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Westphalia and the Taiwan Conundrum: Beyond an Exclusionist Construction of Identity and Sovereignty

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Introduction

Sino-American relations, widely believed to be the most important global bilateral relationship in the twenty-first century, will have a profound impact on international security in the Asia Pacific and beyond. In this crucial and complex bilateral relationship, no issues seem more potentially explosive than the question of Taiwan. For China, this issue strikes at the heart of its national sovereignty, while for the United States, keeping its commitment to Taiwan’s defence against a potential Chinese military attack amounts to a litmus test of its strategic credibility. Given what is at stake here for both the United States and China, it is not surprising that the Taiwan issue has frequently been at the centre of a series of U.S.-China confrontations, notably the Taiwan Strait missile crisis, the 2001 spy plane incident, as well as U.S. arms sales to Taiwan.

Moreover, the Taiwan question not only has security implications for Sino-American relations, but also has profound political, economic, social, and cultural repercussions for China and Taiwan itself. At the same time, with mainland China and Taiwan serving as the linchpins of the regional production networks in East Asia, the Taiwan issue, if improperly handled, could also have an immediate devastating effect on regional stability and prosperity.

Given the importance of the Taiwan question for Sino-American relations, regional and international security as well as the wellbeing of mainland China and Taiwan, it is essential that we seek to better understand the causes of and possible solutions to this long-running conundrum. For this reason, this paper both joins and builds on a growing list of literature that has shed much light on the question of Taiwan. But in so doing, the paper aims to engage with the Taiwan question through a hitherto little explored approach, namely, a critical appraisal of the Westphalian concept of sovereignty in the context of cross-strait relations.

The adoption of this approach is prompted by a two-pronged gap in the literature on Taiwan and sovereignty. On the one hand, the Taiwan question has been the subject of numerous research articles and books, but the conventional approaches so far have not focused explicitly on the ideational and constitutive role of Westphalian sovereignty in the Taiwan conundrum, nor on the possibility of solving this problem through an alternative conception of sovereignty. For example, some works on Taiwan are centred on historical contexts of the development of cross-strait relations,1 others discuss the Taiwan question mainly in the geopolitical settings of the strategic

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triangle of Washington, Beijing, and Taipei. Still others focus on the issues of nationalism and identity politics and economic and political differences. History, strategic triangle, identity politics, and economic and political differences are no doubt part and parcel of the Taiwan question and should be taken seriously, but these factors alone do not provide adequate explanations of the intractability of the Taiwan issue. In this sense, it is puzzling that little systematic attempt has been made to examine how the belief in the Westphalian notion of sovereignty shared by both sides may play a part in this problem. It is true that there have been some analyses of the Taiwan question through a perspective of sovereignty. For example, Michel Oksenberg usefully discussed how 'the concept of sovereignty and its associated ideas are confining' in relation to cross-strait relations as both sides cling to the notion of sovereignty as they understand it. Nevertheless, he seemed to suggest that the major constraints on the Taiwan question are 'deep distrust and animosity between the two and their different understandings of the meaning of sovereignty.' In this way, the link between their common ideational affiliation with the Westphalian notion of sovereignty and the Taiwan conundrum remains largely obscured.

If scholars on the Taiwan question have yet to systematically problematise the issue of sovereignty, then international relations scholars have also made little attempt to bring their critical understanding of sovereignty to bear on the issue of Taiwan. Since the end of the Cold War, there has been a large body of critical literature on the Westphalian notion of sovereignty. These theoretical critiques of Westphalian sovereignty are highly valuable in that they lay the theoretical groundwork for

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reconceptualising sovereignty in different ways and for ‘opening up the possibility for new political actors to enter the global stage.’ Indeed, this paper, with its specific focus on Taiwan, very much shares the broad research questions raised by Stephen Krasner in his edited volume *Problematic Sovereignty*: ‘to what extent do existing institutional arrangements, rules, and principles associated with the concept of sovereignty inhibit the solution to some of the most pressing issues in the contemporary international order? Can these rules be bent? Can they be ignored? Do they present an insurmountable or at least significant barrier to stable solution, or can alternative arrangements be created?’

In this broad genre of critical scholarship on sovereignty, some scholars have usefully demonstrated how diplomacy, conducted between mutually exclusive sovereignties, represents a fundamental process of mutual estrangement rather than mutual accommodation. Others have empirically and fruitfully examined how this particular concept has been linked to the political violence in multi-ethnic states such as the former Yugoslavia and how it has underpinned (or obstructed) international intervention and responses to such violence. And yet, this body of critical literature on sovereignty has yet to be more systematically applied to the analysis of the Taiwan question. Even mainland Chinese scholars with an interest in post-Westphalian sovereignty have shied away—perhaps understandably—from linking their analysis to the question of Taiwan.

It is at this junction of mutual neglect between the literature on Taiwan and the critical scholarship on sovereignty that this paper aims to fill a gap by critically examining the central role of important ideas such as Westphalian sovereignty in shaping the dynamics of cross-strait relations. The paper consists of four parts. First, it will briefly discuss the key characteristics of the Westphalian notion of sovereignty. Second, it then illustrates how both mainland China and Taiwan’s constructions of their national identity in regard to Taiwan are predicated on this model of sovereignty.

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Next, it will discuss how this common ideational fixation with Westphalian sovereignty paradoxically widens differences between mainland China and Taiwan and exacerbates their mistrust and animosity. Finally, the paper indicates the need to go beyond the Westphalian model and the possibility of seeking alternative ways of conceptualising sovereignty in the construction of national identity across the Taiwan Strait.

