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Contours of President Tsai’s Cross-Strait Policy After 2020 Elections

After winning a decisive re-election on January 11 for the presidency of Taiwan, Tsai Ing-wen (蔡英文) has a renewed mandate to lead the country. After an election campaign fueled by growing concerns about malign political interference by Beijing, her victory speech emphasized the need for unity among the political parties in the island-democracy—not only to begin healing the wounds left by a vicious political campaign but to fend off what will surely be a bigger fight ahead. Indeed, President Tsai’s victory speech was not only directed to the country’s electorate; China loomed large in the background of the 2020 elections as Beijing’s saber-rattling and the civil unrest in the Hong Kong Special Administrative Region (SAR) reverberated like constant political tremors throughout Taiwan. In her speech, President Tsai had a clear message for Beijing: resume official communications, renounce the use of force, do not deny the existence of the Republic of China, and the future must be decided by the people of Taiwan. Specifically, President Tsai stated:

“I want to once again call upon the Beijing authorities to remind them that peace, parity, democracy, and dialogue are the key to positive cross-strait interactions and long-term stable development. These four words are also the only path to bringing together and benefitting both our two peoples. “Peace” means that China must abandon threats of force against Taiwan. “Parity” means that neither side of the Taiwan Strait should deny the fact of the other’s existence. “Democracy” means that the future of Taiwan must be decided by our country’s 23 million people. “Dialogue” means that we must be able to sit down and discuss the future development of cross-strait relations.”
The four principles (i.e., peace, parity, democracy, and dialogue) will ostensibly form the foundation of Tsai administration’s cross-Strait policy after the 2020 elections. These principles do not reflect any fundamentally new premise in cross-Strait relations. In fact, President Tsai’s emphasis on “parity” is similar to President Ma Ying-jeou’s (馬英九) principle of “mutual non-denial” that he stated in 2008 when elected for his first term. Indeed, as Ma then explained: “mutual recognition [between the two sides of the Taiwan Strait] is not possible, while mutual denial is unnecessary. Therefore, only mutual non-denial can provide space for interaction.” Specifically, the position implies that “we will not deny its [China’s] existence but we cannot recognize its sovereignty.” While such first principles alone would leave much wanting in terms of specifics, the cross-Strait policy for Tsai’s second administration will likely build on the policy and legal frameworks laid out in her 2016 inaugural address. During her 2016 inaugural speech, President Tsai referred to the political foundation of her cross-Strait policy as:

“The first element is the fact of the 1992 talks between the two institutions representing each side across the Strait (SEF & ARATS), when there was joint acknowledgement of setting aside differences to seek common ground. This is a historical fact. The second element is the existing Republic of China constitutional order. The third element pertains to the outcomes of over twenty years of negotiations and interactions across the Strait. And the fourth relates to the democratic principle and prevalent will of the people of Taiwan.”

The key question now is whether Beijing will show creativity, demonstrate flexibility, and adjust its failed policy and approach to cross-Strait relations. It bears mentioning that after Tsai’s election victory in 2016, Beijing appeared to initially flirt with a more conciliatory approach when the Foreign Minister of the People’s Republic of China (PRC), Wang Yi, gave a speech in Washington, DC in February 2016, that did not refer to the so-called “1992 Consensus”—a controversial tacit agreement made between the Nationalist Party (Kuomintang, or KMT) and the Chinese Communist Party (CCP) that both sides belonged to One China. Instead, Wang focused on the fact that Taiwan’s “own constitution” (他們自己憲法), under which Tsai was elected, provides that Taiwan and the “mainland” belong to one and the same China. Most notably, Wang expressed the hope that Tsai would, “in her own way” (以她自己的方式) accept that constitutional provision. That hope was quickly dashed in March 2016 when Beijing re-established diplomatic relations with The Gambia.

Despite the olive branch in President Tsai’s inaugural address, which referred to the both ROC Constitution and the Act Governing Relations between the People of the Taiwan Area and the Mainland Area (臺灣地區與大陸地區人民關係條例)—which is the law of the land and governs cross-Strait relations—Beijing did not reciprocate. Rather, Beijing snubbed her inaugural address as an “incomplete test paper” and has worked unceasingly to unilaterally undermine the cross-Strait status quo through a multifaceted pressure campaign that aims to isolate Taiwan internationally and divide it internally.

In light of the fact that Beijing has shown Tsai little goodwill during the first four years of her administration, there does not appear to be any expectation that she would make any further concessions during her second term, much less that Taipei would or should negotiate with Beijing on the latter’s terms based on Beijing’s “One-China Principle” and its “one country, two systems” corollary. It is in this context that the determination by the US administration to permit the vice-president elect, Dr. William Lai, to visit DC in a non-official capacity to attend the National Prayer Breakfast and meet with lawmakers and officials as consistent with the US “One-China policy” and a reflection of the growing trust and support for Taiwan in Washington, DC. It should be noted that the vice-president elect is the most senior political figure from Taiwan to be permitted to visit DC prior to taking office since the switch in diplomatic relations in 1979. While President Tsai has committed to maintaining the “status quo,” in the face of ever-increasing pressure, it may become increasingly difficult for the Tsai administration to continue to chart a pragmatic, consistent, and responsible cross-Strait policy.

