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The Heritage Foundation's new approach to China recognizes that US-Taiwan relations and deterrence in the Taiwan Strait are vital US national interests. On March 28, Heritage released a new policy report titled *Winning the New Cold War: A Plan for Countering China* (hereafter referred to as the "Plan"). Representing a landmark shift in Heritage's approach to national security threats emanating from the People's Republic of China (PRC), the Plan acknowledges that the Chinese Communist Party (CCP) has undertaken a Cold War strategy against America—and accordingly, that the PRC is more appropriately seen and dealt with as an adversary, rather than as a competitor.

The Plan offers a comprehensive policy agenda for securing American prosperity in the face of the greatest external threat the United States has faced since the collapse of the Soviet Union. Among over 100 policy recommendations for the government, the business community, and civil society, the US-Taiwan partnership stands among the Plan's most critical elements. Taiwan-related policy recommendations are found throughout the Plan, in four overarching categories:

- Prioritizing Taiwan among competing US interests
- Arming Taiwan with critical defense systems
- Recalibrating the policy of strategic ambiguity
- Non-military forms of deterrence

Each of these four critical issue areas for US policy towards Taiwan and the PRC will be addressed in further detail in the sections below.

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Prioritizing Taiwan

The Plan acknowledges that the Indo-Pacific is the priority theater for US foreign policy and national security, and that "[n]owhere else in the world do the interests of China and the United States collide as directly or dangerously as they do in the Taiwan Strait." The Plan notes that "[a]n armed conflict over Taiwan, whether the United States is directly involved or not, would be distinct from any conflict that generations of younger Americans have experienced" in terms of its economic harm to the United States.

Heritage finds that PRC forced reunification with Taiwan would "cement the PLA's control of the Western Pacific, threaten critical interests of the US and key allies, disrupt the global supply of semiconductors, and give the CCP unprecedented leverage over vital sea lines of communication and, therefore, the global economy." Further, "US credibility among its regional allies and partners would be dealt a mortal blow, as would broader US efforts to thwart China's global ambitions." In light of these unparalleled stakes, the Plan clearly identifies "[d]eterring the CCP's aggression toward Taiwan" as "an apex priority," and makes recommendations to prioritize allocating US resources toward this challenge.

The Plan aims to prioritize the United States' own resources and capabilities for the purpose of deterring the People's Liberation Army (PLA) from aggression more generally, and preventing conflict in the Taiwan Strait specifically. To that end, the Plan recommends restoring conventional deterrence in the Indo-Pacific by immediately adopting and resourcing a strategy of deterrence by denial. To begin implementing this approach, the Plan suggests a block purchase of naval vessels, the development and deployment of ballistic and cruise missiles formerly prohibited by the Intermediate-Range Nuclear Forces Treaty, and Congressional support for unfunded priorities identified by United States Indo-Pacific Command (INDOPACOM).

Heritage's Plan also focuses on prioritizing resources necessary to harden Taiwan's own defenses. This is particularly critical given the significant backlog in deliveries of systems sold to Taiwan under Foreign Military Sales (FMS), as well as increased stresses on the defense industrial base and US munitions stockpiles. The Biden Administration has thus far not explained what actions it will take to resolve delayed FMS deliveries to Taiwan and increase munitions production more broadly. Requests to Congress for supplemental spending for Ukraine have not included an analysis of either potential tradeoffs regarding Taiwan, or requested funding for Congressionally authorized Taiwan security

programs.

Heightening concerns that deterrence in the Taiwan Strait is not being appropriately prioritized, the administration has yet to respond to Congressional requests for a plan to implement the <u>Taiwan Enhanced Resilience Act</u> (TERA). To address this shortcoming, the Plan suggests that "[w]hen the administration sends capabilities that are backlogged for Taiwan to other places, it should be required to justify the decision to Congress with full transparency about the trade-offs to deterrence in the Taiwan Strait."

