TAIWAN’S PATH TO INDEPENDENCE:
RESOLVING THE “ONE CHINA” DISPUTE

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I. INTRODUCTION

Compared to countries that have sought or are currently seeking to be a sovereign state, Taiwan, the Republic of China’s journey to independence may be one of the most unique and interesting. Many in the international community acknowledge Taiwan as a separate entity from the People’s Republic of China (“China”); however, it is often still not officially recognized as its own sovereign state. Although Taiwan has had a long and complicated history with China, during the last sixty years, Taiwan has transformed from an authoritarian regime into a democracy, often regarded by western countries as a model for other developing countries.1

Despite its status as a “non-recognized State,” or an “entity sui generis,”2 many countries have entered into bilateral trade agreements and established “non-official” relationships with Taiwan. However, the lack of official recognition from the international community has jeopardized Taiwan’s status with both foreign countries and international organizations. As of this publication, only twenty-one countries, none of whom are world powers, give Taiwan full recognition.3 Without full recognition from countries that

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2 This concept may refer to “entities which maintain some sort of existence on the international plane in spite of their anomalous character” and “this is the situation of Taiwan (Formosa).” See Ian Brownlie, Principles of Public International Law 63–65 (6th ed. 2003); Malcolm N. Shaw, International Law 166 (4th ed. 1997) (“Taiwan would appear to be a non-state territorial entity which is de jure part of China but under separate administration.”).

3 Twenty-four countries maintaining diplomatic relations with Taiwan, Republic of China include: Europe (Holy See), East Asia and Pacific (Kiribati, Republic of the Marshall Islands, Nauru, Republic of Palau, Solomon Islands, and Tuvalu), Central and South America (Belize, the Dominican Republic, El Salvador, the Republic of Guatemala, Haiti, the Republic of Honduras, Nicaragua, the Republic of Panama, Paraguay, the Federation of St. Christopher & Nevis, St. Lucia, and St. Vincent & the Grenadines), and Africa (Burkina Faso, Democratic Republic of
are powerful and influential international organizations, Taiwan often cannot portray itself as a separate entity from China in international settings, as recognized sovereign states are allowed to do.4

The stem of Taiwan’s obstacles to statehood is pressure from China and its insistence that “there is but one China” and “Taiwan is an inalienable part of China.”5 For fear of offending the economic powerhouse that is China, many countries and organizations acquiesced to its demand that Taiwan not been recognized as its own state.6 However, rather than supporting China’s claim over Taiwan, many members of the international community have simply acknowledged it, and continue to have diplomatic relations with Taiwan separate from China.7

This Note discusses the historical and legal contexts within which Taiwan is arguably its own state, and advances the notion that members of the international community must finally take a definitive stance as to whether Taiwan is its own sovereign state in order to resolve the “one China” dispute, rather than choosing to remain supposedly impartial. Section II of this Note provides an overview of Taiwan’s path to statehood, democracy, and indepen-

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6 The United States of America has repeatedly “acknowledged the Chinese position” and “all Chinese on both sides of the Taiwan Strait” without actually supporting the proposition that Taiwan is a part of China. The Obama administration has encouraged “confidence-building measures” (“CBMs”) between Taiwan and China, maintained the diplomatic relations with both countries, and urged both Taiwan and China to keep the status quo. Shirley A. Kan, China/Taiwan: Evolution of “One China” Policy—Key Statements from Washington, Beijing and Taipei, Congr. Res. Serv. (Oct. 10, 2014), https://www.fas.org/sgp/crs/row/RL30341.pdf.


7 See sources cited supra note 6.
II. BACKGROUND

A. Historical Differences Between Taiwan and China

1. When Taiwan Was a Part of China

Taiwan has a complicated history with China. China, though, has not been the only foreign government that has exercised control over it. In 1684, during the Qing dynasty, Taiwan fell to China, and officially became a province of the Chinese Empire in 1885.\(^8\) In 1895, at the conclusion of the Sino-Japanese War, China and Japan signed the Treaty of Shimonoseki, ceding Taiwan to Japan “in perpetuity.”\(^9\) Taiwan was formally a part of Japan until the end of World War II, when the United States, Taiwan, and the United Kingdom issued the Cairo Declaration of December 1\(^{st}\), 1943,\(^10\) mandating Taiwan to “be returned to the Republic of China.”\(^11\)

However, while Taiwan was under Japanese control, China experienced the Xinhai Revolution against the Qing dynasty.\(^12\) On January 1, 1912, following the Revolution, the Nationalist Party formally established the Republic of China, ending over two thousand years of imperial rule.\(^13\) This didn’t last long though, as prior

\(^8\) Denny Roy, Taiwan: A Political History 19 (2003).
\(^9\) Treaty of Shimonoseki art. 2(b), Apr. 17, 1895, China-Japan, 181 Consol. T.S. 217 (“China cedes to Japan in perpetuity and full services . . . [t]he island of Formosa, together with all islands appertaining or belonging to the said island of Formosa.”). Taiwan is also known as Formosa, a name given to the island by Portuguese sailors.
\(^10\) The Cairo Declaration was issued by Generalissimo Chiang Kai-Shek of the Republic of China, Prime Minister Winston Churchill of the United Kingdom, and President Franklin D. Roosevelt of the United States on December 1, 1943. The Declarations stated, “all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be returned to the Republic of China.” Cairo Conference, 9 Dep’t. St. Bull. 393 (1943).
\(^11\) Id.
\(^12\) Charles Holcombe, A History of East Asia: From the Origins of Civilization to the Twenty-First Century 233 (2011).
\(^13\) Id. at 234–35.
to the beginning of the Second World War, China was already embroiled in another civil war between Generalissimo Chiang Kai-Shek and Chairman Mao Zedong. Generalissimo Chiang was the leader of the Nationalist Party, also known as the Kuomintang party, which controlled the Republic of China, while Chairman Mao was the head of the Chinese Communist Party. In 1945, when Japan was required to return Taiwan to the Republic of China, the Potsdam Declaration mandated that Taiwan be returned to the Republic of China, which was mainland China controlled by the Kuomintang party.

Shortly after the Second World War, the civil war between the Kuomintang party and the Chinese Communist Party concluded, resulting with Generalissimo Chiang and the Kuomintang party retreating to Taiwan to re-form the Republic of China, while Chairman Mao and the Chinese Communist Party established the People’s Republic of China on mainland China. At that point then, Taiwan and China each considered itself the “official” China.

Generalissimo Chiang’s goal in Taiwan was to establish a base strong enough to return to Mainland China to re-establish control; he did not intend that Taiwan remain its own sovereign state. In 1949, Generalissimo Chiang joined the United Nations as a founding member and as the representative for China. In 1971, the United Nations changed allegiances and recognized the People’s Republic of China as the official Chinese government, and removed Taiwan, Republic of China from its members. Since 1971, Taiwan has existed as an undefined State, neither under the control of China nor independent.