The main point: The four principles (i.e., peace, parity, democracy, and dialogue) that President Tsai Ing-wen outlined in her election victory speech will ostensibly form the foundation of her second administration’s
cross-Strait policy. They will also be reinforced by the legal and policy frameworks laid out in her inaugural address in 2016.

Correction: An earlier version of this article inaccurately referred to Tsai's victory statement as literally calling for Beijing to recognize the existence of the ROC.

Military Propaganda Across the Taiwan Strait

Only days before the lunar new year ushering in the year of the Rat—when people on both sides of the Taiwan Strait prepared to return home to spend time with family for the holidays—a provocative image of a People’s Liberation Army (PLA) military command post on Chinese social media quickly made its way into the information space of Taiwan. In the image, several dozen PLA soldiers sat surrounding a large topographic map in the middle of a large room—the map appeared to be of the southern coastline of Taiwan. The military station’s name is the Southern Island-Landing Battle Group Command Post (南部登島作戰群指揮所) and a Southern Island-Landing Battle Group Landing Craft Loading Map was plastered on one of the interior walls. One of the routes on the maps shows the PLA simulating the capture of Kinmen, then Penghu, and marching on the south of Taiwan, while another picture seems to show the routes of the PLA after landing on the island.

In another example, maps of Taiwan appeared in a photograph of a PLA exercise taken from PLA’s Eastern Theater Command on June 8, 2018. In that image, at an exercise conducted by the PLA 73rd Army Air Defense Unit (第73集團軍防空分隊) in Beichenshan (北辰山), Xiamen, appeared two blurred maps that appear to show military deployments appearing in the background of the exercise command post. One was a deployment map of the fortress in the Kinmen area, and the other was a schematic diagram of the radar station and military airport on Taiwan—which caused quite a media stir in Taiwan at the time.

The provocative image reportedly appeared—simultaneously—on several well-known Chinese social media outlets such as Weibo (微博), Tianfu Community (天府社區), and Dingsheng Forum (鼎盛論壇) on January 19. The topographic map was visibly covered with black marks, which appear to be the positions that the PLA would seize and possible routes. Although the image has not been directly attributed to the Chinese government, it follows a pattern of PLA offensive cognitive operations to influence public opinion in Taiwan. For instance, in December 2016, the PLA Air Force’s (PLAAF) official Weibo account released an image of a PLA HK-6 bomber in the sky and Chinese media sources suggested that the background was of the highest mountain peak in Taiwan.
These non-exhaustive but illustrative examples, which also include short videos, reflect the PLA’s cognitive domain operations. According to research conducted by RAND analyst Nathan Beauchamp-Mustafaga, the goal of cognitive domain operations “is ‘mind superiority’ (制腦權, zhinaoquan), using psychological warfare to shape or even control the enemy’s cognitive thinking and decision-making.” In recent years, Chinese military propaganda have also been complemented by increased PLA military activities encircling Taiwan. According to former Pentagon official Mark Stokes, executive director of the Project 2049 Institute, “the PLA has a history of using airpower as an instrument of coercive persuasion against Taiwan. The PLAAF began flights over the Taiwan Strait in 1996, and extended operations to the centerline in 1999” during previous periods of heightened cross-Strait tensions. Stokes added that “diminishing Taiwan’s air space would play into its strategic objectives and claims over disputed territo ries in the region.” Taken in their totality, the military propaganda and the substantial increase and greater frequency of exercises may be seen as a form of enhanced coercive diplomacy.

In the preliminary analysis, while the image of the topographic map has yet been attributable to the Chinese government, it does fit the hallmark of PLA cognitive domain operations. It is highly unlikely to indicate military action in the near or even medium term and appears intended for its psychological effects in light of President Tsai’s electoral victory on January 11. According to Carl Schuster, a former US Navy captain, cited by CNN while commenting on a Chinese military propaganda video directed at Taiwan released in early 2019: “It [the video] is trying to convince them they cannot match China’s military power, that defeat is inevitable and no one, not even the United States, will come to their aid.” For its part, visible US military presence in the area has helped to militate against the coercive effects of these PLA cognitive domain operations. Indeed, the US Navy has ramped up its naval transits through the Taiwan Strait. The US Navy has conducted nine transits through the Taiwan Strait in 2019—the most since 2016 when US warships transited through the waterway 12 times.

The main point: A recent image that appeared on Chinese social media of a PLA command station with a topographic map of the southern coastline of Taiwan is consistent with the Chinese military’s cognitive domain operations.

Sino-Japanese Relations in 2020 and Implications for Taiwan

By: I-wei Jennifer Chang

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Japan was one of a handful of governments around the world that congratulated President Tsai Ing-wen (蔡英文) on her re-election on January 11, 2020. Japanese Foreign Minister Toshimitsu Motegi sent an official congratulatory message to President Tsai lauding the island’s democratic election. Tokyo’s congratulatory message to Tsai hit a nerve with Beijing, whose preferred China-friendly candidate Han Kuo-yu (韓國瑜) lost to the incumbent president. In response to Motegi’s statement, the Foreign Ministry of the People’s Republic of China (PRC) called on Japan to “abide by the “One-China” principle,” though Tokyo has not changed its official stance on Taiwan’s status since the 1970s. Tsai’s re-election comes at the heels of Chinese President Xi Jinping’s (習近平) upcoming state visit to Japan scheduled for April, and at a time when Japanese Prime Minister Shinzo Abe strives to improve relations with Beijing while maintaining close ties with Taipei.

