Nonstate) at the United Nations Headquarters

(I) Nonmember States Maintaining Permanent Observer Missions at UN Headquarters

Holy See

Permanent Observer of Mission of the Holy See to the United Nations

(II) Entities and Intergovernmental Organizations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent offices at Headquarters

Palestine

Permanent Observer Mission of Palestine to the United Nations

African Union

Office of the Permanent Observer for the African Union to the United Nations

Asian-African Legal Consultative Organization

Office of the Permanent Observer of the Asian-African Legal Consultative Organization to the United Nations

Caribbean Community

Office of the Permanent Observer for the Caribbean Community to the United Nations

Commonwealth Secretariat

Office of the Commonwealth Secretariat at the United Nations

European Union

Delegation of the European Commission to the United Nations

International Organization for Migration

Office of the Permanent Observer for the International Organization for Migration to the United Nations

International Organization of la Francophonie

Office of the Permanent Observer for the International Organization of la Francophonie to the United Nations

International Seabed Authority

Office of the Permanent Observer for the International Seabed Authority to the United Nations

International Tribunal for the Law of the Sea

Office of the Permanent Observer for the International Tribunal for the Law of the Sea to the United Nations

International Union for the Conservation of Nature and Natural Resources

Office of the Permanent Observer for the International Union for the Conservation of Nature and Natural Resources to the United Nations

League of Arab States

Office of the Permanent Observer for the League of Arab States to the United Nations

(Continued)

Table 1.
(Continued)

Organization of the Islamic Conference
Office of the Permanent Observer for the Organization of the Islamic Conference to the United Nations
International Committee of the Red Cross
Delegation of the International Committee of the Red Cross to the United Nations
International Federation of Red Cross and Red Crescent Societies
Delegation of the International Federation of Red Cross and Red Crescent Societies to the United Nations
Inter-Parliamentary Union
Office of the Permanent Observer to the United Nations
Sovereign Military Order of Malta
Office of the Permanent Observer for the Sovereign Military Order of Malta to the United Nations

are sanctified by different legal sources from those that apply to a regular UN member. What governs the process of applying for and being granted observer status is a body of common law built up from cases determined since 1948—to be exact, 16 cases involving states and 17 involving nonstate actors such as regional organizations, for example, the Caribbean Community and the Palestinian Liberation Organization (PLO). In the past observer status was granted to temporarily divided countries such as North and South Vietnam before their reunification in 1975 and East and West Germany before October 1990. Before formally becoming a member state, Switzerland was also an observer. As of 2006 the only nonmember state observer is the Holy See, whereas the 17 other observers are nonstate entities ranging from Palestine to the European Union, from the African Union to the International Committee of the Red Cross (see Table 1).

The only conceivable complication is that opponents may try to throw up roadblocks by pointing to a 1992 General Assembly resolution requiring that as a prerequisite for observer status in the UN, an applicant must

have obtained membership in at least one international governmental organization (IGO).⁶ But from the cases examined, this requirement is honored more in its breach than in its observance. Yet if there is any doubt, Taiwan could point to its membership (under the name Chinese-Taipei) in, for example, the Asian Development Bank, which is listed in the official *United Nations Handbook* as an IGO, as having fulfilled the prerequisite.

Third, applications for observer status are addressed to the secretary general of the UN, who has almost the summary right to make a final decision. In all the cases studied, when the secretary general asked the General Assembly for a retroactive review following a decision he had made on an observer application, the Assembly invariably accepted his decision as final.

In the late summer of 1993, Beijing was seriously considering what its policy should be if Taiwan submitted an application for observer status to the secretary general of the UN. It was a time when there was a groundswell of articulated yearnings among the Taiwan populace for wider international participation beginning with the UN. Beijing was willing to

listen to a discussion (with a visitor) of the possibility of withholding its objection to such an initiative from Taiwan provided that observer status would satisfy its yearnings and convince it to cease to agitate for formal membership in the UN, which would create "two Chinas" or "one China and one Taiwan," neither of which was acceptable to Beijing. But word came that at the UN, ^{Latin} Latin American states, acting on behalf of President Lee Teng-hui of Taiwan, were proposing for inclusion on the agenda to be considered by the General Committee of the General Assembly the item of Taiwan's parallel membership application. On August 11 Beijing's representative at the UN, Ambassador Li Zhaoxing, served notice to Secretary General Boutros Boutros-Ghali that the PRC was opposed to Taiwan's entry in any form, including participation as an observer. (In Beijing, contact with the lone visitor was abruptly ended.) In effect, Lee Teng-hui blew it for Taiwan.