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14 Id. at 262–64.
15 Id.
16 Id. at 336.
17 Roy, supra note 8, at 81.
20 See sources cited supra note 19.
21 See The Learning Network, supra note 19 (“Though the R.O.C. only continued to control the island of Taiwan after its expulsion from the mainland, it still considered itself the one true government of China. This view was supported by the Western powers in allowing the R.O.C. to remain China’s representative in the United Nations.”).
2. Taiwan’s Development Towards Democracy and Independence

Although Taiwan’s economy flourished after its separation from China, it remained an authoritarian, one-party system until 1986, when Taiwan began embracing democracy. In the thirty years after Generalissimo Chiang established the Republic of China on the island of Taiwan, Taiwan’s economy prospered, eventually becoming one of the “Four Asian Tigers.” Taiwan’s economic growth is partially attributed to the influx of Western influences, one of which was the political ideology of democracy.

In 1978, Generalissimo Chiang’s son, Chiang Ching-Kuo, was elected President of Taiwan, but it is still important to note that, at this time, Taiwan continued to be a one-party system. In 1986, Taiwan’s government officially became a two-party system when President Chiang allowed the establishment of the Democratic Progressive Party. Succeeding President Chiang in 1988, was Lee Teng-Hui, who is regarded as the “father of Taiwan’s democracy.” It was during President Lee’s tenure that the Taiwanese people began to embrace and fight for a completely democratic government. Recognizing that many Western countries were shifting allegiances from Taiwan to China, President Lee pushed for Tai-

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23 ROY, supra note 8, at 170–75.

24 The “Four Asian Tigers” were comprised of: Taiwan, Hong Kong, South Korea, and Singapore, all countries that experienced spectacular growth economically in the 1970’s to 1990’s. Michael Sarel, *Growth in Asia What We Can and What We Cannot Infer*, INT’L MONETARY FUND (Sept. 1996), http://www.imf.org/external/pubs/ft/issues1/.


26 ROY, supra note 8, at 156.

27 When the Democratic Progressive Party was established in 1986, the party kept a low profile and did not take a strong stance on independence for fear of retribution from the dominating party at the time, the Kuomintang Party. *Id.* at 174. Today, the Democratic Progressive Party has spoken out publicly about the goal of Taiwan gaining official independence from China with foreign entities and countries recognizing Taiwan as its own State, while the Kuomintang party has changed its policies by no longer arguing Taiwan should be a part of China, but should still maintain strong ties with the mainland. *Id.* at 238.

28 *Id.* at 172.


30 Teresa Wright, *Student Mobilization in Taiwan: Civil Society and Its Discontents*, 39 ASIAN SURV. 986, 1005 (1999). In March 1990, thousands of students organized a movement to gather near the central offices of the Kuomintang appealing to the government to embrace democracy. The students unfurled banners with what became known as the “Four Big Demands:” (1) reelect the National Assembly; (2) abolish the old Constitution; (3) present a schedule for political reform; and (4) convene a National Affairs Conference to discuss such reform.” This movement became known as the Wild Lily Student Movement. *Id.* at 1005.
wan to become more democratic to create and improve diplomatic ties with allies.\footnote{See Roy, supra note 8, at 185.} Under President Lee’s leadership, the 1995 presidential election was a truly democratic election,\footnote{although Taiwan was technically a two-party system at this time, the Kuomintang was the dominating party, wielding almost all the political power. Prior to the 1995 presidential election, Taiwanese presidents were elected into office by national assembly members, but the 1995 election was a direct election, with the Taiwanese presidents being elected by popular vote. Id. at 195.} marking Taiwan’s emergence as a democratic state.

Throughout these last two decades, the Democratic Progressive Party remained the minority political party in Taiwan; however, in 2000, the first non-Kuomintang political candidate was elected as president.\footnote{Id. at 230.} During Chen Shui-bian’s presidency, Taiwan continued its long and difficult battle for its separation from China. Under Presidents Lee and Chen’s terms, the One-China policy evolved from the Kuomintang party and the Chinese Communist Party arguing about which land was rightfully China, to a proposition supporting Taiwanese independence from the mainland.

3. One China Policy

The One China policy has existed since Generalissimo Chiang retreated to Taiwan in 1949, but the proposition it represents has changed numerous times since then. Originally, the policy represented the views of Generalissimo Chiang and Chairman Mao, with both sides arguing that their respective governments were the one and true China.\footnote{Holcombe, supra note 12, at 337.} Countries seeking diplomatic relations with China were required to recognize either Taiwan, Republic of China or the People’s Republic of China as the official China.\footnote{Id. (‘The resulting ‘one China’ formula turned out to be very awkward for Taiwan, however, because, when forced to choose, most of the world eventually opted to recognize the Beijing-based PRC (People’s Republic of China).’).} However, in the last two decades, the One China policy has changed and it is no longer about two countries fighting for recognition as China.

The policy continued to evolve with each presidency, with the One China policy eventually evolving into the 1992 Consensus.\footnote{See One-China Principle, supra note 5 (“Unfortunately, from the 1990s, Lee Teng-hui, the leader of the Taiwan authorities, has progressively betrayed the One-China Principle, striving to promote a separatist policy with “two Chinas” at the core, going so far as to openly describe the Cross-Straits relations as “state to state relations, or at least special state to state relations.”). To}
Under President Lee’s leadership, many Taiwanese people began to interpret the One China policy as not a policy that only one China did exist, but that China was Mainland China, that no longer included Taiwan and its islands, and that Taiwan was its own independent state. Even with the changes in the Taiwanese political climate over the last few decades, this interpretation of the One China policy has remained relatively the same.

4. Taiwan’s Current Political Climate

Taiwan’s previous president, Ma Ying-Jeou, a member of the Kuomintang party, had shifted Taiwan’s economic and political ties to become closer to China during his two terms; however, popular sentiment and recent elections have indicated that the future of Taiwan is leaning more towards independence than it has in the past. Further, there has been a tremendous rise in support for Taiwan’s independence among the younger generations. In the spring of 2014, thousands of students led a peaceful protest in Taipei opposing the actions of the government and President Ma that resulted in more Chinese oversight over Taiwan. The protest, which later became known as the Sunflower Movement, ultimately culminated with dozens of students occupying the chamber of the Legislative Yuan, Taiwan’s parliament. The protest’s goal...


41 JoAnn Fan, The Economics of the Cross-Strait Service Agreement, BROOKINGS (Apr. 18, 2014), http://www.brookings.edu/research/opinions/2014/04/18-taiwan-cross-strait-services-agreement-fan. The Cross Strait Service Trade Agreement would create a service trade pact between Taiwan and China. Although the agreement was signed by semi-governmental bodies of both countries, the pact still needed to be ratified by Taiwan’s parliament. Ma Ying-Jeou and the Kuomintang attempted to push the deal through legislation without conducting an item-by-item review. Ramzy, supra note 37. The student protesters refused to leave the Legislative Yuan unless their three demands were met: (1) Ma Ying-Jeou go to the legislative chamber and apologize for the way he and his party, the Kuomintang, had attempted to push the agreement, the Cross Strait Service Trade Agreement, through parliament; (2) the parliamentary speaker, Wan Jin-Pyng, pay his respects; and (3) legislation passed to institutionalize parliament’s right to scrutinize agreements item-by-item. Banyan, supra note 40.
was to prevent the ratification of the Cross Strait Service Trade Agreement, a trade agreement with China, before it being properly reviewed in its entirety, item by item.42 Although the Democratic Progressive Party insisted the students were protesting of their own initiative, the members of the political party provided support and protection for the protestors, believing the protestors were fighting for similar principles the party held.43

