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2022

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Recommended Citation

Julian G. Ku, *Considering the Consequences of an Unchecked Presidential Recognition Power for U.S. Taiwan Policy*, 13 GEO. MASON INT'L L.J. 55 (2022)

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CONSIDERING THE CONSEQUENCES OF AN UNCHECKED PRESIDENTIAL RECOGNITION POWER FOR U.S. TAIWAN POLICY

*Julian G. Ku**

I. INTRODUCTION

In 2015, the U.S. Supreme Court handed the President an unusually clear victory on a question of constitutional law when it held that Congress could not limit or interfere with the President's power of diplomatic recognition. Rather than avoiding the question as non-justiciable¹ or setting up a framework for analyzing shared powers,² the Court held in *Zivotofsky v. Kerry (Zivotofsky II)*³ that the President has the exclusive power to recognize a state (and the scope of its territory) under Article II of the Constitution. It further held that Congress could not limit this power by requiring the designation of "Jerusalem, Israel" on U.S. passports for citizens born in Jerusalem.

In *Zivotofsky II*, the Court was seen as siding with the defenders of the foreign policy establishment in the executive branch against more radical members in Congress.⁴ Indeed, the Court itself cited this traditional understanding of the executive branch's expertise in granting the president this exclusive power.⁵ Yet, *Zivotofsky*'s endorsement of an unreviewable and exclusive presidential recognition authority also opened the door for a different president to wield the power against that same foreign affairs establishment. During his four years as President, Donald Trump not only used this power to recognize Jerusalem as part of Israel,⁶ but he also recognized the Golan Heights as part of Israel and the Western Sahara as part of Morocco.⁷ All of these exercises of the president's recognition power reversed traditional U.S. policy that avoided recognizing Israel and Morocco's sovereignty claims (thus,

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¹ *Zivotofsky v. Clinton*, 566 U.S. 189, 201-02 (2012).

² *Youngstown Co. v. Sawyer*, 343 U.S. 579, 635-37 (1952) (Jackson, J. concurring).

³ *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 32 (2015) [hereinafter *Zivotofsky II*].

⁴ *Id.*

⁵ *See id.* at 11 ("The President is capable, in ways Congress is not, of engaging in the delicate and often secret diplomatic contacts that may lead to a decision on recognition.").

⁶ Proclamation No. 9683, 82 Fed. Reg. 58331 (Dec. 11, 2017).

⁷ Proclamation No. 9852, 84 Fed. Reg. 11875 (Mar. 28, 2019).

raising concerns if not outright opposition in Congress). It also appeared to contradict determinations of the UN Security Council as well as certain principles of general international law.⁸ Seen in this light, the *Zivotofsky* Court did not just protect the prerogative of the president to control foreign policy, but it also shielded that presidential power from any effective check by either Congress or the judicial branch. While it is likely that President Trump's recognition decisions would have taken place without *Zivotofsky*, that decision was undoubtedly easier given the lack of domestic legal hurdles that would have slowed down or complicated his actions.

Less obviously, *Zivotofsky* also removed any lingering doubt about whether international law should operate as a meaningful constraint on exercises of the president's recognition power. While declaring the power an exclusive presidential determination, the Court did not identify any external constraints on the exercise of this power, even international law.⁹ Yet, international law seemed particularly relevant when guiding decisions on territorial sovereignty.¹⁰ In any event, while scholars have long called for international law to regulate the exercise of a state's recognition power,¹¹ the Golan Heights and Western Sahara decisions were both remarkably free of support in traditional sources of international law and in arguable conflict with resolutions from key institutions, like the United Nations Security Council.¹²

This Article will begin by discussing the not entirely but still surprising rise of an unchecked presidential recognition power. As the *Zivotofsky* dissents noted, the Court had to reject various historical precedents supporting a meaningful role for Congress in the determination of state recognition. Such a role for Congress was wholly rejected in *Zivotofsky*. The Article will then review the implications of

⁸ See, e.g., Matthew Lee, *Israel, Morocco To Normalize Ties; US Shifts W Sahara Policy*, AP NEWS (Dec. 10, 2020), <https://apnews.com/article/donald-trump-africa-israel-north-africa-morocco-4279242f6f688d242bad5c7a64e29caf>.