**The Westphalian Model of Sovereignty**

To understand how the Westphalian model of sovereignty has dominated the thinking of both mainland China and Taiwan in relation to national identity and sovereignty, it is necessary to briefly consider what Westphalian sovereignty means. The Westphalian model of sovereignty owes its name to the Treaty of Westphalia in 1648, which formally accorded the states with the legal status of sovereignty, or the absolute authority over all internal matters within their own territories. Like most concepts in social sciences, Westphalian sovereignty is a fuzzy and frequently contested concept. As Richard Falk notes, "the Westphalian rubric is ambiguous in its usage as it serves both as a shorthand to designate a state-centric, sovereignty-oriented, territorially bounded global order and to identify a hierarchically structured world order shaped and managed by dominant or hegemonic political actors. In effect, the term "Westphalia" contains an inevitable degree of incoherence by combining the territorial/juridical logic of equality with the geopolitical/hegemonic logic of inequality."

But the confusion does not end there. As Falk continues, ""Westphalia" is simultaneously used to identify an event, an idea, a process, and a normative score sheet." For the purpose of this paper, I shall focus on Westphalian sovereignty as an idea, one which addresses the interrelated questions of on what basis world order should be established and how political entities within it should be organised internally and related externally. In this sense, Westphalian sovereignty is better seen as a particular set of ideas rather than just one singular idea. When analysts invoke this notion, they often refer to different components of this ideational set. Having said that, the ideational complexities of Westphalian sovereignty should not detain us here, and in its conventional usage, it is still able to denote a common, relatively coherent understanding, or a way of thinking which not only has been generally accepted in the international community as a norm, but also has been institutionalised in a wide range

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13 Ibid, p. 312.
of international organised and legal principles. When I refer to the notion of Westphalian sovereignty held by mainland China and Taiwan, which have been part of this international normative, legal, and institutional system, I mean precisely this particular understanding.

This common understanding of Westphalian sovereignty has three levels of meaning. First, Westphalian sovereignty stipulates that world order should be based on a system that consists of sovereign, territorial states. Only such fully sovereign states should be qualified for full membership and participation in international organisations and international society more generally. For this reason, a Westphalian world order is also regarded as a statist system. Second, relations among sovereign states, as Westphalian sovereignty envisions, take place in the context of anarchy, which means that there is no higher authority above sovereign states. And with this meaning come the norms of sovereign equality and nonintervention. In other words, as far as state authority is concerned, it is legally equal and mutually exclusive. And because traditionally state authority is exercised through and within territorial space, sovereign equality and nonintervention are often embodied in another closely linked norm: territorial integrity and exclusivity. The third level of meaning relates to the domestic context. Here, Westphalian sovereignty means that there is always one single supreme authority, the sovereign. This is what the French thinker Jean Bodin means when he suggests that ‘majestas est summa in cives ac subditos legisbusque soluta potestas’ [Sovereignty is supreme power over citizens and subjugated peoples and is bound by no law].

For centuries since the Treaty of Westphalia, the Westphalian model of sovereignty has gradually emerged as arguably the most fundamental concept of the modern international system. The dominance of Westphalian sovereignty is due less to the fact that it reflects the inherent reality of the world, than to the fact that states, organised on the basis of Westphalian sovereignty, are very often more efficient and thus more powerful, than alternative forms of governance such as non-territorial feudal societies, city-leagues, city-states, and loosely integrated empires. And in the context of constant war and its demand on manpower and other resources, it is obvious that efficiency often means the difference between survival and surrender.

The success of Westphalian states, together with the norm of social Darwinism, further encouraged states to expand their territories. It is not pure coincidence that it was Europe that became the primary source of imperial and colonial expansion in the past few centuries. As European states, modelled on the Westphalian notion of sovereignty, cracked open traditional societies in the non-European parts of the world,

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the ‘sovereignty’ of those societies was effectively lost. But with a twist of irony, the idea of Westphalian sovereignty began to take roots, an idea which eventually led to decolonisation and national independence movement. Through this process of global normative replication, the Westphalian model of sovereignty becomes the established norm of the international system which is extensively institutionalised, for example, through the United Nations system.\(^{15}\)

Of course, in practice Westphalian sovereignty has far from been fully realised everywhere, and this can be exemplified precisely by the question of Taiwan. And yet, precisely because the Taiwan issue is considered an exception to the rule, when it comes to tackling the Taiwan question, Westphalian sovereignty has become all the more pertinent and appealing to both mainland China and Taiwan. For all their political and ideological differences, this is probably one of the few major political ideas to which both sides passionately subscribe. It is this ideational commonality between mainland China and Taiwan to which the next section now turns.

**Westphalian Sovereignty and Common Constructions of National Identity across the Taiwan Strait**

Much has been said about the differences in national identity construction between mainland China and Taiwan. For example, mainland China and Taiwan have different focuses in national identity construction. For mainland China, the emphasis is on sameness between itself and Taiwan, with the latter considered to be both ethnically and culturally similar to the motherland and “an essential element of [China’s] national identity.”\(^{16}\) Taiwan, by contrast, has increasingly highlighted its difference or distinctiveness, with mainland China classified as the significant Other. As Tu Wei-ming puts it, “Taiwaneseness is often set against Chineseness” and a new Taiwanese identity is largely conditioned on “de-Sinicization.”\(^{17}\)

Differences also exist in the practical purposes of identity politics across the Taiwan Strait. Chinese identity politics in regard to Taiwan is designed to prevent the current Chinese national identity from unravelling. If Taiwan was allowed independence, other parts of China such as Tibet, Xinjiang and even Inner Mongolia might be encouraged to follow suit. A domino-style disintegration of China would thus ensue, putting the very legitimacy and survival of the Chinese government at risk. For example, if China’s 2005 Anti-Secession Law can be seen as part of this national

\(^{15}\) *Revolutions in Sovereignty*, p. 92.