The sentiments behind the Sunflower Movement were thought to be held by the majority of the Taiwanes. This assertion was proven to be correct in the local mayoral elections in the fall of 2014. Of Taiwan’s twenty-two counties and districts, the Democratic Progressive Party won thirteen.44 The trend towards the Democratic Progressive Party continued in the January 2016 elections, with the party taking 68 of 113 seats in the Legislative Yuan,45 and the Democratic Progress Party presidential candidate, Tsai Ing-Wen, elected to office by a landslide victory.46 These elections demonstrate that the Taiwanese people are embracing Taiwanese sovereignty and a stronger national identity.47 However, even with the Democratic Progressive Party controlling the majority of the legislature and the presidential office, President Tsai may not be able to steer Taiwan towards independence as

42 See sources cited supra note 41.
43 See Banyan, supra note 40. The protesters agreed on Monday to end the sit-in, a decision that came a day after the legislature’s speaker, Wang Jin-pyng, visited the occupied chamber and offered a key concession. He said that a bill that would allow lawmakers to have closer oversight of agreements with China should be approved before the legislature resumed consideration of the trade pact. As speaker, Mr. Wang is responsible for convening meetings between parties, a powerful tool in organizing the legislative agenda. Ramzy, supra note 37.
45 Katie Hunt & Kristie Lu Scout, Taiwan Elects Its First Female President; China Warns of ‘Grave Challenges,’ CNN (Jan. 17, 2016), http://www.cnn.com/2016/01/16/asia/taiwan-election/.
46 Id. The Democratic Progressive Party candidate, Tsai Ing-wen won the election with 56.1% of the votes, while the Kuomintang party candidate, Eric Chu, received 30.1% and the People First Party candidate, James Soong, received 12.8% of the votes. Richard C. Bush III, Taiwan’s Election Results, Explained, BROOKINGS (Jan. 16, 2016), http://www.brookings.edu/blogs/order-from-chaos/posts/2016/01/16-taiwan-election-results-bush.
47 Id. The Democratic Progressive Party has traditionally supported Taiwan’s formal independence and by electing Democratic Progressive Party candidates in the majority of the elections, the people are showing their preferences for independence. See Austin Ramzy, Tsai Ing-wen Elected President of Taiwan, First Woman to Hold Office, N.Y. TIMES (Jan. 16, 2016), http://www.nytimes.com/2016/01/17/world/asia/taiwan-elections.html.
strongly as she, and the Democratic Progressive Party, would like to.48

Recent surveys have indicated that while there has been an increase in support for Taiwanese independence, there has not been as steep an increase for officially declaring independence.49 One of the biggest problems President Tsai has faced since being sworn in is maintaining Taiwan’s relationship with China. While she promised to continue engaging China, and recognized the need to preserve the status quo with China,50 she also voiced the importance of ensuring the Taiwanese “democratic system, national identity, and international space be respected by China and other countries.”51

III. DISCUSSION

A. Taiwan’s Claim to Independence

1. Montevideo Convention: Defining an Independent State

Taiwan’s current conditions meet all the requirements as defined in Article I of the Montevideo Convention on the Rights and Duties of States. Article I states that a sovereign country should “possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.”52

Firstly, Taiwan has a permanent population, which is currently comprised of 23 million people who live in Taiwan and its outlying islands.53 Second, Taiwan has a “defined territory,” which is currently comprised of the island of Taiwan and its outlying islands,

48 Tsai believes the election results show the people’s commitment to democracy and stresses the importance of ensuring Taiwan’s sovereignty is respected, but also acknowledges the importance of maintaining Taiwan’s relationship with China by stating, both sides “have a responsibility to do their utmost to find mutually acceptable ways to interact . . . and ensure no provocation and no surprises.” Hunt & Lu Scout supra note 45.

49 Independence vs. Unification, supra note 38.

50 See Ramzy, supra note 47.


Kinmen, Matsu Islands, Dongsha Islands, and Nansha Islands. Some may argue Taiwan’s territory is not officially defined because of the dispute with China over its territories. However, a state’s borders are not in-dispute simply because another state lays claim to the same land, as China is also currently disputing territory with Japan, but Japan’s sovereignty has not similarly been challenged.

Thirdly, Taiwan has an autonomous democratic government, independent of China. Taiwan’s current government has full control over the Taiwanese people and state affairs, but more importantly, Taiwan’s government operates independently of China. Taiwan and China each have their respective heads of state, who are elected into office by means defined by each government. Additionally, the two governments issue different currencies. Even in an international setting, Taiwanese and Chinese citizens have different rights.

Lastly, Taiwan has the capacity to enter into relations with other states. Taiwan has maintained foreign relations with other states separately from China and international organizations without China’s approval. Currently, Taiwan maintains official and unofficial diplomatic relations with at least thirty countries, has entered into multilateral treaties, and is a member of several international organizations, such as the Asian Development Bank.

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55 China has claimed small fishing islands near Japan as its own. The islands have traditionally been under Japanese rule. Many believe China is claiming the islands now because there are many economic benefits to owning the islands because they are close to important shipping lanes, offer rich fishing grounds, and lie near potential gas reserves. How Inhabited Islands Soured China-Japan Ties, BBC NEWS (Nov. 10, 2014), http://www.bbc.com/news/world-asia-pacific-11341139.

56 Taiwanese presidents are elected into office by popular vote, while China’s president is elected by the National People’s Congress. See World Factbook: Taiwan, supra note 53; World Factbook: China, infra note 57.


58 Taiwanese passport holders and Chinese passport holders have different “powers.” Taiwan’s passport allows its holders to enter into 109 countries without a visa, while China’s allows its holder to enter into only 74 countries without a visa. Global Passport Power Rank 2016, PASSPORT INDEX, http://www.passportindex.org/byRank.php (last visited Oct. 27, 2015).

59 Foreign Policy Reports: Diplomatic Allies, supra note 3. See, e.g., World Factbook: Taiwan, supra note 53. Taiwan and the United States have maintained diplomatic relations even though the United States has not officially recognized Taiwan as an independent state.

60 Members, ASIAN DEV. BANK, http://www.adb.org/about/members (last visited Nov. 14, 2015). Although both China and Taiwan are in the Asian Development Bank, Taiwan is recog-
2. Principle of Effectiveness

Even if China’s claims to Taiwanese territories were given every consideration in its favor, the principle of effectiveness would legitimize Taiwanese sovereignty. The principle of effectiveness purports that where a state has controlled a territory for a significant period with the “intention of acting as sovereign,” that state will be considered to have incorporated the territory.61 The Taiwanese have controlled the island for at least sixty years with the intention of governing it differently and separately from the Chinese government. Further, if two states have competing claims to a territory, the state that has exercised effective control over the territory has been given preference in international tribunals.62 Taiwan does not require China’s permission to exercise complete control over the Taiwanese islands, and therefore, Taiwan is an autonomous state under the principle of effectiveness.