Arming Taiwan

Given the scale of US interests in Taiwan's security and the need to prioritize those interests appropriately, the Heritage Plan also makes specific recommendations for how the United States can help arm Taiwan in the immediate term and over the near future. Heritage's suggested policy actions would implement authorities created by Congress in the Taiwan Enhanced Resilience Act, which became law in December 2022 as part of the Fiscal Year (FY) 2023 National Defense Authorization Act (NDAA).

Heritage recommends utilizing the presidential drawdown authority included in TERA "to arm Taiwan with critical munitions to fill the gap left until delayed FMS platforms are delivered." Numerous critical defense capabilities sold to Taiwan under FMS have been delayed for years, and will not be fully delivered until after the 2027 deadline reportedly set by General Secretary Xi Jinping (習近平) for the PLA to be prepared to wage a successful invasion of Taiwan. The use of drawdown authority to provide systems acutely affected by FMS delays, such as Javelin and Stinger missiles, could reinforce deterrence in the immediate term and give Taiwan's forces a head start on folding these systems into regular training and operations while awaiting FMS deliveries.

The Plan also recommends using TERA authorities to begin security cooperation activities with Taiwan beyond FMS. "Congress must fund the Taiwan security assistance programs authorized in [TERA]," which were not included in the FY 2023 omnibus spending bill. The Foreign Military Financing (FMF) authorities provided by TERA could be used for a wide variety of activities to strengthen Taiwan's security, including direct commercial contracting with US defense firms and bilateral training and exercises, as well as the production of munitions locally in Taiwan. These programs represent a critical tool to help Taiwan "pursue the optimal strategies and military platforms necessary to defend the island."

Clarifying Strategic Ambiguity

Heritage's Plan recognizes that "[t]he United States is progressively losing its once-decisive advantage in the balance of strategic and conventional military forces." This shift is prompting a major rethinking of the underlying assumptions of US policies that have maintained stability in the Taiwan Strait, including the policy of strategic ambiguity. Heritage does not recommend changing the United States' "One-China Policy" itself, or adopting a bilateral defense agreement with Taiwan. However, the Plan does suggest taking initial steps towards strategic clarity to reinforce deterrence as the status quo changes in the Taiwan Strait.

Heritage suggests that "the US government should have a declaratory policy that unambiguously states its commitment to the peaceful resolution of disputes across the Taiwan Strait." Such a United States "commitment" would begin clarifying Section 2 of the Taiwan Relations Act, which provides that "peace and stability in the area are in the [...] interests of the United States," and that "any effort to determine the future of Taiwan by other than peaceful means" would be "of grave concern to the United States."

To substantiate this adjustment towards strategic clarity, the United States must demonstrate "the capacity to support the defense of Taiwan" as well as "the resolve—and above all the capability—to support Taiwan against a Chinese invasion, up to and including direct US military intervention." The plan concludes that "[t]he most effective way to prevent a Chinese invasion of Taiwan is to convince Beijing of US military superiority and its strong commitment to defending Taiwan," without the need for changes to the United States' "One-China Policy."

Enhancing Non-Military Deterrence

The Heritage Plan also acknowledges that non-military dimensions of deterrence are essential for preserving Taiwan's autonomy. US administrations have been excessively sensitive to performative outrage by the CCP, and have perpetuated futile efforts to reduce CCP aggression by restricting "symbolic" cooperation with Taiwan in favor of "substantive" outcomes. This false distinction can contribute to the CCP's efforts to marginalize Taiwan. Heritage finds that "[t]he more that Taiwan enjoys the diplomatic space and engagement commensurate with its economic and geopolitical clout, the more the CCP will fear the international consequences" of its escalating belligerence.

Heritage recommends prioritizing US efforts to push back "on China's efforts to distort the United States' 'One-China Policy'"

and "the PRC's distortion of [UN General Assembly] Resolution 2758." The Plan recommends the United States support Taiwan's engagement in international fora, including through participation in international organizations, and "encourage other free nations to enhance their bilateral diplomatic and economic engagements with Taiwan, including establishing representative offices and free trade agreements." The Plan also recommends that the United States set an example by negotiating a bilateral free trade agreement with Taiwan and accepting Taiwan's request to change the name of its diplomatic facility in Washington to the "Taiwan Representative Office."