Japanese Prime Minister Shinzo Abe has steered Japan’s overall policy stance to improve relations with China
since assuming the position in 2012. Yet, a Japanese scholar mentioned to this author that Tokyo, which values its friendship with Taipei as well as Taiwan’s role in Japanese security, will not sacrifice its relations with Taiwan in order to strengthen relations with China. [1] According to this scholar, the Abe administration is content that Tsai was re-elected because her continuation as Taiwan’s president benefits Japan’s security prospects. [2] If Taiwan were to come under Chinese military influence by electing a pro-China Taiwanese administration, that would change Japan’s security situation and make US power projection more difficult, said the scholar. [3] Furthermore, Tokyo’s congratulatory message to Tsai does not harm Japan’s economic and security relations with China. [4] The Abe administration’s balancing act between China and Taiwan reflects the strategic and economic importance of both sides of the Taiwan Strait to Japan’s national interests.

**Shifting Indo-Pacific Geoeconomics**

President Donald J. Trump’s protectionist trade policies have cast a shadow over Washington’s relations with both Japan and China and have created a new scenario where Tokyo and Beijing see the benefits of mending differences and bolstering economic and trade cooperation. The Trump administration’s imposition of tariffs on Japanese steel and aluminum in March 2018, coupled with the US withdrawal from the Obama-era Trans-Pacific Partnership (TPP) shortly after Trump’s inauguration in January 2017, has exacerbated trade frictions with its ally Japan. Meanwhile, the Chinese economy has suffered under the two-year US-China trade war. Trump’s belligerence against foreign trade partners has injected new momentum for the two Asian powers to find new opportunities for economic cooperation.

**A “New Era” of Sino-Japanese Relations: From “Competition to Cooperation”**

Beijing and Tokyo have heralded the “new era” of Sino-Japanese relations that aims to replace the competitive undertones towards enhancing collaboration. “From competition to cooperation, the Japan-China relationship is shifting to a new phase now,” said Abe, speaking in Beijing in October 2018. “We are neighbors; we’re partners who will cooperate with each other, rather than be a threat to each other,” the Japanese prime minister said. At the eighth trilateral summit meeting of China, Japan, and South Korea in Chengdu in December 2019, Abe, calling China and South Korea “precious dear partners,” said Japan wants to work with both countries and the Association of Southeast Asian Nations (ASEAN) to “take trade to a new level.”

However, Abe continues to emphasize that concrete progress must be made on resolving maritime disputes in the East China Sea before there can be any major improvement in bilateral relations. “No true improvement in Japan-China ties can be achieved without stability in the East China Sea,” Abe said to Chinese Premier Li Keqiang in Chengdu late last year. In 2019, Japanese sightings of Chinese naval vessels entering the contiguous zone around the Senkaku/Diaoyu Islands reached a record high of over 1,000 incidents. While the Japanese government is in consensus that the country cannot accept a hegemonic China, the military and economic spheres of the government differ on how to deal with a rising China, said Satoru Nagao, a visiting fellow at the Hudson Institute. [5] Xi’s visit to Japan is very important from an economic perspective, Nagao said. [6] Both countries strive to temporarily shelve the longstanding maritime dispute, which continues to be a thorn in bilateral relations, so that they can reap mutual economic benefits.

Xi’s state visit to Japan—scheduled for April but could be postponed due to outbreak of the Wuhan coronavirus—is expected to continue this conciliatory tone in Sino-Japanese relations. Japanese news reports indicate that both sides might issue a new political document that will lay the foundation for their future relations and could have implications for Taiwan. Japan and China signed four political documents in 1972, 1978, 1998, and 2008 that have shaped bilateral relations over the past five decades. In the 1972 Communiqué, Japan stated it “fully understands and respects” the People Republic of China’s (PRC) position that Taiwan is an inalienable part of Chinese territory, without fully adopting the PRC’s stance as official Japanese policy.

According to Chinese news reports, Abe and Xi also agreed to a four-point consensus in November 2014 and a ten-point consensus in June 2019 to promote ties. During his trip to China in December 2019, Abe mentioned the fifth document, saying that Japan and China “will step up efforts to bring results in each
area.” The fifth political document that may emerge from Xi’s visit to Japan will likely be under construction until the last minute and will not change Japan’s official stance, namely the “One-China” policy, said the Japanese scholar. [7]

**Taiwan-Japan Relations: Friendly Partners with Trade Frictions**

In the Japanese foreign minister’s congratulatory message on President Tsai’s re-election, he called Taiwan “an important partner” and “a precious friend to Japan.” The foreign minister also stated, “We share basic values and enjoy close economic relationship and people to people exchange. The Government of Japan will work toward further deepening cooperation and exchanges between Japan and Taiwan, based on the existing position to maintain Japan-Taiwan relations as a working relationship on a non-governmental basis.” It is beneficial for Japan to strengthen official relations with China as well as unofficial ties with Taiwan, said a Japanese scholar. [8] To deter Chinese military expansion, it is important for Japan to strengthen relations with Taiwan, he said. [9]

In the realm of unofficial ties, Taiwan and Japan share robust economic ties. Taiwan is now Japan’s fourth-largest trading partner, while Japan ranks among Taiwan’s top trade partners following China, ASEAN, and the United States. Bilateral trade totaled USD $67.3 billion in 2019. Japanese investment in Taiwan reached USD $1.5 billion in 2018, a dramatic jump of more than 138 percent from 2017. Taiwanese investment in Japan climbed to USD $620 million in 2018, an increase of 206 percent compared to the previous year.