B. Treaties Affecting Taiwan’s Status in the 20th Century

Taiwan’s status as a country has also been decided by many other countries and international organizations. However, these entities did not give much recognition to what the Taiwanese people want. There are three major agreements established in the 20th century that serve as the legal groundwork for those who believe in reunification or independence.63

1. Cairo Declaration of 1943

China and Taiwan’s separation began earnestly in the 1940s, after World War II. The Cairo Conference was released as a communique on December 1, 1943, and represented an agreement between Generalissimo Chiang, Prime Minister Winston Churchill of the United Kingdom, and President Franklin D. Roosevelt of the United States of America.64 The Declaration stated that “all territories Japan has stolen from the Chinese, such as Manchuria, normalized as Taipei, China. There is recognition on some level from both foreign countries and international organizations that Taiwan is a distinct entity from China.

62 Id.
64 Cairo Conference, supra note 10.
mosa, and the Pescadores, shall be returned to the Republic of China.”65 Both China and Taiwan have argued that the Cairo Declaration gives their interpretation of the One-China policy credence.

The Cairo Declaration dictates that Taiwan (Formosa) and the Penghu Islands (the Pescadores) be returned to the Republic of China, which in the 1940s, was the official name for mainland China.66 However, since the 1950’s, Taiwan has officially been known as the Republic of China.67 China argues that the Cairo Declaration was intended to return Taiwan to mainland China, while Taiwan believes the Cairo Declaration meant to return Taiwan to the government of the Republic of China in Taiwan.68 Ultimately, however the Cairo Declaration may not be decisive because the agreement is not considered a treaty, since neither Churchill nor Roosevelt signed the document,69 and the declaration was supposedly superseded by the San Francisco Peace Treaty of 1951.70

2. San Francisco Peace Treaty

The San Francisco Peace Treaty, signed by forty-eight nations on September 8, 1951, was intended to formally end Japan’s involvement in World War II and resolve any remaining issues with Japan and its actions during the war,71 including its occupation of Taiwan.72 At the time of the conference and treaty signing, China was amid its civil war. Conference organizers could not decide which government was the official Chinese government and were unsure as to whether to invite Generalissimo Chiang, representative of the Republic of China or Chairman Mao, representative of the People’s Republic of China.73 As a result, neither government was invited, and, therefore, all decisions made regarding Taiwan’s status were done without any input from the Chinese or Taiwanese people.74

65 Id.
66 HOLCOMBE, supra note 12, at 315.
69 See id.
71 The San Francisco Peace Treaty became effective on April 28, 1952. Id.
72 Treaty of Peace with Japan, supra note 70, at art. 2.
74 Q&A on the Treaty of Peace, supra note 63.
Furthering the confusion surrounding Taiwan’s status is the fact that the Treaty does not explicitly dictate to which government Taiwan would be returned. Article 2 of the Treaty simply stipulated, “Japan renounces all right, title and claim to Formosa and the Pescadores.” While both the Chinese and Taiwanese governments have challenged the legitimacy of this agreement, because neither took part in the conference and agreement, there are some advocates from both sides that recognize it as a valid agreement. Supporters of Taiwanese independence have argued that Taiwan was not ceded to any country and that Japan simply renounced its sovereignty over the island, leaving Taiwan to decide how to govern itself. However, reunification supporters have argued that when Japan renounced its sovereignty, the Republic of China resumed its sovereignty over Taiwan and is, therefore, a part of China. Further support for reunification lies in the treaty drafts dated August 5, 1947 and January 8, 1948, which originally stated “Japan hereby cedes to China in full sovereignty the island of Taiwan (Formosa) and adjacent minor island.” Even accepting the treaty drafts as the actual intent of the agreement, the argument of the Cairo Declaration can still be raised as to the representation of the word “China:” was it mainland China and the People’s Republic of China, or the government of the Republic of China, which has been located on the island of Taiwan since the signing of this Treaty?

3. Treaty of Taipei

To validate the San Francisco Peace Treaty, Japan and Taiwan signed the ROC-Japan Peace Treaty in 1952, also known as the Treaty of Taipei. The Treaty of Taipei reiterated the main points of the San Francisco Peace treaty concerning Taiwan’s status, namely that Japan renounces all sovereignty over Formosa and the Pescadores. The treaty also specifically stated that the agreement was between Japan and the Republic of China in Taiwan. Pro-independence supporters have argued this treaty supports their proposition on the same grounds as the San Francisco Treaty:

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75 Treaty of Peace with Japan, supra note 70, at art. 2.
76 See Wang, supra note 68.
77 Id.
79 See Q&A on the Treaty of Peace, supra note 63.
80 Treaty of Peace with Japan, supra note 70, at art. 2.
81 Id.
pan renounced its sovereignty over Taiwan and its islands, but did not cede Taiwan to any other government. As with the other treaties, those who believe in reunification have argued that Japan renounced its sovereignty and ceded Taiwan to China, the country to which Taiwan belonged prior to its occupation.

In 1972, Japan’s Foreign Minister Masayoshi Ohiro announced unilaterally that Japan was terminating the Treaty of Taipei, and officially recognizing the People’s Republic of China. However, this announcement has not deterred pro-independence supporters from using the Treaty of Taipei as legal grounds for independence.

C. Taiwan’s Status on an International Level

Even though Taiwan is not officially recognized as an independent state by many countries or international organizations, most countries and international organizations concede that on some level, Taiwan is a separate entity from China.

1. Taiwan in the Eyes of Foreign Countries

Taiwan’s biggest allies do not admit to Taiwan’s sovereignty, but rather maintain unofficial diplomatic relations with Taiwan. The United States, Taiwan’s strongest ally, has publicly noted that it does not recognize Taiwan to be an independent state; however, it also does not support China’s claim to Taiwanese territory. After President Jimmy Carter terminated the Sino-American Mutual Defense Treaty, which had established official diplomatic relations with Taiwan, Congress passed the Taiwan Relations Act in 1979. The Act authorized de facto diplomatic relations with Taiwan and gave special recognition to the American Institute of Taiwan, rec-

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82 See Wang, supra note 68. See also Jake Chung, Treaty Clear on Taiwan, Ma Says, TAIPEI TIMES (Aug. 6, 2012), http://www.taipeitimes.com/News/taiwan/archives/2012/08/06/2003539581. Taiwanese President Ma has argued against reunification by remarking that the combination of the 1943 Cairo Declaration, 1945 Potsdam Proclamation, and the 1945 Japanese Instrument of Surrender clearly stated that after World War II, Japan would return Taiwan and its adjacent islands to the inhabitants of the Republic of China, which are the people living in Taiwan.

83 See Wang, supra note 68.

84 Q&A on the Treaty of Peace, supra note 63. Contrary to what President Ma has stated, the Ministry of Foreign Affairs for Taiwan has maintained that Japan’s unilateral cancellation does not affect Taiwan’s status due to a combination of three commitments: the 1943 Cairo Declaration, the 1945 Potsdam Proclamation, and the 1945 Japanese Instrument of Surrender. Id.

85 See sources cited supra note 6.

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ognizing it as a de facto embassy. Further, the Taiwan Relations Act obligates the United States to aid in defending Taiwan against any attacks or invasions, specifically from China.