Conclusion

Heritage's Plan for Countering China reflects a substantially reworked approach to PRC national security threats, and although many of the Plan's policy proposals are new, Heritage's long-standing support for Taiwan persists. Deterrence in the Taiwan Strait is a vital US national interest, and the policy recommendations discussed here—prioritizing Taiwan in US policy, arming Taiwan urgently, reassessing strategic ambiguity, and supporting Taiwan internationally—will be key elements of Heritage's work to win the New Cold War.

The main point: The United States' partnership with Taiwan, and restoring deterrence in the Taiwan Strait, are vital US national interests. The new Heritage Foundation report *Winning the New Cold War: A Plan for Countering China* recognizes that the PRC is acting as an adversary of the United States and offers policy recommendations in four critical areas of US-Taiwan relations.

Ma Ying-jeou Trip Brings the CCP's United Front Cultivation of Taiwan Youth Back into the Spotlight

By: John Dotson

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In mid-March, former Taiwan President Ma Ying-jeou (馬英九) announced that he would <u>travel to China</u> from March 27—April 7, marking the first time that a former chief executive of the Republic of China (Taiwan, ROC) would set foot in the People's Republic of China (PRC) since 1949. The stated purpose of the trip was <u>ostensibly personal</u>, with Ma making plans to visit the tombs of ancestors in Hunan Province for the Ching Ming Festi-

val (清明節)—as well as to visit historical sites associated with the history of the Kuomintang (KMT, 國民黨), such as the Sun Yat-sen Memorial in Nanjing and World War II historical sites in Shanghai and Chongqing.

However, as Ma is also a former KMT chairman—who continues to be an <u>influential power broker within the party</u>, as well as an <u>outspoken critic</u> of the Tsai Administration's policies regarding cross-Strait relations—the announcement inevitably drew <u>speculation and criticism</u> that the trip was also political in nature. Lending credence to these claims, Ma's trip followed close on the heels of a February <u>visit to the PRC by KMT Vice-Chairman Andrew Hsia</u> (夏立言)—a trip in which Hsia met with senior Chinese Communist Party (CCP) officials, including Politburo Standing Committee (PSC, 中央政治局常委會) member <u>Wang Huning</u> (王滬寧) and Song Tao (宋濤), director of the CCP Central Taiwan Affairs Office (TAO, 中共中央台辦).

While the full agenda of Ma's trip is unclear, he has held at least some political meetings, such as a March 30 meeting in Wuhan with Song Tao. Ma's trip is also noteworthy in terms of timing, in that it has overlapped with a 10-day trip by President Tsai Ing-wen (蔡英文) for official visits to Guatemala and Belize, as well as "transit stops" in the United States. Whether the timing was intentional or not, the optics of the two contrasting trips—with Ma on a tour promoting Chinese identity and cross-Strait fence-mending, and Tsai on a visit to shore up ties with diplomatic allies and the United States—have been striking.

Irrespective of the political controversy surrounding Ma's trip, it contained another element that has received relatively less attention, but is arguably just as significant in terms of understanding the PRC's united front policies toward Taiwan. Both Taiwan and PRC media have indicated that Ma has been accompanied on his trip by a delegation of Taiwan university students, ostensibly for the purpose of "youth exchange" activities. This latter point is a major focus of the CCP's united front work directed towards Taiwan, and is worthy of a closer look.

Ma Ying-jeou's Trip to China and Student "Exchanges"

PRC media has emphasized that alongside the visit by Ma—invariably referred to as a "former Taiwan regional leader" (台灣地區前領導人), rather than "president"—a parallel purpose of the trip would be "exchange between young students and mainland students" (青年學子與大陸學生交流), with Ma being accompanied on his travels by a delegation of university students from Taiwan. Upon landing in Shanghai on March 27, Ma was quoted as stating that: "Apart from going to make offerings to my ancestors, I am also taking Taiwan university students to

the mainland for exchanges [...] hoping to improve the current cross-Strait atmosphere through the enthusiasm and interaction of young people, so peace can come even faster and sooner to us here." For its part, the PRC Central Taiwan Office <u>praised the planned exchanges</u>, stating that "[s]trengthening exchange and contacts [between] cross-Strait youth can add new energy to cross-Strait relations and peaceful development, infusing [them] with youthful energy."