**President Tsai has called on Japan** to smooth Taiwan’s entry into the Japan-led Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), as part of Taipei’s broader efforts to participate in multilateral economic institutions. The free-trade agreement among 11 countries (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) that came into effect in December 2018, CPTPP was formed after the United States withdrew from TPP in 2017. Some current and former Japanese politicians and government officials have voiced their support for Taiwan’s accession, but Tokyo has not formally endorsed Taiwan’s entry into CPTPP. During former Premier William Lai’s (賴清德) visit to Japan in May 2019, Hajime Sasaki, a lawmaker from Japan’s ruling party, Liberal Democratic Party (LDP), welcomed Taiwan’s participation in the second wave of CPTPP negotiations. Taiwan’s economic standing makes it a suitable member of CPTPP, said Tadashi Ikeda, former chief representative of the Interchange Association, now called the Japan-Taiwan Exchange Association (日本台灣交流協會), Tokyo’s representative office in Taipei.

However, friction over Taiwan’s ban on Japanese agricultural exports from Fukushima and four other prefectures following the Fukushima Daiichi nuclear disaster in 2011 may hinder Japanese support for Taiwan’s efforts to join CPTPP. Despite Abe’s hope that Tsai would end the import ban when she entered office in 2016 and Abe’s overtures to discuss a regulatory agreement on nuclear food safety, Taiwan’s government has not changed its stance. Furthermore, Taiwanese citizens voted in a November 2018 referendum to maintain the government’s prohibition on Japanese agricultural imports from the nuclear-affected areas. South Korea and China have more restrictive food bans related to the Fukushima disaster, but were those countries to ease their restrictions, Taiwan would be put in an awkward position as a Japan-friendly country that still maintains a comprehensive ban on Japanese food imports.

At a time when Xi and Abe both desire closer economic cooperation, Taipei also should seek to strengthen trade links and overall cooperation with Japan. In 2019, Japan joined the United States and Taiwan as a coordinating partner in the Global Cooperation and Training Framework (GCTF). Tsai has said the GCTF could be a springboard for further collaboration with Japan, including on bilateral trade agreements and building support for Taiwan’s entry into CPTPP. Moreover, Taiwan’s government should carefully watch developments in Sino-Japanese relations and ensure that Taipei retains Japanese support as Beijing seeks to thwart Tsai’s ambitions to raise Taiwan’s international profile and carve out more international space for the island.

**The main point:** Japan wants to both improve relations with China while maintaining robust economic and unofficial ties with Taiwan. Economic tensions arising from Taiwan’s import ban on Japanese agricultural goods may dampen Tokyo’s support for Taipei’s entry
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into the Japan-led Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

[2] Ibid.
[3] Ibid.
[4] Ibid.
[6] Ibid.
[8] Ibid.
[9] Ibid.

Global Emergency Highlights Need to Rethink Taiwan’s Exclusion from the United Nations

By: J. Michael Cole

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The global coronavirus (2019-nCoV) outbreak that was first reported in Wuhan, China, in late 2019 has brought into sharp relief the inadequacy of a United Nations-led multilateral system that continues to exclude Taiwan and its 23.7 million people. At the heart of Taiwan’s inability to both participate in emergency meetings and to receive and share timely information as a member of the community of nations is United Nations General Assembly Resolution 2758. Passed on October 25, 1971, UNGA 2758 stipulates that the People’s Republic of China (PRC) is “the only legitimate representative of China to the United Nations.” (That same year, Chiang Kai-shek (蔣介石) decided to pull the Republic of China from the UN over his refusal to countenance the existence of “two Chinas.”).

Old Thinking

Various countries, as well as a number of heads of specialized UN agencies, have adhered to a strict understanding of the Resolution to resolve that Taiwan, over which the PRC argues it has sovereignty, ought not to have a seat at the table and should instead, like any other province or Special Administrative Region of the PRC, receive its information from Beijing. The PRC’s influence over several UN agencies, where in recent years it has succeeded in installing its own people, added to lack of understanding among officials and governments of Beijing’s politicization of global issues as part of its designs on Taiwan, accounts for the general silence that has characterizes the response by the international community to an exclusion that otherwise should, for its egregiousness, cause major concern.

Besides leaving out 23.7 million Taiwanese in the cold, this blind spot in the international system exposes millions of global citizens who, every year, visit Taiwan or transit its airspace—a major hub in the Indo-Pacific region. Adherence to UNGA 2758 and, as Beijing maintains, its inherent “One-China” principle, has also resulted in Taiwanese carriers being barred entry into countries (as Vietnam and Italy initially did) that had shut the door to travel from the PRC. It did not matter that UNGA 2758 never stipulated that Taiwan falls under the jurisdiction of the PRC: politics, rather than common sense, prevailed. Such subservience to Beijing prompted Taiwan’s Minister of Foreign Affairs, Joseph Wu (吳釗燮), to tell a press conference on February 2 that the leadership at the World Health Organization (WHO) “lives in a parallel universe.”