⁹ *Zivotofsky II*, 576 U.S. 1, 17 (2015) (“The formal act of recognition is an executive power that Congress may not qualify.”).

¹⁰ See, e.g., Sir Michael Wood, *Territorial Sovereignty*, ENCYCLOPEDIA PRINCETONIENSIS, <https://pesd.princeton.edu/node/686> (last visited Mar. 25, 2022).

¹¹ See Tom Grant, *How to Recognise a State (And Not)*, in SOVEREIGNTY, STATEHOOD AND STATE RESPONSIBILITY 192, 194, 204 (Christine Chinkin & Freya Baetens eds., 2015).

¹² See S.C. Res 690, ¶ 2 (Apr. 29, 1991); S.C. Res. 497, ¶ 1 (Dec. 17, 1981); Meetings Coverage, Security Council, Security Council Members Regret Decision by United States to Recognize Israel's Sovereignty Over Occupied Syrian Golan, U.N. Meetings Coverage SC/13753 (Mar. 27, 2019).

this unchecked presidential power. It argues that it is possible, even likely, that this power will be used in a way that does not attempt to conform with international law and contradicts prior U.S. policy. The Article concludes with an assessment of the costs and benefits of this unchecked, non-legalistic approach to state recognition by considering its possible effect on U.S. policy towards another territorial dispute that the U.S. is deeply concerned with: the international legal status of Taiwan. It suggests reasons that the presidential power of recognition is a double-edged sword for supporters of Taiwan.

II. *ZIVOTOFSKY* AND THE RISE OF THE UNREVIEWABLE PRESIDENTIAL RECOGNITION POWER

U.S. presidents have long exercised the power to recognize foreign states without apparent regard to the views of Congress or the courts. Famously, President Washington invoked this power in deciding to receive the French Ambassador from Revolutionary France despite concerns about the U.S.’s prior connection with the French Monarchy.¹³ But, as Chief Justice Roberts observed in his dissent in *Zivotofsky*, the text of the Constitution does not plainly support an unchecked and unreviewable presidential recognition power.¹⁴

For instance, the key constitutional provision relied upon by the *Zivotofsky* Court, the President’s duty to “receive Ambassadors and other public ministers,”¹⁵ may have been understood to be more of a ceremonial duty “without consequence to the administration of the government.”¹⁶ Moreover, although the U.S. Supreme Court had never before ruled on the question, historical precedents, ranging from Andrew Jackson to Abraham Lincoln, suggested that neither president believed he possessed an unchecked power of recognition free of any congressional control or review. Similarly, Congress has at times enacted legislation directing the president to recognize a government (the Philippines).¹⁷

¹³ See THOMAS JEFFERSON, *Anas* (Apr. 18, 1793), in 1 WRITINGS OF THOMAS JEFFERSON 226, 226-27 (Paul L. Ford ed., The Knickerbocker Press, 1892); *Cabinet Opinion on Washington’s Questions on Neutrality and the Alliance with France*, in 25 PAPERS OF THOMAS JEFFERSON 570, 570 (John Catanzariti ed., 1992).

¹⁴ See *Zivotofsky II*, 576 U.S. at 63-64 (Roberts, C.J. dissenting).

¹⁵ U.S. CONST. art. II, § 3; see also *Zivotofsky II*, 576 U.S. at 11, 13-14, 24.

¹⁶ THE FEDERALIST NO. 69, at 420 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

¹⁷ See *Zivotofsky II*, 576 U.S. at 70-71 (Scalia, J. dissenting).

Moreover, although the U.S. Supreme Court has suggested that the President possesses an exclusive constitutional power in regard to foreign affairs over which Congress cannot interfere,¹⁸ before *Zivotofsky*, it had never actually invalidated an act of Congress on the grounds that it interfered with that exclusive presidential power.¹⁹ To be sure, presidents throughout history have frequently claimed a broad exclusive presidential power over matters related to their commander-in-chief power and their conduct of foreign affairs. Such claims are most prominently found in signing statements issued by presidents objecting to certain provisions of congressional legislation.²⁰ But, the Court has never actually invalidated a federal statute on such grounds until *Zivotofsky*.²¹