The reason for Beijing's exasperation was implicit in its view that the action by the 17 Latin American states confirmed the PRC Foreign Ministry's suspicion that mere observership would not satisfy Taiwan whose true intention had been proved to be parallel membership in the UN. Even worse, Beijing suspected that the initial broaching of the idea of Taiwan's observership was a ruse to divert the Ministry's attention, while the island was working covertly through the ^{Latin} Latin American states to sneak the membership issue onto the UN agenda. That suspicion even discredited the lone visitor to whom Beijing, only a few days before, had shown an initial willingness to listen to a discussion of a possible observer status for Taiwan. Taiwan's recurrent bid for UN participation since the 1993 fiasco for parallel membership has met with repeated defeat. By now, it seems, even some of the most fervent former critics in Taiwan of the observer alternative suggestion have turned around and regret that Taiwan lost a good opportunity 13 years ago.

A Summing Up

Observer status is technically within reach. All things considered, it is the most feasible way to provide an opportunity for people in Taiwan to fulfill their urge to "return to the international community." The only thing standing between Taiwan and observer status is not any legal barrier but the high profile of Taiwan that arouses Beijing's suspicion. How to overcome this hurdle after several fiascos since 1993 is up to the government of President Chen Shui-bian. If negotiation with Beijing is possible, the foremost job would be to emphasize the point that observer status does not infringe on the delicate issue of sovereignty. Next, Taiwan needs to convince Beijing that such a status would obviate any need for Taiwan to continue its attempts to seek parallel membership in the UN. As an observer, Taiwan (presumably known as "Chinese-Taipei") would have "access to fora" and the "right of participation" described earlier. That would provide Taiwan with enough access to the outside world to satisfy the yearnings of its domestic constituency. The last possible hurdle is how Taiwan can meet the PRC's requirement that the island recognize the one-China principle.⁷ On that question, nobody can help Taiwan except President Chen who has professed a theory that there is "one state on either side of the Taiwan Strait" and has proclaimed that he is not Chinese.

Taiwan and ASEAN

Many in Taiwan have raised the hope of cultivating a closer relationship with the Association of South East Asian Nations or at least forming a linkup with its unique network of nongovernmental organizations (NGOs) as a way to break the island's increasing regional isolation.⁵ For a meaningful discussion to take place, a brief review of the background of

ASEAN is necessary. It includes an assessment of its attractions to Taiwan and commentary designed to ascertain whether establishing a relationship with the organization will or will not be within Taiwan's reach.

First, ASEAN was created in 1967 with five member states (Thailand, Malaysia, Singapore, Indonesia, and the Philippines). They were brought together by their common concern for regional security. Communist insurgencies in some parts of the region posed a threat to them all. In little more than three and a half decades, ASEAN has grown to 10 members and has moved beyond its initial security concerns to articulate a primarily economic mission. Three original guiding principles have continued to underscore the ASEAN way: (1) Noninterference in other members' domestic affairs; (2) peaceful consultation; and (3) responsible consideration of other members' interests and sensibilities. It is quite understandable that its three guiding principles, plus its earlier anti-Communist vigilance, have enabled ASEAN to engender enormous interest in Taiwan. Besides, Taiwan's two-way trade with ASEAN reached \$37.9 billion by 2003, accounting for more than 13 percent of the island's total foreign trade. Taiwan's foreign direct investments (FDI) in ASEAN-7 totaled \$364.5 million in 2003, down from the \$629.2 million total for 2001.⁹

Second, the ASEAN regime offers its NGOs an unusual role with regard to the association's objectives. The principal objective is to facilitate cooperation among member states in political, economic, social, scientific, medical, and technological fields. NGOs registered with ASEAN enjoy the privilege of attending the association's meetings, using the facilities of its Secretariat, and having access to ASEAN documents.