A possible deterrence for members of the international community voicing support for Taiwan’s independence is that China has repeatedly threatened foreign countries with economic sanctions or military consequences if they help or recognize Taiwan. For example, in 2010, the Obama administration decided to engage in a $6.4 billion arms deal with Taiwan, to which the Chinese government responded by suspending military exchanges with the United States because the arms package “constitute[d] a gross intervention into Chinese internal affairs.”

Similarly, the United Kingdom does not actively support Taiwan’s independence or China’s claim. Instead, the government has repeatedly stated that “the future of Taiwan [should] be decided peacefully by the peoples of both sides of the Strait.” Therefore, as demonstrated, many countries, like the United States and the United Kingdom, are hesitant to support Taiwan’s claim of independence because of political and economic pressure from China.

2. Taiwan’s Membership in International Organizations

Many international organizations recognize Taiwan as a separate entity from China to some extent, but refuse to acknowledge Taiwan as its own state due to pressure from the Chinese government. Both Taiwan and China are members of multiple international organizations, but Taiwan is consistently listed as a member under “Chinese Taipei,” different from China, which is recognized as “China, People’s Republic of.” However, there are some international organizations, such as the United Nations, which refuse to even admit Taiwan as a member state. Taiwan has applied fifteen times to the United Nations for membership, and has been

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87 Id.
88 Id.
89 See Andrew Browne & Jay Solomon, China Threatens U.S. Sanctions over Arms Sale to Taiwan, WALL ST. J. (Jan. 31, 2010), http://www.wsj.com/articles/SB10001424052748703389033883880457
5v03424012038334292.
90 1 INTERNATIONAL BUSINESS PUBLICATION, TAIWAN, COUNTRY STUDY GUIDE: STRATEGIC INFORMATION AND DEVELOPMENTS 46 (2013).
91 See sources cited supra note 6.
denied each and every time. In 2007, the most recent attempt, President Chen applied to the United Nations as “Taiwan” rather than “Republic of China.” The United Nations denied Taiwan’s application citing to United Nations General Assembly Resolution 2758 (“U.N. Resolution 2758”), which recognized the People’s Republic of China as the official representative of China to the United Nations, removing the Republic of China (Taiwan) from among its members. United Nations Secretary-General Ban Ki-moon went even further to state that U.N. Resolution 2758 stipulated that Taiwan was a province of China; however, that referenced resolution does not actually resolve the issue with Taiwan’s political status, much less mention Taiwan at all.

Even in international beauty pageants, Taiwan continues to be a victim of China’s pressure. In the Miss Earth 2015 beauty pageant, the Taiwanese contestant, Ting Wen-yin, was removed from the competition because she refused to wear a sash that read “Miss Chinese Taipei,” and instead requested the sash read “Miss Taiwan ROC.” Prior to the competition, Ting Wen-yin was told that she would be wearing the “Miss Chinese Taipei” sash, to which she responded, “I told them 30,000 times that Taiwan is Taiwan. I was born in Taiwan, my sash now says Taiwan, I represent Taiwan, and I’m going to use the name of Taiwan in appearing at this pageant.”

3. Taiwan and China Current Relations

China has often responded to Taiwan’s democratic aspirations with threats. In 1995 and 1996, it fired missiles over the Taiwan Strait in response to President Lee’s increasingly vocal support for
a stronger Taiwanese identity. Additionally, during President Chen’s terms, Chinese officials and state media frequently denounced his pro-independence line, and in 2005, China passed an anti-secession law that called for the use of force in the event of a formal declaration of Taiwan’s independence.

On November 7, 2015, President Ma and Chinese President Xi Jinping met in Singapore to discuss the future of the relationship between their two countries. It was the first meeting between the Chinese and Taiwanese heads of state since 1949. Many western countries applauded the meeting, commenting that it was “a step in the right direction” to improving cross-strait relations. However, the meeting did not produce any agreements between the two countries other than maintaining the status quo and working towards maintaining a peaceful relationship. The lack of results from the meeting left Taiwanese pro-independence groups speculating that the meeting was merely an attempt to bolster pro-reunification sentiments in Taiwan because of the then-upcoming Taiwanese presidential elections, and also to serve as a warning to the Democratic Progressive Party of the consequences of pursuing independence. Since President Tsai was sworn in as president in

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102 See *Text of China’s Anti-Secession Law*, BBC NEWS (Mar. 14, 2005), http://news.bbc.co.uk/2/hi/asia-pacific/4347555.stm. The law is meant to prevent Taiwan from “seceding” from China by restating Taiwan is merely a province of China and in Article 2 of the law, China reiterates it will “never allow the ‘Taiwan independence’ secessionist forces to make Taiwan secede from China under any means or by any means.”


104 Id.

105 White House Press Secretary, Josh Earnest, said, “We would certainly welcome steps that are taken on both sides of the Taiwan Strait to try to reduce tensions and improve cross-strait relations.” Id.


107 In the Ma-Xi meeting, President Xi of China identified two paths Taiwan could come to post-presidential elections: 1) a path of peaceful development or 2) a path of renewed confrontation, separation and zero-sum hostility. Id. He goes even further by stating, “At present, the greatest real threat to the peaceful development of cross-strait relations is the ‘Taiwan independence’ force and its splittist activities. The ‘Taiwan independence advocates’ instigate hostility and confrontation between the two sides of the Strait, harm the state sovereignty and territorial
May 2016, she has been cautious when discussing Taiwan-China relations. Although Chinese officials have indicated that they want President Tsai to formally accept the 1992 Consensus, she has not endorsed the Consensus.\footnote{Austin Ramzy, \textit{Taiwan President Takes Cautious Line on China at Inauguration}, N.Y. TIMES (May 20, 2016), http://www.nytimes.com/2016/05/21/world/asia/taiwan-president-tsai-ing-wen.html.} As a result, China has suspended diplomatic communications with Taiwan.\footnote{Javier C. Hernandez, \textit{China Suspends Diplomatic Contact with Taiwan}, N.Y. TIMES (June 25, 2016), http://www.nytimes.com/2016/06/26/world/asia/china-suspends-diplomatic-contact-with-taiwan.html?_r=0.}

The most recent Taiwanese presidential, legislative, and local election results are the result of a shift in the Taiwanese national identity. According to a series of surveys conducted by the Center for the Study of Elections at the National Chengchi University, the Taiwanese national identity underwent a dramatic transformation in the last decade.\footnote{A spokesman for Beijing’s Taiwan Affairs Office has stated “[t]he cross-strait communication mechanism has been suspended because Taiwan did not recognize the 1992 Consensus, the political basis for the One China principle.” \textit{Id.} }\footnote{Independence vs. Unification, supra note 38; Taiwanese/Chinese Identification Trend Distribution in Taiwan (1992/06–2015/06), ELECTION STUDY CTR. NAT’L CHENGCHI U., http://esc.nccu.edu.tw/course/news.php?Sn=166 (last visited Oct. 28, 2015). The surveys have indicated an increase of people identifying themselves as “Taiwanese” rather than “Chinese” or a mix of the two. \textit{Id.}} In 2008, 43.7% of the Taiwanese population identified as only Taiwanese, while 44.7% identified as both Taiwanese and Chinese, and 3.5% identified as Chinese.\footnote{Frank Muyard, \textit{Taiwan National Identity, Cross-Strait Economic Interaction, and the Integration Paradigm}, ACADEMIA 153, 155 (Dec. 21, 2011), http://www.academia.edu/4993204/Taiwanese_National_Identity_Cross-Strait_Economic_Interaction_and_the_Integration_Para digm.} In 2014, there was a significant increase in those that identified themselves as only Taiwanese, with 60.6% of the people identifying as Taiwanese, while the remaining 32.5% identified as both Taiwanese and Chinese, and 2.5% identified as Chinese.\footnote{\textit{Id.}} The Taiwan-China dispute can only be resolved through reunification or a declaration of independence and, with the current movement for a stronger Taiwanese national identity and Taiwanese independence, the current status quo between China and Taiwan will no longer suffice.\footnote{There have been many examples of how a state could become autonomous, but unfortunately, those methods are not optimal for Taiwan due to economic and political pressure from China. For example, it is unlikely Taiwan will be successful in its bid for independence following Kosovo’s example because China strongly opposes Taiwan’s independence. \textit{Id.}}
IV. PROPOSAL