Despite its uncertain historical foundations, it is not all that surprising that the *Zivotofsky* court concluded that the president's recognition power is exclusive. The weight of scholarly opinion seemed to support this position,²² and the executive branches of both the Republican and Democratic parties have consistently argued in favor of an exclusive presidential recognition power.²³ The Court also relied on functional considerations, such as the need for the U.S. to "have a single policy regarding which governments are legitimate in the eyes of the United States and which are not."²⁴ Because of the significance of recognition under international law, and for the conduct of foreign relations, the Court concluded that the President's unique ability to speak with "[d]ecision, activity, secrecy, and dispatch" made the executive branch the natural repository of the recognition power.²⁵ While Congress had broad powers of its own to regulate activities related to foreign

¹⁸ See, e.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637-38 (1952) (Jackson, J. concurring) (noting that "Courts can sustain exclusive Presidential control in such a case only by (sic) disabling the Congress from acting upon the subject.").

¹⁹ See *Zivotofsky II*, 576 U.S. at 61, 66-67 (Roberts, C.J. dissenting).

²⁰ Statement on Signing the Supplemental Appropriations Act, 2009, 2009 DAILY COMP. PRES. DOC. 512 (June 24, 2009) (objecting to law that would "interfere with my constitutional authority to conduct foreign relations" and stating he would not interpret those provisions to limit his conduct of foreign affairs). For a longer discussion, see Julian G. Ku, *Unitary Executive Theory and Exclusive Presidential Powers*, 12 U. PA. J. CONST. L. 615, 617-20 (2010).

²¹ See *Zivotofsky II*, 576 U.S. at 66-68 (Roberts, C.J. dissenting).

²² See JULIUS GOEBEL, *THE RECOGNITION POLICY OF THE UNITED STATES* 97-170 (Kessinger Publishing, LLC. 2008) (1915); see also Robert Reinstein, *Is the President's Recognition Power Exclusive?* 86 TEMP. L. REV. 1, 19 (2013).

²³ See generally Reinstein, *supra* note 22.

²⁴ *Zivotofsky II*, 576 U.S. at 14.

²⁵ *Id.*

affairs, “[i]f the President is to be effective in negotiations over a formal recognition determination, it must be evident to his counterparts abroad that he speaks for the Nation on that precise question.”²⁶

III. THE CONSEQUENCES OF AN UNCHECKED PRESIDENTIAL RECOGNITION POWER

As the leading foreign relations scholar Jack Goldsmith argued, the primary impact of *Zivotofsky* is not on the courts or even on Congress.²⁷ Rather, the decision is significant because it provides a rare judicial support for the executive branch to ignore otherwise valid federal laws that they believe impinge on the executive’s prerogatives.²⁸ While the *Zivotofsky* decision itself could be read narrowly, the executive branch’s lawyers, who face different incentives and norms than judges, “will read it generously in favor of the President in resolving everyday foreign policy disputes between the political branches.”²⁹ Put differently, the Court’s willingness to rule in favor of the President over Congress will likely embolden subsequent presidents to act unilaterally with less concern over legal obstacles in the realm of foreign affairs.

It is therefore not surprising that *Zivotofsky*’s endorsement of exclusive presidential powers in recognition was followed by three of the most controversial exercises of the recognition power in decades. In 2017, newly-elected President Donald Trump flexed the exclusive recognition power when he announced that the United States would now recognize Jerusalem as the capital of Israel.³⁰ While there was ample support for this policy in Congress, the Jerusalem decision reversed decades of U.S. policy on Israel and the Middle East.³¹ Indeed, in the *Zivotofsky* case, the Obama administration sought to uphold the traditional U.S. policy towards Jerusalem against congressional efforts to undermine it.³² The U.S. decision even arguably violated the 1980 U.N. Security Council Resolution (which the U.S. abstained from)

²⁶ *Id.* at 17.

²⁷ Jack L. Goldsmith, *Zivotofsky II as Precedent in the Executive Branch*, 129 HARV. L. REV. 112, 114 (Nov. 10, 2015).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Proclamation No. 9683, 82 Fed. Reg. 58331 (Dec. 11, 2017).

³¹ See generally Jim Zanotti, CONG. RESEARCH SERV., R44 245, *Israel: Background and U.S. Relations in Brief* (2022).