Third, ASEAN's activities in building free trade areas (AFTs)—one of which, to be known as ACFTA, is with mainland China—would most likely pose a stiff threat to Taiwan. All ASEAN member states that are currently

Taiwan's close trading partners might be diverted away from Taiwan because of their institutionalized commitments to the China market. ASEAN's trade with mainland China has been on the rise since China's accession to the World Trade Organization in December 2001. By 2003, it reached \$62.6 billion, or 40 percent larger than Taiwan's trade with ASEAN. As shown earlier, Taiwan's FDI in ASEAN-7 declined following the PRC's entry into WTO, whereas the mainland Chinese FDI showed a pattern of steady increase in the region (total for 1995–2003: \$584 million).

Can Taiwan cash in on the potential benefits that may accrue from a relationship with ASEAN? It has been a basic ASEAN premise that regional security and economic health require a stable U.S.–PRC–Taiwan relationship. In July 1999, however, Taiwan, under then President Lee Teng-hui, proclaimed an explicit two-state theory, which demanded that Taiwan be treated as a separate but coequal sovereign state in dealings with mainland China. The claim immediately plunged Cross-Strait relations downward. It also raised an alarm among ASEAN nations. Singapore's Prime Minister Goh Chock Tong told ASEAN's foreign ministers meeting in Singapore that the three-way relationship was under stress because it was complicated by the rift between the two sides of the Taiwan Strait. The rift, in this view, resulted from President Lee's ditching of the "one-China" principle—a principle that ASEAN supports.

Consequently, since then ASEAN has kept Taiwan at arm's length. This is why the island's bid to open negotiations for an ASEAN–Taiwan FTA has not received the expected warm response. After September 11, 2001, ASEAN established a regional antiterrorism regime that encompassed not only member states but also a few external nonmembers, including Australia and the United States. But Taiwan was not invited to join.

Worse still, in the aftermath of the December 2004 tsunami disaster, Taiwan was

excluded even from the world tsunami relief summit in early January 2005 that was held in Jakarta where the ASEAN Secretariat is based. This happened despite the fact that Taiwan at the time was the world's eighth-largest donor to countries that had experienced the disaster (later it was overtaken by three other donors and became number 11). The worst hit was Indonesia, the host country, which turned down Taiwan's request to attend the summit meeting as an observer. The reason given was that ASEAN does not accept observers.

This sort of merciless exclusionism is an unmistakable sign that any hoped for affiliation with ASEAN is fruitless for Taiwan. Such a reaction is most likely to continue as long as the Cross-Strait dispute between Taiwan and the mainland over the one-China question remains deadlocked.

Some might ask whether Taiwan could try to gain access to ASEAN through its elaborate NGO network. Indeed ASEAN's NGO network is extensive. A long list of 57 ASEAN-affiliated NGOs, in the aggregate, represents almost all interests and industries (the only exception is in the environmental area). But to obtain an ASEAN affiliated NGO status, an NGO must be formed by nationals of an ASEAN member state and registered in one of the member states. The restrictions are explicitly spelled out in "Guidelines for ASEAN Relations with NGOs" adopted in 1986. Following the logic of the Guidelines, for Taiwan to have an NGO that could gain ASEAN-affiliated status, Taiwan would have to become a member of ASEAN first. Then its nationals could form an NGO registered in Taiwan in order to qualify for ASEAN-affiliated status.

Taiwan and the EU

Taiwan is the third-largest trading partner of the European Union. Two-way trade amounted to \$35 billion in 1997 and \$37.6

billion in 2000. Yet under its 1994 New Asia Strategy—designed to improve political contacts and upgrade market access in Asia, in particular East Asia—the EU's emphasis has increasingly focused on the PRC. Following the Asian financial crisis of the late 1990s, the EU's policy recognized China as the growth engine of Pacific Asia, replacing Japan, whose economy has been in the doldrums since 1989. An avenue of the EU's access to the region is through the Asia-Europe Meeting (ASEM), an outgrowth of a conference held in Bangkok in 1996 among 10 European states and their Asian counterparts in the region. First billed as an interregional process to promote "strong partnership" in trade and investments, the summit spawned a number of joint undertakings involving the establishment of institutions such as the Asian-Europe Environmental Technology Center in Thailand and the Asia-Europe Foundation in Singapore. Other measures include an Asia-Europe University program and links integrating a trans-Asian railway network with the trans-European railway network.