The student delegation accompanying Ma Ying-jeou's trip reportedly consists of university students affiliated with the "Big Nine Academy" (大九學堂), an initiative sponsored by the Ma Ying-jeou Foundation (MYJF, 馬英九基金會). The program is open for applications from university students who "identify with the Republic of China, with enthusiasm for public service," and is intended to "encourage youthful friends to participate in public policy, [and] develop leadership talent." Prior to Ma's departure, MYJF Executive Director Hsiao Hsu-tsen (蕭旭岑) commented that the trip was non-political in nature, and that "[t]he purpose of the former president's first trip to China is to honor his ancestors and give Taiwanese students an opportunity to meet with their Chinese counterparts." Thus far, the MYJF itself appears to have offered little further information regarding the student exchange activities held in conjunction with Ma's trip.

For their part, PRC media outlets have offered very limited details, with the *Global Times* indicating that the Taiwan student delegation consisted of about 30 members of the "Big Nine Academy," who would engage in discussion seminars and other exchange activities with students from Wuhan University (武漢大學), Hunan University (湖南大學), and Fudan University (復旦大學) in Shanghai. PRC media coverage of Ma's sojourn in Wuhan and its environs mentioned aspects of Ma's visit—in



Image: Ma Ying-jeou speaks before a "student exchange" forum held on March 30 at Wuhan University. (Image source: <u>Shanghai Observer</u>)

cluding a cruise on the Yangtze River, a visit to an exhibition touting Wuhan's success in battling the COVID-19 epidemic, and a visit to the Xinhai Revolution – Wuchang Uprising Memorial Hall (辛亥革命武昌起義紀念館). This coverage also mentioned a student forum at Wuhan University, with descriptions that were long on sloganeering—"the more we engage in contact, the more we develop friendly feelings" ("多一份接觸,就多一份情誼")—but devoid of details regarding the agenda, or any substantive discussion as to what the students may have actually discussed in the course of their "exchange."

"Youth Exchanges" as a Core Element of CCP United Front Policy Towards Taiwan

Although Beijing has frozen out any dialogue with Taiwan's current Democratic Progressive Party (DPP, 民進黨)-led govern ment—which it regularly derides as consisting of "Taiwan independence' separatist elements" ("台獨"分裂分子)—it has, at the same time, emphasized what it terms "people-to-people exchanges" (or "among the people exchanges," 民間交流) with selected groups in Taiwan. Such exchanges are nominally non-governmental in nature; however, from the PRC side they are carefully controlled and stage-managed by organizations within the CCP's "united front work" (統戰工作) bureaucracy. Within this framework, "youth exchanges" (青年交流) are a major focus of united front work directed at cultivating and coopting groups within Taiwan society. [1]

Many illustrative examples exist of the CCP's intensified propaganda-cum-cultivation efforts focused on "Taiwan youth" (臺灣青年) in recent years. For example, at the "14th Cross-Strait Forum" (第十四屆海峽論壇) convened in July 2022 in the city of Xiamen, a centerpiece of the event was the reading of an open letter to Taiwanese young adults nominally written by CCP General Secretary Xi Jinping (習近平). In addition to praising the forum's participants for their "bonds of affection with the mainland," the letter reiterated key themes of this united front outreach: namely, that young adults from Taiwan should take up opportunities to live and work in the PRC. The letter promised that the government would:

[C]reate positive conditions for Taiwan youth to study in the mainland, to take up work, to be entrepreneurs, [and to find] life with many benefits. [We must] allow more Taiwan youth to understand the mainland, [and] proceed together in one heart with mainland youth, cooperating and striving [together], persevering, moving rapidly, allowing youth to blossom in the great course of realizing the rejuvenation of the Chinese people and the Chinese dream.