³² See Brief for Appellee at 2 n. 1, *Zivotofsky v. Kerry*, 576 U.S. 1 (2015) (No. 13-628) (citing evidence of “consistent foreign policy to recognize no state as having sovereignty over Jerusalem” since Truman’s recognition of Israel in 1948).

condemning Israel's annexation of East Jerusalem.³³ The shift in policy was undoubtedly driven by the politics of the moment and drew bipartisan support in Congress;³⁴ but, it seems likely that the President's unchecked recognition power made the shift easier.

An even clearer illustration of the potential impact of *Zivotofsky* occurred when President Trump exercised this power again later in his term in 2019 when he unilaterally gave recognition to Israel's sovereignty over the Golan Heights.³⁵ As with Jerusalem, the Golan Heights recognition decision was more controversial globally than it was domestically.³⁶ Still, the decision also reversed decades of consistent U.S. policy and drew broad international criticism.³⁷ Even more dramatically than the Jerusalem decision, the Golan Heights decision seemed to conflict with existing international law principles that the United States had and continues to endorse, specifically, an opposition to conquest as a basis for territorial acquisition.³⁸ Similarly, it conflicts with the U.N. Security Council Resolutions that the U.S. had previously voted for.³⁹ It is striking that the Golan Heights decision—which had

³³ S.C. Res. 478 ¶ 2 (Aug. 20, 1980).

³⁴ Patrick Goodenough, *From Enthusiastic Support to Stinging Criticism, Democrats Divided Over Jerusalem Move*, CNS NEWS (Dec. 7, 2017), <https://www.cnsnews.com/news/article/patrick-goodenough/enthusiastic-support-stinging-criticism-democrats-divided-over>.

³⁵ Proclamation No. 9852, 84 Fed. Reg. 11875 (Mar. 28, 2019).

³⁶ *Reaction to Trump's Declaration On Golan*, JEWISH INSIDER (Mar. 22, 2019), <https://jewishinsider.com/2019/03/reaction-to-trumps-declaration-on-golan/>.

³⁷ See JIM ZANOTTI & CARLA HUMUD, CONG. RESEARCH SERV., IN11081, ISRAEL AND SYRIA IN THE GOLAN HEIGHTS: U.S. RECOGNITION OF ISRAEL'S SOVEREIGNTY CLAIM 3 (2019) (noting that "previous U.S. administrations consistently supported Israel's security interests in the Golan while maintaining the position that final borders were subject to Israel-Syria negotiation."); see also G.A. Res. 76/81, *The Occupied Syrian Golan* (Dec. 9, 2021) (calling on Israel to reverse its annexation of the Golan Heights); *UN Passes Resolution Against Israeli Annexation Plans in Syria's Occupied Golan Heights*, VETERANS TODAY (Dec. 10, 2021), <https://www.veteranstoday.com/2021/12/10/un-passes-resolution-against-israeli-annexation-plans-in-syrias-occupied-golan-heights/> (noting that 149 countries supported the resolution and only 2, the U.S. and Israel, voted against it).

³⁸ See, e.g., Michael R. Pompeo, Sec'y of State Press Release, *Crimea Declaration* (July 25, 2018), <https://ru.usembassy.gov/statement-by-secretary-pompeo-crimea-declaration/> ("Russia, through its 2014 invasion of Ukraine and its attempted annexation of Crimea, sought to undermine a bedrock international principle shared by democratic states: that no country can change the borders of another by force. The states of the world, including Russia, agreed to this principle in the United Nations Charter, pledging to refrain from the threat or use of force against the territorial integrity or political independence of any State.");

³⁹ S.C. Res. 497 ¶ 2 (Dec. 17, 1981).

been the subject of lobbying from pro-Israel congressmen and activists for decades—was made in the post-*Zivotofsky* world.

The last Trump recognition decision, which recognized Morocco’s sovereignty over the Western Sahara, had the least domestic support. Announced at the end of his term, the decision was part of the Abraham Accords that solidified Morocco’s agreement to open normal diplomatic relations with Israel.⁴⁰ In addition to reversing decades of U.S. policy, the Western Sahara decision also drew domestic criticism for undermining traditional U.S. support for the principle of self-determination under international law.⁴¹ Nonetheless, the domestic opposition to the Western Sahara recognition was muted because it arose during the post-November 2020 election period when President Trump was also contesting the results of those elections.⁴² Nonetheless, the Western Sahara decision is the only one of the three Trump’s recognition decisions that his successor, President Biden, has announced is under review for possible reversal.⁴³ Some members of Congress raised serious concerns about the decision and the possible precedent it set for future acts of recognition.⁴⁴ Congress even conditioned military assistance for Morocco in the 2022 fiscal year on a determination that Morocco makes efforts to negotiate peace in the Western Sahara.⁴⁵ This suggests that

⁴⁰ See Steve Holland, *Morocco Joins Other Arab Nations Agreeing to Normalize Israel Ties*, REUTERS (Dec. 10, 2020), <https://www.reuters.com/article/israel-usa-morocco-int/morocco-joins-other-arab-nations-agreeing-to-normalize-israel-ties-idUSKBN28K2CW>.