A. The Need for Utilizing Alternative Dispute Resolution Methods

For alternative dispute resolution to be successful, there must be a possible compromise that would satisfy both parties. Unfortunately, the 1992 Consensus was the middle ground, and both countries are no longer satisfied with the status quo. Additionally, both President Xi and President Tsai have indicated that, while they wish to maintain peaceful relations, they are not willing to compromise on Taiwan’s sovereignty. To fully resolve the independence dispute, there must be a clear agreement as to whether Taiwan should be reunified with China or if Taiwan should be recognized as an autonomous state.

had to its benefit, which Taiwan did not, is Kosovo did not have an economic powerhouse threatening economic sanctions or military repercussions against it for declaring independence. Countries supporting Kosovo’s declaration also did not face economic or political pressure from those that opposed Kosovo’s independence.

Kosovo’s independence was gained through a declaration of independence and support from major Western powers. In 2007, after a series of conflicts and disagreements between Kosovo and its neighboring states, UN Special Envoy Martti Ahtisaari proposed the Ahtisaari Plan, which would create oversight as to how Kosovo would govern its people as it sought to gain status as a sovereign state. As part of the Ahtisaari Plan, the International Steering Group for Kosovo was founded to guide Kosovo’s democratic development. In February 2008, Kosovo declared its independence and proclaimed itself “Republic of Kosovo.” In its declaration, Kosovo made a binding commitment to fully implement the Ahtisaari Plan, and even welcomed a period of international supervision. While the International Court of Justice was considering Serbia’s position that the declaration violated international law and United Nations Security Council Resolution 1244, many countries recognized Kosovo’s declaration as an independent state. Kosovo had enough support from these countries and organizations to govern itself with the help of the International Steering Group, which decided on September 10, 2012, that Kosovo no longer needed international supervision. Currently, there are still countries and organizations which have refused to acknowledge Kosovo’s independence, and others that have abstained from choosing a side. Despite the lack of recognition from certain countries and international organizations, Kosovo has maintained diplomatic relations as an independent state with many countries, and is a member of various international organizations. See Summary of the Comprehensive Proposal for the Kosovo Status Settlement, U.S. Dep’t St. (Jan. 20, 2009), http://www.state.gov/p/eur/lis/is/101244.htm; International Support for Kosovo, U.S. Dep’t St., http://www.state.gov/p/eur/ci/kv/c27789.htm (last visited Jan. 06, 2016); Nicholas Kulish & C.J. Chivers, Kosovo is Recognized but Rebuked by Others, N.Y. Times (Feb. 19, 2008), http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html.


The only agreement that Taiwan and China have reached regarding the sovereignty issue has been the 1992 Consensus, which stands for the proposition that there was only “one-China,”116 but the interpretation of that differed between Taiwan and China.117 In the last thirty years, both countries have failed to come to any other agreements about Taiwan’s sovereignty.118 Now, with both countries leaning towards rejecting the 1992 Consensus,119 the current status quo between China and Taiwan is not a permanent solution to the dispute. It is crucial that the two countries utilize alternative dispute resolution methods of conciliation, negotiation, and mediation to find another consensus, and, ultimately, to obtain independence for Taiwan.

1. The Current Middle Ground Is Unsustainable

Throughout the last sixty years, Taiwan and China have discussed Taiwan’s status on both official and unofficial levels.120 In the beginning, the talks revolved around Taiwan representing the “true” China; however, talks have evolved into discussions regarding Taiwan’s independence. Since the 1970’s, both Taiwan and China have steadfastly held to their positions regarding Taiwan’s sovereignty. China has repeatedly stated that Taiwan is merely a province of China, and that, under no circumstances, will it allow Taiwan to secede.121 Taiwan, on the other hand, moved towards democracy, maintained a strong national identity, and never conceded to fully reunifying with China in the future,122 even during times when the Kuomintang party was in charge of the government. Although China and Taiwan have maintained reasonably peaceful relations, neither country is willing to compromise as to which country Taiwan and its islands belong.

The 1992 Consensus was the middle ground between Taiwan and China, but this status quo cannot be maintained given that

117 Id.
118 See Hunt & Lu Scout supra note 45.
119 Cole, supra note 115.
120 See Zohair Abdoolcarim, It’s Going to Take a Lot More than a Historic Handshake to Fix China’s Relations with Taiwan, TIME (Nov. 9, 2015), http://time.com/4104494/china-taiwan-relations-summit/.
121 Text of China’s Anti-Secession Law, supra note 102, at art. 2. China reiterates it will “never allow the ‘Taiwan independence’ secessionist forces to make Taiwan secede from China under any means or by any means.” Id.
122 See Abdoolcarim, supra note 120.
both governments are moving towards changing the current agreement. The 1992 Consensus is the latest interpretation of the One-China policy: both countries recognize that there is one China, but the definition of “China” varies, with China believing “China” to include Taiwan as a province, whereas Taiwan believes the “one China” is only mainland China.\footnote{HOLCOMBE, supra note 12, at 337.}

The 1992 Consensus has been used by Presidents Ma and Xi as a foundation for trade talks between the two countries. This has led to an increase in bilateral economic agreements and relaxation of tourism limitations among other things.\footnote{Muyard, supra note 111.} However, in November 2015, when Taiwanese polls indicated the most popular presidential candidate was President Tsai of the Democratic Progressive Party,\footnote{J.R. Wu, Leader of Taiwan DPP, Party Hated by China, Heads Last Election Poll, REUTERS (Jan. 5, 2016), http://www.reuters.com/article/us-taiwan-election-idUSKBN0UJ0FB20160105.} Presidents Ma and Xi arranged a meeting to discuss the future relationship of the two countries, especially the Consensus.\footnote{Bush III, supra note 106.} President Xi indicated that he wished to dispense of the “different interpretation” component of the 1992 Consensus and wanted to enforce the interpretation of One China to mean China would be mainland China with Taiwan and its islands as a province.\footnote{Chen Wei-han, Ma-Xi Meeting: Ma’s Acknowledgement of ‘One China’ Is ‘Damaging’, TAIPEI TIMES (Nov. 08, 2015), http://www.taipeitimes.com/News/taiwan/archives/2015/11/08/2003631971.} President Xi also stated that any move towards independence from Taiwan would “bring disastrous consequences to the compatriots on the two sides of the Strait.”\footnote{Bush III, supra note 106.} President Xi’s comments at the meeting indicate a clear intent that China will reject the 1992 Consensus in the future.