When confronted with the argument that, in times of crisis such as that which currently poses a threat to the international community, ways should be found to allow Taiwan to participate in emergency meetings, officials, scientists, and governments have fallen back to UNGA 2758 or believed Beijing’s propaganda to the effect that it is looking after the wellbeing of “Taiwanese compatriots.” Upon being shown that such rhetoric is misleading, agencies have on occasion reacted by accusing its critics of spreading “fake news” or orchestrating a campaign of disinformation. This is what the Montreal-based International Civil Aviation Organization (ICAO) did in late January, resulting in ICAO communications officials blocking several dozen Twit-
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...ter accounts within a matter of days, including those of well-known academics and journalists. The unfortunate incident prompted the US Department of State to issue a stern statement on February 1:

“The United States is deeply concerned about actions taken by the International Civil Aviation Organization (ICAO) to suppress freedom of expression and curtail important discussion of Taiwan’s legitimate role in international issues. Blocking Twitter users who make reference to Taiwan’s participation in international organizations, particularly given the global response to the coronavirus crisis, is outrageous, unacceptable, and not befitting of a UN organization. Taiwan has a relevant and credible voice on transnational health issues, and the United States has long supported its active engagement in international venues, including ICAO, where its expertise can be beneficial. We call upon ICAO to immediately and permanently reverse its practice of blocking discussion of Taiwan on its Twitter properties and make clear publicly its understanding that freedom of expression must always supersede the political insecurities of member states.”

Although various governments had made the case for Taiwan’s inclusion in international organizations prior to the outbreak of 2019-nCoV, the severity of the outbreak, along with memories of the impact that the politicization of health had had on information sharing during the Severe Acute Respiratory Syndrome (SARS) epidemic in 2003, compelled governments to be more vocal in their support for Taiwan. Within the space of 24 hours, both Japanese Prime Minister Abe Shinzo and Canadian Prime Minister Justin Trudeau stated on the record late January that Taiwan should be granted participation at specialized international agencies as required to ensure the safety of its citizens and to plug any gap in the global monitoring system.

In the first instance of a Canadian prime minister publicly stating that it is Canada’s policy to support Taiwan’s participation, Trudeau said, “We believe that Taiwan’s role as an observer in World Health Assembly (WHA) meetings is in the best interest of the international health community and also is an important partner in the fight against this [2019-nCoV] epidemic.” The following day, Abe stated that “It will be difficult to main-
tain health and prevent further infections in this region if [Taiwan] is excluded for political reasons.”

**Embracing Reality**

Whether calls by heads of state will result in a policy change at the UN regarding Taiwan’s participation remains to be seen. What is certain is that stubborn adherence to a UN Resolution enacted nearly half a century ago, or the contention that Taiwan should accept its fate because Chiang Kai-shek decided to pull out of the UN in 1971, without mention of the fact that Chiang was a dictator who did not arrive at this decision via democratic means, is as myopic as it is dangerous in the current geopolitical context. In other words, it is grand time the international community adapted to reflect reality: and the reality is that leaving out the world’s 20th largest economy and a country with a population equal to that of Australia, is foolhardy. Since 2016, a number of countries—including the United States, Canada, Japan, and European states—have worked behind the scenes to ensure Taiwan’s “meaningful participation” (meaning, as an “observer”) at various specialized UN agencies, such as the World Health Assembly’s annual WHA, ICAO, Interpol, and others. Despite the welcome support, such efforts failed to counter Beijing’s influence at the global body, which it exploited as part of its punitive efforts against Taiwan and the Tsai Ing-wen (蔡英文) administration.

Countering Beijing’s grip on UN institutions could help ensure fairer treatment for Taiwan by the global body. In late January, Foreign Policy reported that the US Department of State had appointed Mark Lambert as special envoy to counter Chinese influence at the UN. Beyond this, alternative measures to ensure Taiwan’s participation must be considered. This includes, as Michael Mazza proposed in the previous issue of the Global Taiwan Brief, imposing costs on China for refusing to shift its policy on the matter, as well as using carrots and sticks at the UN (stopping or increasing funding to UN institutions) to bring about change.

Another option, and one that would become necessary if the above measures failed to bring about a change of heart at the UN, would be for a grouping of member states to create a mechanism outside the UN through which Taiwan could access and share relevant information under the purview of specialized agencies.
Already, Taiwan and some of its democratic partners have when necessary adopted ad hoc measures to share information from UN institutions with Taiwan. This occurred during the 2009 World Games in the southern port city of Kaohsiung, and again during the 2017 Taipei Summer Universiade. In the latter case, important information on the whereabouts of suspected international terrorists, which Taiwan could not access due to Beijing’s interference at Interpol, was communicated to Taiwan’s law enforcement via the UK and Europol. And in a welcome development, on Feb. 8 the WHO announced that Taiwanese health experts would be able to participate online in a forum on the coronavirus held by the global body in Geneva on Feb. 11-12. Rather than rely on ad hoc information sharing agreements with Taiwan, a more permanent mechanism should be implemented to normalize communication with Taiwan. Beijing would likely express displeasure at the creation of such a body, but absent not sharing information with a number of countries, there is little that it could do to prevent its implementation.