\(^{16}\) David Kang, op cit, p. 177.

\(^{17}\) Tu Wei-ming, “Cultural Identity and the Politics of Recognition in Contemporary Taiwan,” *The China Quarterly*, p. 1117.
identity construction process, it illustrates that this construction is more conservative in nature. According to Yu Keli, a Taiwan expert at the Chinese Academy of Social Sciences, the law "would address only China's reaction if Taiwan declared statehood, rather than requiring active steps by the mainland to force reunification." In this respect, Andrew Nathan suggests that China's aim "is not positive (to impose any particular system on Taiwan), but negative (to deny Taiwan to others)." By contrast, Taiwan's identity politics is more assertive and positive. It seeks to assert a new independent identity in order, among other things, to better suit the growth of Taiwan's democracy. Thus, the identity politics of mainland China and Taiwan seems to be on a collision course. But what is responsible for this collision course, as shall be illustrated below, is to a large degree their shared belief in Westphalian sovereignty as the ultimate organising principle of national identity.

Sovereignty in China's Discourses of Taiwan

In the global rush to replicate the principle of Westphalian sovereignty, China stands out as one of its most enthusiastic proponents. Alastair Iain Johnston argues that 'China’s version of sovereignty comes closer than most to the Westphalian model.' Similarly, Samuel Kim observes that the Westphalian notion of sovereignty 'remains at the core of Chinese foreign policy thinking.' In a way, Chinese adherence to Westphalian sovereignty is hardly surprising. With its experience of humiliation at the hands of imperial powers in the nineteenth and early twentieth centuries, the concept of sovereignty looked most promising "as the solution to this weakness." Even at a personal level, it is argued that the notion of sovereignty helped Chinese premier Zhou Enlai 'avoid the sense of inferiority stemming from the breakdown of cultural confidence in China.'

In this context, in the eyes of the Chinese, Taiwan's continued separation from the mainland remains characteristic of China's past national weakness and inferiority in the family of nations. Like the British-ruled Hong Kong and the Portuguese colony Macau, Taiwan was once a colony occupied by imperial Japan when China suffered

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from both internal calamity and external encroachment. With the sovereignty over Hong Kong and Macau now reverted to China, Taiwan stands as the last but all the more pointed reminder of that humiliating past. As Zhu De, founder of the People’s Liberation Army, once claimed, “As long as Taiwan is not liberated, the Chinese people’s historical humiliation is not washed away.” Thus understood, little wonder that the Chinese government perceives the Taiwan question as a matter of national sovereignty and territorial integrity and resorts to sovereignty as its solution to redress past wrongs. For example, in a 1997 interview with *Asian Affairs*, then Chinese President Jiang Zemin said that “You have here a case where the fundamental interests of a nation lie. On such a question involving state sovereignty, a government has no room for any compromise.”

The sovereignty solution to Taiwan is commonly known as the “One China” principle, which is couched in classic Westphalian terms. For example, in the 2000 State Council White Paper *The One-China Principle and the Taiwan Issue*, this principle is justified on the basis that “state sovereignty is inseparable. The territory is the space in which a state exercises its sovereignty. In the territory of a country there can only be a central government exercising sovereignty on behalf of the state.” Consequently, it argues that “Although the two sides of the Straits have not been reunified, Taiwan’s status as a part of Chinese territory has never changed, neither, therefore, has China’s sovereignty over Taiwan ever changed.”

Indeed, not only is Taiwan considered a matter of sovereignty for China, China’s sovereignty as a whole is seen as hinging on the fate of Taiwan. From the Chinese perspective, Taiwan is a litmus test for the sovereignty and territorial integrity of the Chinese state. It becomes, as it were, at once the last remaining sovereignty issue for China and the first line of defence of contemporary Chinese sovereignty and identity. As mentioned before, it is believed that Taiwan’s independence would set a dangerous precedent for other peripheral areas of China, which could put Chinese sovereignty in jeopardy. In this sense, Taiwan and Chinese sovereignty have become almost synonymous.

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25 Quoted in Denny Roy, “Tension in the Taiwan Strait,” *Survival*, p. 79.
26 Quoted in Greg Austin, “China’s Perceptions of Cross-Strait Relations,” p. 7.
27 *The One-China Principle and the Taiwan Issue*.
28 *The One-China Principle and the Taiwan Issue*. 
Taiwan’s Evolving Perceptions of Sovereignty

While mainland China sees issue of Taiwan largely through the Westphalian lens of sovereignty, it is interesting to note that there also exists a mirror-image discourse in Taiwan. In the past two decades or so, the Taiwan authorities have increasingly cast the issue in essentially the same political discourses. Prior to 1988, under the rule of Chiang Kai-shek and his son Chiang Ching-kuo, the Kuomingtang (KMT) government in Taiwan had claimed sovereignty over mainland China as well as Taiwan. While Taipei and Beijing bitterly clashed over who was the sole legitimate government of China, neither side challenged the “one China” principle or China’s sovereignty over Taiwan. Reflecting this cross-strait consensus, in the 1972 Shanghai Communiqué, the U.S. “acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China.”