⁴¹ James A. Baker III, *Trump’s Recognition of Western Sahara is a Serious Blow to Diplomacy and International Law*, WASH. POST (Dec. 17, 2020), <https://www.washingtonpost.com/opinions/2020/12/17/james-baker-trump-morocco-western-sahara-abraham-accords/>.

⁴² 166 Cong. Rec. S7511 at 7531 (Dec. 16, 2020) (noting that Senator Inhofe, a traditional supporter of President Trump, “confess[ed] that when I came down to the floor last week, I was feeling shocked and deeply saddened by the announcement” of Western Sahara recognition).

⁴³ Joseph Stepanky, *Why Biden’s Western Sahara Policy Remains Under Review*, ALJAZEERA (June 13, 2021), <https://www.aljazeera.com/news/2021/6/13/why-biden-administration-and-western-sahara>.

⁴⁴ *Id.*

⁴⁵ See National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81 § 1341(a), 135 Stat. 1541, 2017 (2021) (“Limitation On Support To Military Forces Of The Kingdom Of Morocco For Multilateral Exercises

(a) In General.--None of the funds authorized to be appropriated by this Act or otherwise made available to the Department of Defense for fiscal year 2022 may be used by the Secretary of Defense to support the participation of the military forces of the Kingdom of Morocco in any multilateral exercise administered by the Department of Defense unless the Secretary determines, in consultation with the Secretary of State, that the Kingdom of

Congress might have tried to take a bolder action to reverse President Trump's decision had there been a constitutional pathway to do so.

In sum, there is reason to believe that the Supreme Court's endorsement of an exclusive presidential recognition power has opened the door to more controversial uses of this power than has typically occurred in U.S. history. While there was substantial congressional support for each of the recognitions, there are also indications that domestic political opposition was limited by recognition of the President's unreviewable power in this sphere. Moreover, the nascent movement in Congress to reverse President Trump's Western Sahara decision highlights how Congress might have acted in an alternate constitutional universe.

IV. ASSESSMENT: THE UNREVIEWABLE PRESIDENTIAL RECOGNITION POWER AND TAIWAN

The Middle East and North Africa are not the only areas of the world where the U.S. government might exercise its recognition power in controversial ways. For instance, the U.S. government has generally avoided taking positions on disputed territorial claims in East Asia, and this reticence includes its refusal to take a position on whether Taiwan is part of China.⁴⁶ If anything, U.S. policy has leaned toward accepting China's view that Taiwan is part of China and that there is a credible legal basis for this position.⁴⁷ Yet, in recent years, the U.S. has increasingly found that its political and strategic goals in the region require supporting a separate and possibly independent Taiwan.⁴⁸ U.S. policy has settled on remaining agnostic as to whether Taiwan is part of China. This subtle and complex position was shaped and endorsed by Congress' enactment of the Taiwan Relations Act in 1979 as an effort to

Morocco is committed to seeking a mutually acceptable political solution in Western Sahara.”)

⁴⁶ See John Tkacik, *Taiwan's "Unsettled" International Status: Preserving U.S. Options in the Pacific*, THE HERITAGE FOUND (June 19, 2008), <https://www.heritage.org/asia/report/taiwans-unsettled-international-status-preserving-us-options-the-pacific> (“The United States has thus far demurred to China's claims of sovereignty on the grounds that the Taiwan issue was left “unsettled” at the end of World War II.”).

⁴⁷ *U.S. Relations with Taiwan*, U.S. DEPARTMENT OF STATE (Aug. 31, 2018), <https://www.state.gov/u-s-relations-with-taiwan/> (noting that the U.S. “does not support Taiwan independence”).