What should not be done, however, is to create an alternative to the UN system, however disillusioned many may have become with the global body. Splitting the planet into two camps would go counter to the aim of ensuring that every country and region has the ability to tap into and to contribute to global monitoring systems.

**The main point:** In today’s hyperconnected world, the international community cannot afford to create unnecessary blind spots in the global monitoring system. Leaving Taiwan out in the cold based on decisions made nearly half a century ago or over the insecurities of the regime in Beijing imperils us all. Barring membership of Taiwan at UN institutions, alternative mechanisms must be considered.

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**Closing Loopholes in the Legal Framework for Government Surveillance in Taiwan**

By: Hsin-Hsuan Lin

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All governments engage in some form of surveillance—including in Taiwan. According to a South China Morning Post news article, government authorities in the island democracy—mostly its intelligence and police units—reportedly made close to 70,000 demands from 2015 to 2016 to social media and internet service providers to disclose the content and parties’ communication, as well as location tracking and personal information of their clients without their knowledge. Government surveillance of communication and the legal requirements of telecommunication companies in assisting such surveillance in the country are regulated by the Communications Protection and Surveillance Act (通訊保障及監察法, hereafter Communications Act). [1] As the primary statutory basis in the communication domain, the Communications Act delegates surveillance authority in government agencies. Indeed, Article 1 indicates that the Communications Act “is enacted to safeguard the freedom of private communication and privacy, to protect from unlawful intrusion, and to ensure national security and maintain social order.” [2]

**What Is the Communications Protection and Surveillance Act?**

In accordance with the Communications Act, there are two lawful methods for government agencies to intercept personal information: (1) through an interception warrant sought by a prosecutor and issued by the court; and 2) surveillance initiated by intelligence agencies. The interception warrant generally needs to be sought by a prosecutor upon request by the police and issued by the court before communication interception can commence. In addition, there must be a reasonable belief that the content of the communication subject to surveillance is relevant to the case be-
The court must issue the warrant within 48 hours; otherwise, the interception must end to guarantee legal due process.

The Communications Act also provides a statutory basis for intelligence surveillance. The intelligence agency does not require a warrant from the court when intercepting the communications of foreign governments or cross-border terrorist organizations for national security purposes. Article 7 of the Communications Act stipulates that when it is necessary to conduct surveillance in order to collect intelligence on foreign forces or their agents, hostile or otherwise, to protect national security, the head of the authority overseeing national intelligence may issue the interception warrant on the following communications:

1. Domestic communications of foreign forces, hostile foreign forces, or their agents.
2. Cross-border communications of foreign forces, hostile foreign forces, or their agents.
3. Off-shore communications of foreign forces, hostile foreign forces, or their agents. [4]

As such, the intelligence agency does not appear to need an interception warrant from the court to intercept the communications of foreign governments and cross-border terrorist organizations for national security purposes. Under such circumstances, the head of the national intelligence agency, the National Security Bureau (NSB), is able to authorize the intercept.

Structural Deficiency of Current Regulatory Framework

Relying solely on these two methods presents several structural deficiencies. As reported by the Taiwan Association for Human Rights (TAHR), Taiwan has used wiretapping to obtain metadata and network content over many years in violation of digital human rights for the purpose of conducting criminal investigations. Increased surveillance activity is occurring in tandem with developments in Taiwan’s surveillance and wiretapping technology capabilities. It was also revealed that South Korea and Japan had begun cooperation and exchanging classified information with the “Five Eyes” intelligence partners—a UK-US agreement to share signals intelligence after World War II, a partnership which later expanded to include Australia, New Zealand and Canada—for providing access to the external communications of China, Hong Kong, and Taiwan.

Surveillance is generally a large-scale collection activity that potentially affects many more people than only those who are being targeted. Any organization conducting surveillance should apply the legal principles of probable cause, due process, and civilian oversight to government surveillance activities to protect human rights. The government needs to make its activities more transparent and accountable in open courts. Nevertheless, Ho Ming-syuan (何明諠), the lead author of the TAHR report, said that “a great number of device users had not been informed about the surveillance demands and were left in the dark.” Ho provided further critical evidence that “most authorities simply skipped the legal procedures by writing to the operators, asking for the information they wanted.”

The Implications for National Security Policy in Taiwan

While surveillance within its area of jurisdiction is to be expected, do Taiwan’s law enforcement authorities have sufficient authority to implement cross-border surveillance? How can government authorities and legal professionals ensure the right balance between national security and the rule of law without jeopardizing national security interests? The promulgation of five corresponding amendments with respect to national security (國安五法), which includes the Criminal Code, Classified National Security Information Act, National Security Act, and Act Governing Relations between the People of the Taiwan Area and the Mainland Area are an initial attempt to supplement the legal loopholes of Taiwan’s national security policy.