ASEM's biennial meeting since then has been institutionalized, rotating its meeting site between European and Asian capitals. Its membership has grown to 39, including all the 25 members of EU, the European Commission, and 13 Asian states.¹⁰ Taiwan, however, is not among its members.

Nevertheless, the European Parliament (EP) is not unconcerned about Taiwan. In 2002–2003 it adopted five resolutions concerning Taiwan. Two of them called on the World Health Assembly to grant Taiwan observer status.¹¹ The "EU Strategy Toward China" (also known as the China Resolution), adopted on April 12, 2002, contains a chapter on Taiwan; the EP seems to have struck a balance between the PRC and Taiwan. Although the China Resolution endorses the one-China doctrine and a majority of the members of EP consider Taiwan as part of China, another EP document, known as the ASEM Resolution, urges both sides

straddling the Taiwan Strait "to deescalate the arms buildup and China, in particular, to withdraw missiles in the coastal provinces across the Taiwan Straits" (Paragraph 17). Compared to the "China Resolution," which urges the EU to "enlarge" ASEM to include India and accept "Taiwan in ASEM," the ASEM Resolution reflects a relatively weaker or retrogressive position toward the subject. It uses the term "association" instead of "participation." The document, nevertheless, reiterates the EP's position that the political pillar would support, as its first priority, "political dialogue between the PRC and Taiwan" (Paragraph 16). This inconsistency clearly demonstrates a lack of consensus among members of EP (MEP), who are elected from the EU's member states by a system in which account is taken of relative population. MEP groups are formed on the basis of political tendency, not nationality. After the Amsterdam treaty (1999), the EP became coequal with the European Council, forming in effect a bicameral legislature. In March 1999, in a regulation on the subject of third country nationals in the EU, the Council characterized Taiwan as a "[t]erritorial entity and authority not recognized by all member states" (Council Regulation [EC] no. 57499).¹²

Although neither the EP nor the European Commission has defined the EU's one-China policy, all members of the EU recognize the PRC, even though Taiwan maintains simultaneous "unofficial" relations with some EU members (e.g., Belgium, Austria, France, the United Kingdom, and others). For the same reason that keeps Taiwan out of ASEM, the island is excluded from the Generalized System of Preferences (GSP) in long-term trade with the EU. Besides, according to one report, Taiwan's exports have been heavily discriminated against by quotas, "voluntary" export limits, and tariffs used to prevent them from obtaining access to the EU.

Despite those hazards, however, Taiwan still manages to be the EU's third-largest trading partner, as noted earlier. This state of

affairs is possible because despite its one-China policy, the EU recognizes Taiwan as an economic and commercial entity, allowing a vast "gray area" in which Taiwan's flexible approach (such as the use of "unofficial" relations and business-to-business agreements) has gained it a niche in the EU market as well as helped channel the EU's FDIs to the island. As Chih-chieh Chou argues, with the necessary flexibility, including the use of a name like "Chinese-Taipei" (used in ADB and APEC), Taiwan's chances of being accepted into the ASEM process are much better than they would be in trying to "return to" or "enter" the UN in the name of Taiwan.¹³ Chen sees great potential in continuing the momentum of Taiwan-EU contacts and talks following Taiwan's entry into the WTO. For instance, the EU established a "European Economic and Trade Office" in Taiwan in 2003. Taiwan began a dialogue with the EU as early as late 2002 in order to reach an FTA.¹⁴

Chen has also concluded (see note 13, page 23) that Taiwan's inclusion in the ASEM process depends on whether its strategy succeeds in three areas: (1) strengthening Taiwan's economic performance, which has been in decline since at least 2000 because of the island's deteriorating political relations with the PRC (resulting in capital flights from the island because of uncertainty about its security); (2) maintaining momentum and widening Taiwan's support among members of the EP; and (3) overcoming Beijing's objection.