This cross-strait consensus, however, became gradually eroded with the passing of Chiang Ching-kuo in 1988 and the end of martial law on Taiwan in 1991. In the same year, Taiwan’s President Lee Teng-hui initiated a constitutional change, abandoning the claim that the Republic of China (ROC) represented the only legitimate government of China. The PRC was no longer viewed as a ‘rebel group’, but as an equal “political entity.”29 While this might be a realistic and conciliatory move on the part of Lee Teng-hui to recognise the existing political reality, it is at the same time a significant new development in the Taiwan conundrum. Previously both sides recognised that there was one China and Taiwan was an integral part of Chinese sovereignty, but thereafter, as reflected in the term ‘ROC on Taiwan’ popularised by Lee Teng-hui, Taiwan has repeatedly claimed sovereign status of its own.

In order to demonstrate and promote this claimed status, for much of the 1990s and the first decade of the twenty-first century, Taiwan has conducted flexible diplomacy, vacation diplomacy, and cheque-book diplomacy. It has made a series of attempts to join the United Nations and other international organisations where statehood is a requirement for membership. In July 1999, Lee Teng-hui dropped a political bombshell across the Taiwan Strait by saying that relations between China and Taiwan should be considered a “special state-to-state relationship.” While Lee did not call Taiwan an independent, sovereign state outright, his reference to Taiwan’s sovereignty was nevertheless unmistakeable. In August 2002, following in the footsteps of Lee Teng-hui’s “two-state theory,” his successor Chen Shui-bian claimed that China and Taiwan “are two separate countries on opposite sides of the Taiwan Strait.” Chen’s passion for Taiwan’s sovereignty reflects one of the key political

platforms of his Democratic Progressive Party. Prominently titled "The Establishment of a Sovereign and Independent Republic of Taiwan," Section A of the DPP's Political Platform contains the so-called 'Independent Clause', which states that:

In accordance with the reality of Taiwan's sovereignty, an independent country should be established and a new constitution drawn up in order to make the legal system conform to the social reality in Taiwan and in order to return, to the international community according to the principles of international law.\(^{30}\)

Furthermore, in August 2005 Chen announced "One Principle, Three Insistences, and Five Oppositions." The 'one principle', according to Chen, "is to protect Taiwan's sovereignty and negotiate with China under the principle of democracy, equity and peace."\(^{31}\) In Taiwan's first national security report issued in May 2006, sovereignty once again figures prominently. For example, in the section "Establishing a Reciprocal Framework for Peace and Stability in Cross-Strait Relations," the report states that "Taiwan's long-term national development strategic objectives at present are sovereignty and dignity, survival and security, and prosperity and development," with maintaining sovereignty being the "bottom line."\(^{32}\) And in laying out several conditions for establishing possible political relations with the mainland, such as reciprocal recognition of each other's judicial authority in its own territory, non-interference of each other's foreign affairs and member issues in international organisations,\(^{33}\) its fondness of Westphalian sovereignty is all too obvious.

The explicit appeal to Westphalian sovereignty is central not only to the official discourse of Taiwanese identity, but also to Taiwan's popular self-image. As Robert Ross points out, "after Taiwan's half century of autonomy, economic progress, and democratization, and the resulting contrast between Taiwan and authoritarian China, many on the island have developed a strong sense of 'Taiwan identity,' and they believe that Taiwan now merits international recognition as a sovereign country."\(^{34}\) Likewise, Andrew Nathan notes that:

\(^{30}\) Quoted in Quansheng Zhao, "Beijing's dilemma with Taiwan: war or peace?" p. 221.
\(^{33}\) Ibid, p. 142.
Policymakers need to understand the intense pride of the Taiwanese in their identity and in their accomplishments, their sense of entitlement to nationhood, and their commitment to keeping something they think they already have, their own state. While not provided for in the U.S.-China "communiqué framework," this sense of nationhood is real.\textsuperscript{35}

To the extent that both mainland China and Taiwan resort to the notion of sovereignty in their constructions of national identity, it is clear that the two sides have more in common than either side cares to acknowledge. If the ROC's sovereignty claim to the whole Chinese territory had been "a hopelessly unrealistic military fantasy,"\textsuperscript{36} its revised sovereignty claim to Taiwan now seems much more achievable. But the problem is that the two sides' sovereignty claims no longer coincide in territorial terms, but overlap with each other.

To be sure, since Ma Ying-jeou came to power in Taiwan, the Taiwan authorities have turned down the sovereignty rhetoric. In December 2008, Ma revoked Lee Teng-hui's 'state-to-state relationship' remark on cross-strait relations at a forum on constitutional interpretation. Instead, he referred to the ROC Constitution by suggesting that the relations should be characterised as 'region-to-region.'\textsuperscript{37} While this may be a departure from the DPP position on Taiwan's sovereignty, this new position has not departed from the Westphalian model of national identity construction, as under this formula, the ROC on Taiwan claims sovereignty over China as a whole and therefore implicitly denies the sovereignty of the PRC over the mainland. Furthermore, the pressure from the opposition and the momentum of democratisation in Taiwan will likely continue to act as additional constraints on the Ma administration as far as Taiwan's sovereignty is concerned.