Taiwan’s stance on the 1992 Consensus has also been shifting, with the Ma administration seemingly supporting President Xi’s remarks by not protesting the omission of the “different interpretation” component at the Ma-Xi meeting.\footnote{See Dingding Chen, Taiwan’s Dilemma and Challenges After the 2016 Election—Tsai Ing-wen May Have Won the Election, But She Faces a Range of Important Challenges Ahead, PRINCETON U.—CHINA & WORLD PROGRAM (Jan. 24, 2016), http://cwp.princeton.edu/news/taiwans-dilemmas-and-challenges-after-2016-election-tsai-ing-wen-may-have-won-election-she.} On the other hand, though, President Tsai advocated for the disposal of the 1992 Con-
sensus and embraced the Taiwan Consensus.130 In 2011, when President Tsai was running in the 2012 presidential elections, she indicated she would like to retire the 1992 Consensus and introduce the “Taiwan Consensus.”131 Since her swearing in, President Tsai has not officially endorsed the 1992 Consensus, which has created an even bigger rift between China and Taiwan.132 In time, President Tsai will likely move to formally reject the 1992 Consensus and introduce the Taiwan Consensus.133 Rejection of the 1992 Consensus could prove detrimental to cross-strait relations, though, because the Taiwan Consensus would reject the One China principle and instead would represent the Taiwanese people’s opinions on sovereignty, which has arguably been leaning towards independence, an unacceptable position for China.134 While the 1992 Consensus has served both countries as a middle ground for over thirty years, both Taiwan and China are hoping to move away from it, and they are both moving in different directions.

2. Ensuring Peaceful Relations Between China and Taiwan

In recent history, Taiwan did not actively move to separate itself from China until Generalissimo Chiang established the Republic of China on the island in 1949.135 Since the separation, the Taiwanese and Chinese governments have failed to fully employ alternative dispute resolution methods to improve Taiwan-China relations, which largely focus on the status of Taiwan’s sovereignty.136

In 2000, when former President Chen was elected as the first non-Kuomintang president, China was fearful Taiwan would officially declare its independence.137 However, that concern proved unnecessary because, even though China-Taiwan relations did not improve, the Chen administration maintained the status quo with

131 Id.
132 Hernandez, supra note 109.
133 Chen, supra note 129
134 Bush III, supra note 106.
135 Roy, supra note 8, at 81.
China. Further, even when pro-reunification leaders led Taiwan, China and Taiwan were only able to reach agreements of an economic or social nature. Still, the majority of meetings between the two countries are attended by government officials, but not by the presidents. It was only in November 2015, that two heads of state met for the first time in over sixty years. Even though President Ma was of the Kuomintang party and for pro-reunification, he maintained Taiwan as its own state. However, he brought Taiwan closer to China with numerous agreements regarding trade, tourism, and even academics. Ultimately, the Ma-Xi meeting did not resolve the issues surrounding Taiwan’s sovereignty; instead, it gave President Xi the opportunity to voice China’s strengthened position on prohibiting Taiwan from seceding.

Because of all these recent agreements, Taiwan is much closer to China on many levels, especially economically. President Tsai always stresses that, while she wishes to maintain good relations with China, she will also work to strengthen Taiwan’s independence and sovereignty. Part of her plan to assert Taiwan’s sovereignty includes improving Taiwan’s economy by reducing economic dependency on China. Changing economic policies between Taiwan and China will increase the distance between the two countries once again. When the two countries were closer politically, the only consensus they could reach regarding Taiwan’s status was the 1992 Consensus, which is now at risk of being dismissed completely. Presently, China seems to be losing patience with the slow pace for reunification and wants to move more aggressively, while Taiwan has demonstrated it will not voluntarily reunify with China.

138 Id.
139 China’s Bottom Line, supra note 116.
140 Bush III, supra note 106.
141 Id.
142 Id.
143 Id.
144 Id.
145 Taiwan Opposition Leader Advocates Dumping Old ‘Consensus’ on China, supra note 130.
146 Chen, supra note 129.
147 See Export Values by SITC, External Trade Statistics, MINISTRY FIN., http://www.mof.gov.tw/Eng/Pages/Detail.aspx?nodeid=259&pid=64520 (last visited Mar. 2, 2016). In 2001, Taiwan exported $5,020,729 worth of goods to China (~4% of total exports), but in 2015, Taiwan exported $73,409,572 worth of goods to China (~26% of total exports). In the same timeframe, Taiwan’s exports to other countries have remained more or less constant. Id.
148 Denyer, supra note 51.
150 See Hernandez, supra note 109.
China, and that its people are leaning towards establishing an independent state. Therefore, it is unlikely that the “One-China” dispute can be resolved until both countries fully embrace and employ alternative dispute resolution methods.

B. Achieving Independence Through Alternative Dispute Resolution

The Taiwan-China dispute is not something that can be resolved between the two countries alone, as many other members of the international community hope. Taiwan is unwilling to bow to Chinese sovereignty, and China is unsatisfied with maintaining relations as they are now. For a peaceful resolution to the sovereignty issue, Taiwan must build a stronger sense of national identity, appeal to the international community for support of its independence, and finally improve bilateral relations with China. Taiwan can effectuate these goals by using conciliation, negotiation, and mediation techniques on a local and international level.

1. Building a Stronger Taiwan

Before declaring independence, Taiwan must first build a stronger sense of national identity, with the majority of the Taiwanese people supporting sovereignty. Although recent polls and elections have demonstrated that the Taiwanese people sup-

149 International Business Publication, supra note 90.
150 Chen, supra note 129.

Conciliation is an alternative dispute resolution method that focuses on building a positive relationship between the disputing parties. Conciliators play an active role in the actual resolution by advising the parties and making proposals. Disputing parties will also approach the conciliator seeking guidance. See Alessandra Sgubini, Mara Prieditis, & Andrea Marighetto, Arbitration, Mediation and Conciliation: Differences and Similarities from an International and Business Perspective, Mediate.com (Aug. 2004), http://www.mediate.com/articles/sgubinia2.cfm.

151 In negotiation, two or more disputing parties meet together in good faith to identify issues at hand, present facts and supporting data, arrive at a mutual solution, and abide by the outcome. Negotiation continues as long as the parties are willing to exchange views on the settlement. 1 Alt. Disp. Resol., § 3:1 (West 2015).

152 Mediation requires a neutral and impartial third party to facilitate dialogue in a structured multi-stage process to help parties reach a conclusive and mutually satisfactory agreement. Mediators work with the disputing parties to identify and articulate their own interests, priorities, and expectations of each other. Id. For more information about mediation techniques, see Jessica A. Stepp, How Does the Mediation Process Work?, Mediate.com (Feb. 2003), http://www.mediate.com/articles/steppf.cfm.
port independence, studies done by the National Chengchi University’s Election Study Center show that, in 2015, approximately 60% of the Taiwanese people preferred to maintain the status quo indefinitely,\textsuperscript{154} while approximately 20% of the people would rather declare independence as soon as possible or at least move towards independence.\textsuperscript{155} The inconsistency between the results of the elections and the study can be due to numerous factors, such as fear of retribution from China. China has numerous missiles pointed across the Taiwan Strait,\textsuperscript{156} and, on occasion, has even fired the missiles near or over Taiwan to show its displeasure.\textsuperscript{157} However, regardless of the underlying reasons, Taiwan must present a unified front concerning the sovereignty issue.