As illustration of the loopholes, take for instance the recent measures to strengthen national security and impose heavier punitive measures on those who undermine democracy under renewed threats from China. The Legislative Yuan amended the criminal code defining collusion as working with an “enemy state” or “foreign state,” which technically does not include China, given that Taiwan’s Constitution does not define China as a foreign country. In other words, Taiwanese
prosecutors could not charge individuals for offenses listed in the Criminal Code if they allegedly spied for or colluded with China, Hong Kong, and Macau—because none of the three areas are categorized as a “state” as would by definition be constitutionally required. As such, the National Security Law was amended in June 2019 to explicitly include China as a political regime that is tantamount to an “enemy state” or “foreign state.” Furthermore, Article 2-1 of the Amended National Security Law prohibits the “detection, collection, consignment, or delivery” of confidential information and documentation in the form of pictures or articles. The Law also prohibits people from developing organizations in Taiwan for the official use of a foreign country. This includes military and political party activities, or any organizations established and assigned by other organizations, including civil organizations, which are used by foreign countries and the People’s Republic of China. [5] Article 2-2 of the National Security Law also expands national security protection to any Taiwanese-based server, banning people from prying, collecting, consigning, or delivering confidential electronic documents in the public sector. [6] These amendments may be seen as a positive attempt to confront the normative confusion of China in the Taiwanese legal system, particularly in the area of counter-espionage activities.

In accordance with the Communication Act, Taiwan’s national security apparatuses and legal system should cooperate to address with greater agility the dynamic challenges emanating from the Chinese Communist Party (CCP) malign influence operations. With the enactment of this series of legal revisions with respect to national security, which strengthen the authorities’ competency to impose penalties and sanctions on those identified as spies, it is reasonable to predict that the capacity of foreign and cross-border surveillance will be expanded for the purpose of identifying and prosecuting hostile infiltration activities and malign influence operations. As such, it is necessary to consider how to incorporate the Communication Act in the context of these counter-intelligence initiatives.

Yet, Taiwan lacks a specialized and legal command policy-decision making mechanism tasked with intelligence affairs. Unlike the US system, which is equipped with FISA (Foreign Intelligence Surveillance Act) and FISC (Foreign Intelligence Surveillance Court), a legal statute and a judicial body specifically designated to authorize surveillance targeting of those who pose a threat to national security. This may have three implications. First, the absence of a court-reviewed warrant may cause concerns about due process and the invasion of people’s freedom of expression and communication. Second, the statute does not stipulate which authorities and procedures should be followed when cross-border surveillance is exercised, which may cause even greater concerns about the legitimacy and legality of such activities. Third, the current corresponding provisions—for both court-issued and intelligence surveillance—mainly focus on the dimension of data collection, neglecting the subsequent data use once the data has been disseminated or leaked. The subsequent dissemination and combined data use of other personal information could lead to greater human rights infringements, which has been consistently disregarded in a brazen fashion by law making and law enforcement agencies in Taiwan.

The main point: Taiwan is at a digital and legal crossroads between technology, national security, and privacy protection. Closing loopholes in the legal framework for government surveillance in Taiwan is crucial for finding a balance between national security and the rule of law on the one hand, and national security interests on the other.

Mr. Lai Goes to Washington

By: Michael Mazza

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Last week, Taiwan’s vice president-elect, William Lai (賴清德), visited the United States, meeting with lawmakers and officials in Washington and attending the National Prayer Breakfast, an event organized by a non-profit organization and attended by senior US officials, including the president. Formerly Taiwan’s premier, Lai is currently a private citizen and thus his trip was, technically, fully consistent with past practices. Nonetheless, the visit has had its critics. For instance, a prominent scholar at the Carnegie Endowment for International Peace, Michael Swaine, tweeted out his concerns:

“This is a particularly stupid provocation of Beijing. Lai is a very committed proponent of Taidu [Taiwan independence]... Why engage in seeing where [China’s] red line lies on this sensitive issue? It makes no sense other than to insult Beijing.”

Swaine’s concerns are misplaced and, arguably, his criticism is exactly backward. As the vice president-elect, Lai’s pro-independence leanings should encourage US leaders to engage with him—not least to better understand his views and positions. Moreover, Beijing’s claim to a veto over whom Washington may welcome to the United States makes it all the more important that US leaders meet with whomever they see fit, regardless of Chinese objections. Indeed, these are two of the three reasons that Lai’s trip is appropriate and important.

First, coming at a time when a viral outbreak has Taiwan feeling the dangerous effects of China’s years-long pressure campaign, welcoming the vice president-elect to Washington has enormous symbolic importance. For citizens of Taiwan, the signs of its international isolation have been plain to see in recent days. The World Health Organization (WHO), which has labeled Taiwan a high-risk area despite only a handful of coronavirus infections. Why? Because the organization considers the island to be part of the People’s Republic of China (PRC). Two weeks ago, ICAO’s twitter account blocked numerous users—including journalists, congressional staffers, and think tank analysts (this writer among them)—for tweeting about Taiwan’s exclusion from the organization.

It matters immensely, then, that the highest ranking official-in-waiting to visit Washington in decades was met with open arms. It matters that Washington did not grant Beijing a say regarding whom it permits entry to the United States. Figuratively and literally, Lai’s interlocutors conveyed to the people of Taiwan that they do not stand alone—a message heard loud and clear in Beijing as well.

Second, Lai’s visit presented an opportunity for the Tsai administration to pass messages to the Trump administration, and vice versa, at a high level. Observations, concerns, and requests conveyed via Lai are likely to be taken more seriously, and perhaps acted upon more quickly, than if they were conveyed via Taiwan’s diplomatic staff in Washington. In his various meetings, Lai only had time to make a limited number of points. His hosts can be sure that those points were carefully selected and accurately reflect the Tsai administration’s priorities. American clarity on those priorities is useful as Tsai gets ready to begin her second term.