**Westphalian Sovereignty and a Potential Taiwan Conflict**

It is now clear that the issue of sovereignty is at the core of both China and Taiwan's constructions of identity in relation to Taiwan. But in what ways does this common belief in Westphalian sovereignty have to do with the long-standing Taiwan conundrum? In order to address this question, firstly I want to briefly look at how international conflict has been intrinsic to the practice of the Westphalian model of sovereignty.

\textsuperscript{36} Michael McDevitt, "The Security Situation Across the Taiwan Strait: Challenges and opportunities," *Journal of Contemporary China*, p. 416.
\textsuperscript{37} Loa Iok-sin, 'Ma Repeats "Region-to-Region" Comments,' *Taipei Times*, 22 December 2008, p. 3.
To begin with, though, it is worth noting that the notion of sovereignty was initially devised not for the purpose of creating tensions or exacerbating conflict. Quite the opposite, it was first systematically introduced by Bodin in his Six Books of the Republic in order to find a cure to the scourge of religious conflict that had ravaged France. According to Bodin, law and order could only be maintained under the condition of sovereignty, where power was exercised by a single authority across the territorial jurisdiction. Likewise, for Thomas Hobbes, the very political purpose of the sovereign state is the establishment of order. And the Treaty of Westphalian, from which Westphalian sovereignty was derived, was signed in order to settle the prolonged disputes in Europe. Indeed, the implication of reciprocity contained in the idea of sovereignty, that is, "a state which claims to be free of limit and control within its community is bound in logic to concede the same freedom to other states in theirs," was designed to regulate and even stabilise international relations. As such, it seems that the "Westphalia model, based on the principles of autonomy and territory, offers a simple, arresting, and elegant image. It orders the minds of policymakers."

Westphalian sovereignty might well have usefully served to maintain both domestic and world order, especially when internally there is a commonly agreed centre of authority, such as the king, and externally, when states are divided by clearly demarcated, mutually agreed boundaries. Good fences make good neighbours, so the argument goes. But in reality these conditions are often in short supply. For instance, when internal sovereignty is bitterly contested by rival factions, the very concept that was aimed to maintain domestic order can heighten the political stake and thus intensify conflict. Furthermore, even if a single centre of authority can be agreed upon, the very notion of sovereignty ‘inside’ implies the existence of anarchy ‘outside’, and with anarchy comes what Hobbes called the ‘state of nature’. As a consequence, he saw with great clarity that achieving peace within a state does nothing to diminish insecurity and violence among them.

Therefore, when states do not have clearly defined boundaries, the role of Westphalian sovereignty in ensuring international peace becomes particularly problematic. In many cases, states do not agree where their ‘fence’ should be placed, or whether there should be a Westphalian-style hard-edged fence between them at all.

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Under these circumstances, far from being an instrument for peace and stability, competing claims to sovereignty over a particular territorial space can be a recipe for conflict. After all, as noted above, characteristic of the Westphalian model of sovereignty is a zero-sum, mutually exclusive logic. Under this exclusionist rubric, "state sovereignty formalises a spatial differentiation of inside and outside, same and other." Insofar as a relationship is framed in terms of self and other, it would be extremely difficult, if not impossible, to find compromise and accommodation, for concessions on matters of sovereignty to the Other can be portrayed as nothing less than a destruction of self, or simply as treason. In his book National Deconstruction, David Campbell's study of the Bosnia War clearly illustrates how the articulation of identity in terms of absolute, mutually exclusive sovereignty both led to and prolonged violence. Similarly, in his analysis of the frontier disputes between British India and Republican China, Hsiao-Ting Lin argues that although 'the professed sovereignty claimed by both Republican China and British India over the Assam-Tibetan tribal territory were largely imaginary, existing merely on official maps and political propagandas,' 'such imagined sovereignty and the "cartographically existing" in fact constituted the origins of a dispute that 'eventually led to war between the successor regimes in the 1960s.'

Furthermore, even if relatively stable national boundaries exist, the temptation of exercising absolute authority over a larger territory has often prompted great powers to pursue greater territorial ambition. In the mid-nineteenth century, in the name of demanding diplomatic equality from the Chinese government in the late Qing period, the British found it justifiable to wage the Opium War against China. In this sense, as R.B.J. Walker notes,

the principle of sovereign equality among states has always been something of a fiction. Inequality between states has been justified on the grounds that it allows the larger states to preserve "order" in the system as a whole.... Thus, the logic of the modern states system brings not only the promise of war between states but also the ongoing domination of strong states over weaker ones.

43 Walker, Inside/Outside, p. 73.
44 David Campbell, National Deconstruction, p. 242.
Thus, the practical consequences of the principle of sovereignty have not been particularly peaceful in nature. While conflict has been a human phenomenon since the existence of human society, the formation of the sovereign state often makes war and organised conflict particularly violent and intractable. This connection between conflict and state-building in the form of Westphalian sovereignty has been captured nicely by a number of observers. For Charles Tilly, "war made the state and the state made war." Similarly, Michael Howard argues that "no Nation, in the true sense of the word, could be born without war." It is obvious that by 'the true sense of the word,' Howard means the Westphalian sense.

In this context, I argue that the Taiwan conundrum, while no doubt caused by a combination of factors, needs to be more fully understood against the background of the insistence on Westphalian sovereignty by both mainland China and Taiwan. To the extent that both sides aspire to the Westphalian model of sovereignty in solving the Taiwan question, they cannot but perceive it as a zero-sum game. This perception is clearly evident, for example, in Taipei and Beijing's frequent dismissal of each other's proposed solutions. Beijing insists on the policy of "One Country, Two Systems" as an appropriate formula for reunification. However, while offering a more flexible treatment of Taiwan than Hong Kong, this formula remains wedded to China's claim to national sovereignty over Taiwan, and implies a hierarchical, central-local relationship between Beijing and Taipei. Consequently, equally adamant on its own sovereignty aspiration, Taiwan sees it as nothing more than a ploy to deny Taiwan's de facto sovereignty status.