Conclusion

The Taiwan people's yearnings for wider international contact and involvement run very deep and are not unreasonable. The obstacles are formidable and the root cause is largely the opposition of the PRC, which is blocking Taiwan's access to many international forums as well as institutional arrangements. Two reasons may account for the PRC's obstructionism.

First, Beijing is extremely sensitive—critics often say paranoid—about the issue of sovereignty, namely that participation in institutions and regimes created by states for the conduct of state-related activities would confer sovereignty on Taiwan outside the one-China diaspora.¹⁵ Second is Beijing's perception, rightly or wrongly, that widened and unimpeded participation in international forums would fortify Taiwan's intransigence in avoiding a serious dialogue with the mainland regarding a peaceful resolution of their division.

Like the United States and ASEAN, the EU maintains a one-China policy and has gone on record as endorsing a Cross-Strait dialogue while characterizing Taiwan as a "[t]erritorial entity and authority not recognized by all member states." All this is prima facie evidence that the EU buys Beijing's argument against Taiwan's participation in such international institutions as ASEM. If this reading of the root cause of the impasse is right—and it seems credible—then the key to Taiwan's "return" to the international community lies in its ultimate ability to overcome Beijing's objections. On this score, only Taiwan's government can help itself by demonstrating that Beijing's allegations are unfounded.

In the meantime, Taiwan's chances of obtaining wider international participation will be enhanced if it can eschew the issue of sovereignty and be realistic enough to explore alternative ways such as obtaining observer status in the UN. Taiwan has been successful in seeking membership in important international forums not involving the participation of sovereign states such as the Pacific Economic Cooperation Council (PECC). Although a nongovernmental organization, PECC has formal ties with ASEAN such as its "Human Resource Development" program. ASEAN's Secretariat handles funding for the training facilities established under the joint program. Thus an invisible link or liaison is possible between Taiwan and ASEAN through PECC.

A related point is that Taiwan need not be overly alarmed by its seemingly helpless isolation. For instance, Taiwan is a member of WTO. Despite the forebodings of the forthcoming ASEAN-China Free Trade Area (ACFTA) conference alluded to earlier, the fact is that Taiwan's interests are protected under WTO rules, especially the "Article XXIV Understanding" (named after Article XXIV of GATT 1994), which was adopted during the Uruguay Round negotiations that led to the creation of the WTO. One vital principle laid down in this understanding is that regional trade areas (RTAs) to be formed by WTO members must not leave any other WTO member worse off. It means in effect that any RTA, such as the one that ASEAN and the PRC are hatching, must not be at the expense of Taiwan or any other member of WTO.

Despite all the zeal it has invested in the quest for wider international breathing space, Taiwan has not always done enough to exhaust all possibilities, as, for instance, in the area of developing FTAs. One example is a possible FTA with the United States that, reports indicate, has been stalled because Taiwan has not done enough to generate strong support in Congress and among U.S. business circles. Another example is an FTA with mainland China. The potential for a Taiwan-mainland FTA can be seen from statistics from the period under Lee Teng-hui's presidency (when his stringent curbs marked trade with the mainland). From 1990 through 2001, trade between Taiwan and the mainland amounted to U.S. \$220.5 billion, yielding to Taiwan a \$128.8 billion surplus. Taiwan's FDI on the mainland from 1989 through 2000 totaled \$42 billion. Even in 2001, during the first term of Chen Shui-bian's presidency, when relations with the mainland sunk to a new low, Taiwan's exports to the mainland increased by 31 percent to \$30.5 billion, generating a \$20.5 billion surplus for Taiwan.

All these impressive advances took place despite the political restrictions enforced by

Taiwan. Under these restrictions, thousands of products from the mainland were banned from Taiwan, and each FDI project of Taiwan firms investing on the mainland had to be kept under a ceiling of \$50 million. Besides, no direct air, maritime, and mail links were permitted with the mainland. For a Taiwan businessman to fly from Taipei to Shanghai, a detour was and still is mandatory through a "third party" mid-way stop (usually Hong Kong) to change planes before proceeding to the final destination. With customs and immigration inspections plus waiting time added to reflect the extra flying distance, the trip could easily take up to 10 hours, as opposed to the three-hour flying time required if direct flights were permitted.