Third, it is precisely because of Lai’s past comments regarding independence that it is important for US leaders to meet with him. Fairly or not, pro-independence politicians make Washington nervous. But Lai will be Taiwan’s vice president come May and may well have a political future beyond Tsai’s second term; the United States cannot simply ignore him. Rather, it behooves American lawmakers and officials to seek a greater understanding of Lai’s views on independence and his preferred approach to managing ties with the People’s Republic. During her 2016 presidential campaign, Tsai worked hard to convince official Washington that she would be a responsible steward of cross-Strait relations. It makes sense for Lai to do so as well, to reassure skeptics concerned that he may be willing to play with fire in the Strait, and to build relationships with potential future partners within the executive and legislative branches.
**Lai’s Companion**

William Lai understandably drew all of the attention during his visit last week, but he did not travel alone. It was notable that Hsiao Bi-khim (蕭美琴) accompanied him. Hsiao, who last month lost her bid for reelection to the Legislative Yuan, has served a total of 14 years (divided between two stints) in the legislature. She has educational and professional experience in the United States, served as an adviser to President Chen Shui-bian in the early 2000s and, during the first Ma Ying-jeou term, ran the Democratic Progressive Party’s (DPP) international affairs department.

Now, Hsiao is out of a job. But her visit to Washington suggests that may not be the case for long. A leader on foreign policy issues within the DPP and a known quantity in Washington, it would not be at all surprising for Tsai to tap Hsiao for a senior role within her administration. This is, of course, speculation, but it is, perhaps, the best explanation for Hsiao’s visit. A private citizen at the moment, there was no reason for the Trump administration to justify limiting her travels in the United States or her engagement with officials. As with vice president-elect Lai, she had an opportunity last week to deepen relationships and forge new ones with American leaders that have been supportive of US-Taiwan relations and with whom she may need to work, if only indirectly, should she join the Tsai administration in a formal capacity.

**Pick up the Phone**

Given Lai’s role as Taiwan’s next vice president and Hsiao’s potential high-level job during Tsai’s second term, this may be the most significant visit by two jobless, private Taiwanese citizens to the United States in quite some time. The question, of course, is what comes next. Ideally, this unofficial visit will be followed by more official high-level contacts.

Importantly, there is, at the present moment, a pressing need for such contact. According to tweets from Senator Cory Gardner and Senator Marco Rubio’s press office, Taiwan’s exclusion from the WHO and ICAO was one topic of conversation during their meetings with Lai and Hsiao. Given the ongoing coronavirus outbreak, it is not at all surprising that this is a priority for Taipei. (As I argued previously for the *Global Taiwan Brief*, it should be a priority for the United States as well.) There may not be a short-term solution to this problem, but with Beijing prioritizing its political interests vis-à-vis Taipei over human lives, now would be a good time for National Security Advisor Robert O’Brien to call David Lee, his counterpart in Taiwan, to consult on efforts to contain the novel coronavirus. In particular, O’Brien should ask if Washington can take steps to speed up the sharing of WHO information, if there are ways the United States and Taiwan could be more closely coordinating, and if there is anything the United States can do to provide assistance to Taiwan citizens stuck in areas of the PRC under lockdown.

An O’Brien call to Taipei would also give Lee an opportunity to share his assessment of China’s overall approach to Taiwan in the lead-up to and aftermath of Tsai’s second inauguration. Will Beijing escalate its years-long pressure campaign, ease it, or stick to its current path? How does Lee assess China’s Taiwan policy might shift in the event of a prolonged coronavirus outbreak in the PRC? And how does Lee assess the potential effects of the virus on Chinese domestic politics? Answers to these questions should assist Washington as it prepares for a variety of possible contingencies in Asia.

**An Envoy for the Inauguration?**

Finally, Lee might take the opportunity to invite the Trump administration to send a representative to Tsai’s inauguration on May 20, 2020. In 2018, the US Congress passed and President Trump signed the Taiwan Travel Act, encouraging the administration to send senior administration officials and military officers to Taiwan for meetings with counterparts. The administration passed up a prime opportunity to do so last summer, when the new American Institute in Taiwan office opened. A presidential inauguration is an even better opportunity. In an ideal world, the president would dispatch his secretary of state or national security adviser to represent him at the event. Although that cannot be ruled out, it seems unlikely, as typical concerns over Chinese reactions would likely dissuade such a move.

In light of current events, however, a less traditional representative might be appropriate. In particular, the secretary of health and human services or, barring that, the commissioner of the Food and Drug Adminis-
tration or the director of the Centers for Disease Control, would be a fitting choice. Such an envoy would, given rank, convey the importance the Trump administration places on the relationship with Taipei and, given role, convey appreciation for the seriousness of the public health challenge facing Taiwan (should it not yet be resolved).

With campaign season well underway in the United States and with forthcoming personnel changes in Tsai’s second term, there is some uncertainty as to what might be in store for US-Taiwan relations this year. Hopefully, last week’s visit from William Lai and Hsiao Bi-khim dispelled some of that uncertainty and paved the way for more substantial official contacts in the months ahead.

The main point: William Lai and Hsiao Bi-khim’s visit to the United States was appropriate and valuable to both Washington and Taipei.