On the other hand, Taiwan's notion of "One Country, Two Political Entities" has been equally greeted with suspicion by the Chinese government on similar grounds. Beijing fears that the acceptance of Taiwan as an equal political entity would imply the loss of absolute authority for the central government, as well as the separation of national sovereignty. Thus, the commitment to the Westphalian model of absolute, indivisible sovereignty on both sides of the Taiwan Strait has proved to be an obstacle to progress in cross-strait relations.

What is more, because it symbolises the supreme authority of a nation, Westphalian sovereignty not only is a basis for foreign policy, but also often becomes a sacred national goal itself. In the case of China, Taiwan's reunification with the mainland not merely is a sovereignty issue, but has come to symbolise China's

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sovereignty and survival per se, for which it is willing to fight at any cost. With the significance of the Taiwan issue elevated to such height, it seems that any other kind of loss or setback is no longer able to deter China from achieving this fundamental goal. For instance, this determination was clearly articulated by a Chinese official, who had warned Taiwan not to miscalculate and declare independence before the 2008 Beijing Olympic Games. The official bluntly reminded that "the Olympics is not one of [China's] three major tasks [which the party leadership describes as modernization, reunification, and common development]; reunification is."\(^50\)

Meanwhile, on the other side of the Taiwan Strait, whenever national sovereignty is believed to be at stake, the determination is almost equally strong. In this sense, as Kenneth Lieberthal correctly notes, both sides' "obsession with final-status issues ('reunification' for Beijing and 'independence' for Taiwan) has made the situation pregnant with catastrophe."\(^51\) Such an obsession, of course, is merely a symptom of the ideational influence of Westphalian sovereignty. And catastrophe has indeed been a distinct possibility when Taiwan attempts to touch on the final-status issue. For example, after Lee Teng-hui announced his provocative "two-state theory" in July 1999, Beijing sent its warplanes to the Taiwan Strait, which strayed over the centre line several times.\(^52\)

And to further complicate the matter, integral to the Westphalian notion of state sovereignty is the perceived legitimacy of the use of force within the claimed jurisdictional space. According to Max Weber, a hallmark of a sovereign state is its monopoly of legitimate violence within its territory. Little wonder that Beijing regards the use of force not only as an effective means of deterrence, but also as its fundamental right as a sovereign nation. Michael Swaine observes that China's refusal to renounce its use of force over Taiwan is predicated precisely on the claim that "the ability to employ force over one's territory is an essential attribute of sovereignty."\(^53\) Along this line of reasoning, Beijing feels that its military build-up is not only strategically necessary, but indeed politically justified. Still on the same basis, China passed its Anti-Secession Law in early 2005, in which it reserves its right to "employ non-peaceful means and other necessary measures to protect China's sovereignty and territorial integrity."\(^54\)

Such military build-up opposite Taiwan and the threat to use force often do nothing but increase mutual distrust and hostility between the two sides. Many argue

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50 Andrew Peterson, "Dangerous Game across the Taiwan Strait," *Washington Quarterly*, p. 26
51 Lieberthal, Kenneth, "Preventing a War Over Taiwan,"
52 June Tuefle Dreyer, "Flashpoints in the Taiwan Strait," p. 621.
that the 1995-96 Chinese missile tests off Taiwan's coast alienated Taiwan's citizens. In the lead-up to Taiwan's 2000 presidential election, Chinese Premier Zhu Rongji warned that if Chen Shui-bian were elected, China might be forced to "spill blood" over the question of independence.\(^5^5\) With the subsequent victory of the pro-independence candidate Chen Shui-bian, Zhu's warning was widely believed to have contributed precisely to the opposite effect. More importantly, China's refusal to renounce the use of force has been met with equally belligerent responses from Taiwan. Taiwan's former premier Yu Shyi-kun, for example, said that Taiwan should seek to deter a Chinese attack by building a "balance of terror" like that between the U.S. and the Soviet Union during the Cold War. It demonstrated for the first time that "Taiwan is seeking offensive capabilities that would enable it to launch land strikes against China."\(^5^6\) Should such spiral model continue unabated, catastrophic military conflict—not just between Beijing and Taipei, but also between Beijing and Washington—is by no means unimaginable. For instance, as U.S. Deputy Secretary of State Robert Zoellick warned, "independence means war," which, he added, "means American soldiers, sailors, airmen and marines."\(^5^7\)

Thus, the root cause of the Taiwan problem is not military build-up per se, but the belief in Westphalian sovereignty. Military build-up is merely the logical development of such a belief. To be sure, while the mutual insistence on Westphalian sovereignty has contributed to mistrust and tensions across the Taiwan Strait, cross-strait relations have so far managed to maintain a delicate status quo. But the status quo is a precarious one, for it satisfies neither side's ultimate goal of Westphalian sovereignty. In order to secure long-term stability, alternative ways of conceptualising sovereignty and identity are called for.