Although the benefits of a free-trade area between Taiwan and the mainland are potentially enormous, it remains true that any direct negotiations would require the lifting of the internal political restrictions in Taiwan that have continued from the Lee Teng-hui presidency (1988–2000) until this day.¹⁶ A free trade association with the mainland would not only facilitate easier trade flows and investment projects across the Taiwan Strait, but Taiwan could also avail itself of other opportunities such as unrestricted access to China's FTA with ASEAN (ACFTA) when it materializes.

However strange it may seem, except for a lone voice that recently raised the question of a Taiwan-mainland FTA, no one else has shown serious interest in the prospect. Thus not all problems frustrating Taiwan's quest for wider international participation came from external sources. Part of the problem is closer to home, within Taiwan itself.¹⁷

In terms of external obstacles, Taiwan's bid to enlarge its international participation, in the UN as elsewhere, is not just a legal or moral problem. It is political in nature, that is, caught in the crossfire of the sovereignty dispute with the mainland and domestic political dissensions within Taiwan. Politics is the art of the possible. It was possible for Taiwan to become a member of the WTO because it was flexible

enough to accept the name "Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu."¹⁸ In other cases such as the Asian Development Bank and APEC, Taiwan was flexible enough to consider a variant form of ROC (the word *China* in ROC would create two Chinas when juxtaposed with the PRC) and accept "Chinese-Taipei" instead.

This seemingly awkward name serves three important purposes: (1) It skirts both the "two-Chinas" dilemma and the "one-China-and-one-Taiwan" taboo, leaving no ground for Beijing to grumble about; (2) it maintains a distinct identity with dignity for Taiwan because the word *Taipei* in the hyphenated name indicates that it is the capital of the ROC, as Chungking was the seat of the wartime ROC government that was the universally recognized government of China during the Sino-Japanese war of 1937–1945; and (3) the hyphenated name symbolizes that the ROC government, currently seated in "Taipei," stands for ultimate reunion with the "Chinese" nation. Hence the name "Chinese-Taipei" literally disarms the PRC of any excuses for opposition. For Beijing to object to "Chinese-Taipei" would be tantamount to pushing Taiwan away from the prospect of an ultimate reunion with the mainland. Beijing would have no choice but to accept.

The name "Chinese-Taipei," therefore, has proved to be Taiwan's "open sesame" in its quest for wider international participation. Its latent coercive quality (*vis-à-vis* Beijing) lends the name a halo of great respectability even though this point is not fully appreciated by many in Taiwan.

In the final analysis, however paradoxically, those self-designated "patriots" who pledge to fight against the island's isolation by carving out an identity for it under the distinct name of "Taiwan" (or potentially the "Republic of Taiwan") will end up facing doors that have been closed to them.

In a similar fashion, some other self-designated "patriots" in Taiwan have proposed

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an EU model for resolving the unification problem with the mainland. Their rationale is that applying the EU model would result in effect in a confederate system encompassing the two sides of the Taiwan Strait as two coequal sovereign entities. This may initially appear to be sensible to Taiwan. The trouble is if a true EU model were to be enforced, the creation of such an entity would require, first, that all barriers maintained by either side regarding customs, immigration, travel, and communications be dismantled. Taiwan's current restrictions on mainland visitors would have to be removed. The "three links" would have to be established in order to provide direct air, maritime, and mail exchanges. The ceilings on investments from Taiwan on the mainland would also have to be lifted. Taiwan's current ban on thousands of import items from the mainland would also have to be removed. Is Taiwan's government ready to do all that?

Second, the EU model would also require both parties to accept the use of one common currency. Since the mainland Chinese economy is three or four times bigger than Taiwan's in terms of total (not per capita) GDP, what would happen if Beijing insisted that the renminbi be used as the common currency. Taiwan could counterpropose an equivalent of the euro or a freshly minted common currency, something that might just be named *yuan* (the Chinese word for a unit of money both in Taiwan and on the mainland). Is Taiwan's government willing to accept that as a substitute for the NT dollar?

By comparison, the Taiwan-PRC FTA formula would seem to be a much better choice. It would give Taiwan much more discretion because it could diverge from what the EU model requires, depending on the outcomes of direct negotiations. Hence, like the other "patriotic" model that calls for jettisoning all names in favor of that of "Taiwan," the EU model, proposed by the likeminded self-designated "patriots" of Taiwan, will prove, paradoxically, not feasible despite the good intentions of its proponents.