⁴⁸ Conor Finnegan, *US Cleans Up Biden's 'Commitment' to Defend Taiwan from Chinese Invasion*, ABC NEWS (Oct. 22, 2021), <https://abcnews.go.com/Politics/us-cleans-bidens-commitment-defend-taiwan-chinese-invasion/story?id=80727528>.

prevent U.S. Taiwan policy from veering too far in favor of China at the expense of Taiwan.

Taiwan is an interesting case study for this situation because Congress has traditionally supported Taiwan’s autonomy and actual independence far more than the executive branch. Members of Congress have introduced both binding and nonbinding resolutions purporting to set U.S. policy on Taiwan’s independence, or the lack thereof.⁴⁹ Indeed, a bill seeking to express the sense of Congress that “the United States should resume normal diplomatic relations with Taiwan” has been introduced in each Congress since 2007.⁵⁰ Although the bill has not garnered a vote in either House, it demonstrates that Congress is likely more open to recognizing Taiwan than presidents of either party.

Seen in this light, one might assume the U.S. president’s unconstrained discretion to wield the recognition power makes what would be a controversial decision to recognize an independent Taiwan more likely. Supporters of such a move might analogize recognizing Taiwan to the decision to recognize Jerusalem, the Golan Heights, or the Western Sahara, since such a decision would also face serious legal and political objections in both Congress and the United Nations.⁵¹ *Zivotofsky* confirms that a president has no limitations on his power to reject such objections and recognize Taiwan despite domestic objections.

An unchecked president, however, could also dash the hopes of Taiwan independence supporters. Traditionally, the executive branch has sought to strengthen ties with China and to limit relations with Taiwan while Congress has generally enacted stronger pro-Taiwan measures than the executive branch may have preferred. An unchecked and unconstrained President could feel empowered to ignore congressional laws, such as the Taiwan Relations Act,⁵² as encroachments on his recognition power. The president could also choose to unambiguously recognize that Taiwan is part of China without any fear of political override. As Professor Goldsmith observed, *Zivotofsky* opened the door to broader executive unilateralism in foreign

⁴⁹ See, e.g., H.Con.Res.21, 117th Cong. (2021); H.Con.Res.117, 116th Cong. (2020); H.Con.Res.124, 115th Cong. (2018); H.Con.Res.29, 113th Cong. (2013); H.Con.Res.122, 112th Cong. (2012); H.Con.Res.18, 111th Cong. (2009); H.Con.Res.73, 110th Cong. (2007).

⁵⁰ *Id.*

⁵¹ *Id.*; see also Sigrid Winkler, *Taiwan’s UN Dilemma: to Be or Not to Be*, BROOKINGS (June 20, 2012), <https://www.brookings.edu/opinions/taiwans-un-dilemma-to-be-or-not-to-be/>.

⁵² Taiwan Relations Act, 22 U.S.C. § 3301 (1979).

affairs.⁵³ While Congress has sought to manage and sometimes even direct presidential policy on Taiwan, a more assertive president could invoke *Zivotofsky* to disregard this long tradition of Congressional oversight. Put differently, the Taiwanese could easily become like the Sahrawi natives of the Western Sahara if a future president is determined to reach an agreement with China. Despite strong congressional support for Taiwan's autonomy (and in some cases its independence), there is no congressional power to block a presidential determination to fully recognize China's claim to Taiwan. The fact that it's the Sarhawis' allies in Congress could not stop or reverse such an action is a cautionary tale for Taiwanese seeking U.S. support.

V. CONCLUSION

In conclusion, the world of an unchecked presidential recognition power reduces the marginal costs of taking aggressive and controversial presidential recognition decisions, such as in the Golan Heights and in the Western Sahara. It also creates a certain level of instability for both domestic and international practice by sharply limiting any role for Congress in overseeing this process. The complicated and delicate questions of Taiwan's legal status illustrate the double-edged nature of this presidential power. While Taiwan independence supporters might welcome such instability, Taiwan's traditional reliance on Congress to limit excessive pro-Chinese policies from the executive branch complicates this assessment since Congress could not stop a pro-China president from formally recognizing China's sovereignty over Taiwan. Either way, supporters of US recognition of Taiwan should prefer a more stable constitutional and political foundation for such a momentous shift.

⁵³ Goldsmith, *supra* note 27, at 121-22.