**Beyond an Exclusionist Construction of Identity and Sovereignty**

If Westphalian sovereignty is at the core of the Taiwan conundrum, a rethinking of this notion is a necessary step towards solving this problem. For all the appeal of Westphalian sovereignty as an ideal form of organising national identity, in dealing with the Taiwan question, both the difficulty of its full realisation and its great potential for military conflict should persuade us to move beyond this ideational straightjacket and explore feasible alternatives other than in zero-sum, absolute, and exclusivist terms. Positive political developments, closer economic integration, active

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\(^5^5\) [http://www.pbs.org/newshour/bb/asia/jan-june00/taiwan_3-20.html](http://www.pbs.org/newshour/bb/asia/jan-june00/taiwan_3-20.html)


cultural exchanges, and increasing confidence-building measures are certainly important in helping mitigate the Taiwan flashpoint, but to the extent that Chinese and Taiwanese conceptions of their identity continue to be modelled on the Westphalian notion, there would be little prospect for the emergence of a fundamental solution.

While we should not pretend that the attempt to modify this dominant notion of sovereignty will be easy, Westphalian sovereignty is not something beyond question. As one scholar notes, 'although the Westphalian system has endured the industrial revolution, the rise of mass politics, other enormous changes in economic and political systems, and revolutions in technology, culture, and communication, there is yet no iron logic by which it must last. Westphalia is persistent, not permanent.'

Three reasons can be offered here as to why Westphalian sovereignty is not permanent and can be rethought. First, sovereignty is never a static concept in history. As Heller and Sofaer argue, 'the concept of sovereignty is not a set of established rules, to which states must bend their conduct in order to preserve their capacities. It is instead an ever-changing description of the essential authorities of states, intended to serve rather than control them in a world that states dominate.' As such, Westphalian sovereignty can be understood as merely a historically specific social construct, even though it is an extremely powerful social construct. And to the extent that it is socially constructed rather than a law of nature, it is amenable to change.

Second, for all its ideational dominance in the international system, Westphalian sovereignty has continued to prove that it is more of an ideal than reality. As Stephen Krasner notes:

the Westphalian model has never been an accurate description of many of the entities that have been called states.... There has never been some golden age of the Westphalian state. The Westphalian model has never been more than a reference point or a convention; it has never been some deeply confirming structure from which actors could not escape.

Third, partly because international reality is not totally in accordance with Westphalian sovereignty, Westphalian sovereignty is not the sufficient nor the necessary precondition for states' survival, practical authority, or prosperity. On the one hand, though many states enjoy nominal Westphalian sovereignty, they are nevertheless considered weak or failed states. It is not uncommon for sovereign states

58 Revolutions in Sovereignty, p. 92.
59 Quoted in Stephen D. Krasner, 'Problematic Sovereignty,' p. 5.
to be at the mercy of international institutions or great powers. On the other hand, for a long time, Switzerland had thrived without a membership in the United Nations. And Taiwan’s own economic experience illustrates that the absence of Westphalian sovereignty is no obstacle to economic prosperity, political development, or international ties.

If it is possible to modify Westphalian sovereignty, then the obvious starting point pertaining to Taiwan would be: how can Taiwan retain and formalise its *de facto* sovereignty by giving up *de jure* independence? Or how can China achieve formal unification while allowing the continuation of Taiwan’s *de facto* independence? In short, how can we make the concept of sovereignty less rigidly Westphalian and more eclectic and flexible? Obviously, there will be no easy answer to these difficult questions. Nevertheless, purely for the sake of indicating the possibility of moving beyond the Westphalian model and provoking further debate, here I tentatively offer a particular formula of sovereignty, which I call a hybrid model of sovereignty.

This hybrid sovereignty consists of two interlocked forms of sovereignty. Horizontally, it retains two territorially divided domains of empirical or practical sovereignty, with mainland China and Taiwan continuing to exercise authority over their respective territory. But vertically, these two separated domains of practical sovereignty are integrated into one higher form of sovereignty, which may be regarded as popular or cultural sovereignty in ethnic and/or cultural terms, if not in political or administrative sense.

Through the horizontal division, Taiwan’s *de facto* sovereignty remains intact, which is designed to satisfy the bottom line of Taiwan. On the other hand, by way of vertical integration, the two political entities are unified as one China in a *de jure* sense, and Taiwan’s *de jure* independence is ruled out. In doing so, mainland China’s minimum demand for one China is met. But this differs from the conventional Chinese sovereignty claim in a significant way. That is, this sovereignty belongs to the whole Chinese nation, rather than to the government of the People’s Republic. In other words, this sovereignty is shared by both the mainland and Taiwan, but under the political control of neither side. In this sense, such sovereignty is a form of virtual or symbolic sovereignty, which lacks a single political centre or authority. Nevertheless, insofar as the sovereignty of “Great China” (incorporating mainland China and Taiwan) is recognised by the international community, it represents the *de jure* unification of one Chinese nation. Any alteration of this sovereignty status would require the consent of the majority of the Chinese people, defined as including people on both sides of the Taiwan Strait. This is a necessary reflection of one important dimension of the current status quo, namely, the existence of one Chinese nation.
While the notion of “one China” is often subject to different interpretations, both sides do accept the reality of one Chinese people. Therefore, this vertical sovereignty reflects this important consensus and provides it with a formal legal framework.

Clearly, this arrangement of sovereignty is different from the Westphalian form of hierarchical sovereign structure with one single supreme authority. First, as far as vertical sovereignty is concerned, the lack of a single higher authority above either Beijing or Taipei would be inconceivable for Westphalian sovereignty. Second, neither Beijing or Taipei are completely sovereign in the Westphalian sense. Their co-existence as two separate practical sovereign entities does not make cross-strait relations an international relationship. For Westphalian sovereignty, this is again unimaginable for two practically sovereign entities to accept the existence of a still higher, albeit largely symbolic authority.