The ultimate moral of all this is that "good" intentions (measured by the intended good for Taiwan) are far from enough and may prove to be counterproductive. They are a poor substitute for prudent realism. Without the courage of facing and accepting the hard reality as it is, Taiwan's professed goal of broadening its international role as a viable player will most likely encounter more frustrating defeat than its 23 million people do not deserve.

About the Author

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Notes

1. UNCIO stands for the United Nations Conference on International Organization, which met in San Francisco in 1945 to adopt the UN Charter and thrash out the final issues leading to the establishment of the UN. See Clyde Eagleton, "The Charter Adopted at San Francisco," *American Political Science Review*, 39 (October 1945).

2. An amendment, according to Art. 108, requires a positive vote of two-thirds of the members in the General Assembly and ratifications by two-thirds of the UN member states, including the five permanent members of the Security Council, as named in Article 23. The latter would include the ROC at the time.

3. U.S. State Department daily briefing, January 30, 2006, sourced from <http://www.state.gov/r/pa/prs/dpt/2006/60060.htm>.

4. Byelorussia changed its name to Belarus as of September 19, 1991.

5. I did the research in 1993 and wrote a paper in Chinese. Because of a move in which I misplaced most of the notes and documents, I am basing this discussion on the unpublished paper that I wrote at the time.

6. Cf. ST/Leg/8, 1962 U.N. *Juridical Yearbook*, 236.

7. Through Qian Qichen and other ranking officials, Beijing has explained that Taiwan and the mainland are the two halves that make up the one China.

8. With support from the Ministry of Education, for example, Mingchuan University hosted an international conference in Taipei on March 12, 2005, with the specific aim of drawing lessons from ASEAN's NGOs and exploring possible affiliations for Taiwan. Part of my discussion here is based on my keynote address to the conference.

9. ASEAN-7 consists of the original ASEAN-5 (Thailand, Malaysia, Singapore, Indonesia, and the Philippines) plus Brunei and Vietnam.

10. The 13 Asian states are Brunei, Burma/Myanmar, China, Cambodia, Indonesia, Japan, South Korea, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.

11. P5_TAPRO (2002) 0130; P5_TA (2003) 0224.

12. Despite this characterization, no member state of the EU recognizes Taiwan.

13. Chih-chieh Chou, "Development of the Asia-Europe Meeting: Implications for the EU and Impact on Taiwan," unpublished paper delivered at the Conference on ASEAN's

Affiliated NGOs in the Context of Global Governance: Lessons for ROC (Taiwan)," Mingchuan University, March 12, 2005, 18.

14. See "EU-Taiwan: Commission Opens Office in Taipei," *European Report*, March 12, 2003, 515; and "Taiwan Foreign Ministry Aims to Improve Economic and Trade Ties with EU," *Asia Africa Intelligence Wire*, August 28, 2002.

15. The PRC does not consider Taiwan a sovereign entity but only a renegade province. Hence the sovereignty dispute is a perpetual problem between the two sides across the Taiwan Strait. A more balanced view is that the PRC has partially succeeded to the sovereignty of the state of China since 1949 (minus the island of Taiwan) and that the ROC has preserved its share of China's sovereignty over Taiwan in a case of incomplete state succession.

16. As the world's no. 15 trading partner in the WTO, Taiwan is facing its first quadrennial Trade Policy Review in June 2006. Taiwan's constraint on direct links with the mainland, another WTO member, along with other political restrictions, is reportedly at the top of the items to come under review by WTO.

17. For those politicians who have a hidden separatist agenda, their first priority is to break away from the "grip" of mainland China. An FTA with the mainland would make Taiwan's break away more difficult.

18. Cf. James C. Hsiung, "The Aftermath of China's Accession to the World Trade Organization," *The Independent Review*, VIII, no. 1 (summer 2003):87-112, at 87. See also Guohua Yang and Jin Cheng, "The Process of China's Accession to the WTO," *Journal of International Economic Law*, 4, no. 2 (2001): 275-296.