To bridge the gap between those that support independence and those that wish to maintain status quo indefinitely, the Taiwanese government should instate policies that encourage Taiwanese identity. These can be established through a version of conciliation, with community centers acting as conciliators. By showcasing the uniqueness of Taiwanese culture, such as the Taiwanese language, the Hakka culture,\textsuperscript{158} and indigenous artworks,\textsuperscript{159} community centers can act as a middle party improving communication between those that believe in maintaining the status quo and those that support independence. This method should instill a strong sense of national identity in those that believe in maintaining status quo, which will ultimately lead to them recognizing Taiwan’s need for official separation from China as its own autonomous entity.

2. Presenting a Strong Taiwan to the Global Community

Secondly, Taiwan must request the global community’s support for independence by highlighting the Taiwanese people’s desire for sovereignty and increasing Taiwan’s presence in the international community. With the current studies indicating that

\textsuperscript{154} See Independence vs. Unification, supra note 38.
\textsuperscript{155} Id.
\textsuperscript{156} Scobell, supra note 100.
\textsuperscript{157} Id.
\textsuperscript{158} The Hakka are Taiwan’s second-largest ethnic group. For more information regarding the Hakka culture, see Hakka Culture, INFO. TAIWAN (May 1, 2009), http://www.taiwan.gov.tw/ct.asp?mp=999&xItem=17473&ctNode=1924; see also Origin of Project, TAIWAN HAKKA CULTURE DIV. CTR. (Feb. 9, 2011), http://thedc.hakka.gov.tw/wSite/ct?xItem=4325&ctNode=563&mp=20.
\textsuperscript{159} For more information about the indigenous peoples of Taiwan, see generally DIGITAL MUSEUM TAIWAN INDIGENOUS PEOPLE, http://www.dmtip.gov.tw/Eng/Taiwan.htm.
the majority of the Taiwanese people would prefer to maintain status quo," it is difficult for the Taiwanese government to officially request international support in its quest for independence. However, only once Taiwan establishes a unified front for independence through a sense of national identity, then the Taiwanese government can appeal to other countries for their support.

Additionally, members of the international community will be more willing to advocate on Taiwan’s behalf for independence if Taiwan makes itself a crucial member of the global community. Due to President Ma’s economic policies, Taiwan’s economy is currently heavily dependent on China. However, President Tsai indicated that her administration will aim to decrease Taiwan’s dependency and her hopes to increase Taiwan’s economy based on technology through fields such as precision machinery and biotechnology. By increasing other countries’ economic dependence on Taiwan, those countries will be less inclined to allow reunification, especially since China has less than transparent economic policies, which could ultimately harm their economies. Taiwan can expand their economic presence by decreasing its dependence on China and negotiating more economic agreements with other countries. By presenting a Taiwan where the majority of people want independence and increasing its economic presence in the international community, Taiwan will gain the necessary support to approach China for independence without fear of retribution.

3. Improving Bilateral Relations between Taiwan and China

Finally, Taiwan must work with China to improve bilateral relations, with the ultimate goal of China agreeing to allow Taiwan to declare independence without fear of retribution. During President Ma’s presidency, China and Taiwan grew closer through many economic policies, however, President Tsai indicated that she wishes to decrease Taiwan’s economic dependence on China, which may strain cross-strait relations even further. Nonetheless, relations between Taiwan and China can be improved through negotiation and mediation because those alternative dispute resolution

160 See *Independence vs. Unification*, supra note 38.
161 See *Export Values by SITC, External Trade Statistics*, supra note 145.
164 Muyard, *supra* note 111.
methods can lead to an outcome that is satisfactory for both countries.

Through negotiation the sovereignty issue can be resolved if the governments communicate honestly with each other regarding what they want. After presenting a strong national identity with the majority of the Taiwanese population supporting independence and with members of the international community on its side, the Taiwanese government can then approach the Chinese government to inquire as to the circumstances in which Taiwan can declare independence without provoking war. If China still remains unwilling to negotiate with Taiwan on the sovereignty issue,\textsuperscript{165} then the two countries can turn to other members of the international community to act as mediators. Members of the international community, such as the United Nations or the United States, can act as mediators and help find a mutually beneficial outcome while minimizing any potential consequences, such as military actions. For example, if through mediation China reveals it is opposing Taiwanese sovereignty because it would like to exercise economic control over Taiwan, then the mediators have facilitated the conversation between Taiwan and China to a point where a bilateral agreement regarding Taiwan's sovereignty can be agreed upon. The Taiwanese government may believe making economic concessions is worth being officially recognized as an autonomous state, and by making economic concessions, Taiwan would be demonstrating an important part of mediation and negotiation, which is acknowledging what the opposing party wants. By utilizing alternative dispute resolution methods on local and international levels, Taiwan can gain independence.

V. CONCLUSION

Taiwan’s journey to establishing its own sovereignty in the eyes of the members of the international community has been long and arduous. Its current status as a “non-recognized State” has not prevented other countries from entering bilateral agreements and establishing “non-official” diplomatic relations, nor has it kept Taiwan from participating in international organizations. Even though Taiwan has enjoyed many benefits of statehood without ac-

\textsuperscript{165} See Text of China’s Anti-Secession Law, supra note 102.
tually being recognized as a state, officially gaining its independence is still crucial.

Unfortunately, Taiwan has not formally declared independence for fear of economic sanctions or military retribution from China. Not wanting to face similar consequences from China, many countries and international organizations have also chosen not to actively support Taiwan’s quest for independence. As a result, Taiwan and China have been maintaining peaceful relations as per the 1992 Consensus, the only recent agreement both countries could come to regarding Taiwan’s sovereignty. However, the status quo cannot be maintained any longer because President Xi has indicated he will no longer accept the 1992 Consensus, and President Tsai has not formally endorsed the 1992 Consensus. The only hope of preserving or improving cross-strait relations would be finding another compromise through more conciliation, negotiation, and mediation, but this is unlikely to be initiated by either country, given that both countries have been shifting in opposite directions in terms of their positions on Taiwan’s sovereignty.

Because the 1992 Consensus will not be satisfactory for much longer, it is crucial that Taiwan and China employ alternative dispute resolution methods to reach another agreement, but more importantly, Taiwan must use these methods to gain independence. Through alternative dispute resolution methods, the Taiwanese government can bridge the gap between those that believe in maintaining the status quo and those that support independence, so that it can present a Taiwan with a unified goal of sovereignty. Additionally, Taiwan should utilize alternative dispute resolution methods to increase its presence in the international community so it can gain support for its quest for independence. Finally, with the international community supporting the Taiwanese people’s hope for independence, Taiwan can negotiate with China regarding what concessions Taiwan will need to make for China to recognize Taiwan as an autonomous state, and, if necessary, request members of the international community to mediate the sovereignty issue so there can be a peaceful resolution to the One-China dispute.