Greg Austin argued that in solving the Taiwan question, two “existing realities” need to be recognised. The first is that “Taiwan and China must remain linked by a common sovereignty”; and the second is that “Taiwan has emerged as a vibrant and highly capable self-governing community without ever having been ruled by the Chinese Communist Party.” Together, these two existing realities make up the current status quo, with which both sides more or less agree. In effect, this hybrid sovereignty arrangement is not a radical plan, but grounded in this dual existing political reality across the Taiwan Strait, or the status quo. At the same time, by institutionalising the currently mutually accepted but fragile status quo, this formula provides more institutional and legal certainty than does the current fragile status quo.

But this hybrid sovereignty is not a simple institutionalisation of the status quo. It is flexible enough to allow more positive development. For example, while ruling out Beijing’s worst political nightmare (i.e., Taiwan’s formal independence), this formula does not preclude the possibility of further integration between the two political entities should the two sides wish to do so in the future. Meanwhile, under this formula, Taiwan’s de facto sovereignty would receive formal recognition from Beijing and the international community. Although such recognition would be limited within the “one China” framework, it would provide Taiwan with the international space and legitimacy it both needs and often deserves, but something which has so far largely eluded this island.

It must be acknowledged here that this hybrid model of sovereignty is not a completely new idea. In many ways, it bears resemblance to Taiwan’s former chairman of the Foreign Relations Committee Yung Wei’s concept of “multi-system nations.” This concept, he argued, could “preserve the idea of ‘one [Chinese] nation’

61 Greg Austin, “China’s Perceptions of Cross-Strait Relations,” p. 22.
but face the reality of the co-existence of two or more mutually separated political systems within that nation.\textsuperscript{62} This is a very important concept as it opens the way for the formulas such as “one nation, two systems,” “one sovereignty, two jurisdictions” and “one country, two international personalities.”\textsuperscript{63} What is new to the hybrid model of sovereignty is that it is based on a more conscious critique of the Westphalian notion of sovereignty.

**Conclusion**

In this paper, I have outlined the necessity and possibility of rethinking the Westphalian model of sovereignty in relation to the Taiwan question. The paper has examined how the notion of Westphalian sovereignty has dominated the thinking of both mainland China and Taiwan in dealing with the Taiwan question, and how this notion has been prone to conflict in international practice. In the case of Taiwan, it has been illustrated that Westphalian sovereignty, by framing it as a zero-sum game, has often rendered compromise extremely difficult, and fuelled distrust and deepened animosity. On this basis, the paper tentatively proposes a hybrid model of sovereignty, with a vertical sovereignty addressing the issue of “one China,” and a horizontal sovereignty arrangement accommodating Taiwan’s need for more formal recognition of its \textit{de facto} sovereignty. This hybrid model is an attempt to recognise and institutionalise the status quo in cross-strait relations, and therefore, it could become a useful starting point for reconciliation and mutual accommodation.

This, of course, does not mean that this hybrid formula provides an easy solution to the perplexing Taiwan challenge. In practice, this formula may face many challenges of its own such as the issue of international representation, the concern with future ‘cheating’ or ‘defection’ by either or both sides, the implications for China’s minority regions such as Tibet and Xinjiang, as well as U.S. reactions. And above all, if the insistence on sovereignty is at the heart of the confrontation between mainland China and Taiwan, then a direct challenge to this Westphalian concept would by definition face intense resistance from both sides. And too often, we have witnessed that seemingly workable proposals are carefully put forward, only to be dismissed out of hand by either or both sides.

That said, this sad reality ought to provide no excuse for pessimism or inaction on the part of scholars and policy-makers, not least because the stakes are so high. Neither side actually wants a war. A military conflict would be in no one’s interests,
including those of the U.S., and both sides of the Taiwan Strait seem to acutely understand that. As Thomas Christensen points out, "Beijing may be willing to fight over Taiwan even against militarily superior foes, but it is hardly eager to do so."\(^{64}\)

Perhaps for this reason, despite their official insistence on Westphalian sovereignty, in practice both Beijing and Taipei have demonstrated some pragmatism and flexibility. At one level, Beijing is increasingly accommodating to the prospect of maintaining Taiwan's de facto sovereignty within a 'one China' framework. China has promised that it would neither levy taxes or appoint mainland official on Taiwan, and that Taiwan could keep its own currency, military, customs status and government structure.\(^{65}\) This is in effect Beijing's acknowledgement of Taiwan's practical sovereignty. Asked if China would be willing to accept a loose confederation with Taiwan, something China had ruled out before, Qian Qichen replied that "Anything can be discussed." He went on to say that China had adopted a "pragmatic and more inclusive" version of its long-standing one-China policy.\(^{66}\) In 2005, meeting with James Soong, Chinese President Hu Jintao effectively agreed to open talks if Taiwan accepted the principle of "two shores, one China" while acknowledging that the two sides might differ on precisely what that term meant.\(^{67}\)

At another level, with some exceptions, Taiwan has not openly embraced the path towards formal independence. While the DPP rejected the 1992 consensus of 'one China, different interpretations,' the Ma Ying-jeou administration is more warm to this idea. All this, it seems, provides some causes for guarded optimism.

\(^{64}\) Thomas Christensen, "Deterring a Taiwan Conflict," p. 12