In CCP united front-organized outreach events, a common practice is to feature testimonial speeches by selected "Taiwan youth" to discuss the lucrative business opportunities they have found in the PRC. Several of these individuals—many of whom are identifiably linked with CCP-controlled front organizations—are featured regularly in PRC state media as exemplars of financial success. [2] Many examples of this approach could be cited, but one such recent event was a January 10 forum for Taiwan youth held in Beijing, hosted by CCP Central Taiwan Office Director Song Tao. Under a theme of "strengthen exchange cooperation, deepen integrated development, create a shared glorious future" (加強交流合作,深化融合發展,共創美好未 來), the forum hosted "31 Taiwan youth engaged in the arts, education, the medical field, finance, law, [or] managing enterprises, or studying at Tsinghua University, Beijing University, Central Nationalities University, or other institutions of higher learning."

In addition to the usual boilerplate comments from Song Tao—such as the need to "resolutely oppose 'Taiwan independence' separatism and foreign interference" (堅決反對"台獨"分裂和外來干涉)—the meeting featured scripted testimonials about the economic opportunities available in the PRC: "In the forum, six Taiwan youth representatives spoke about their experiences



Image: A September 2021 screen capture from the Chinese government propaganda news website China Taiwan Net. Each of the three pictured news stories is focused on "Taiwan youth" (台青) involved in activities in the PRC. Clockwise, from left: "Guizhou Taiwan Office Actively Works at the Grassroots Level for the Masses and [Shows] Taiwan Compatriots the True Story;" "2021 'Ocean-Seas Feeling' Tianjin-Taiwan Youth Innovation Online Salon Successfully Conducted;" and "Taiwan Youth in Hangzhou Investigate [the Beautiful Countryside], Assist Rural Development and Advance Education Exchanges." (Image source: www.taiwan.cn, September 14, 2021)

and realizations in coming to the mainland to work, live, study, and undertake new endeavors; [and how they] looked forward to cross-Strait exchange, integrated development and devoting their efforts to national reunification, [and] realizing their dreams in the course of China's modernization."

Conclusions

Although there is nothing intrinsically wrong with youth exchange activities—and travel can certainly be a positive thing, in terms of opening up new experiences and insights for young people—any participant engaging in an "exchange" activity in the PRC should go into the process with their eyes wide open. Such programs are never genuine "people-to-people" exchanges; by contrast, they are processes carefully controlled by the CCP's united front bureaucracy, and are oriented towards advancing CCP propaganda themes and policy goals. In this context, the student delegation accompanying Ma Ying-jeou will almost certainly be approached by their PRC interlocutors in the terms of the CCP's larger effort to cultivate "Taiwan youth"—that is, as part of a broader effort to engage in cultivation-cum-cooptation of persons whom the united front system hopes will be useful for advancing CCP goals in the future. Whether they may be traveling in the company of a former president or not, "Taiwan youth" are a key targeted demographic within the CCP's broader subversion efforts directed at Taiwan.

The main point: A delegation of university students from Taiwan has accompanied former ROC President Ma Ying-jeou on a 10-day trip to the PRC. These students, like other young adults, are a key group targeted in the CCP's united front efforts directed at Taiwan.

[1] The four specified sub-categories of the party's work in this area are: "youth exchanges" (青年交流), "grassroots exchanges" (基層交流), "cultural exchanges" (文化交流), and "economic exchanges" (經濟交流). See: "Expanding People-to-People Exchanges, Deepening Integrated Development" [擴大民間交流 深化融合發展], People's Daily, July 15, 2022, http://tw.people.com.cn/BIG5/n1/2022/0715/c14657-32475917. html.

[2] For two examples of earlier articles that sketch out this phenomenon, see: John Dotson, "The China Cross-Strait Academy: A Case Study in CCP United Front Cultivation of Taiwan Youths and Media Manipulation," *Global Taiwan Brief* volume 6, issue 13 (June 30, 2021), https://globaltaiwan.org/2021/06/the-china-cross-strait-academy-a-case-study-in-ccp-united-front-cultivation-of-taiwan-youths-and-media-manipulation/; and John Dotson, "The CCP's 14th Straits Forum and United Front

Outreach to 'Taiwan Youth'," *Global Taiwan Brief* volume 7, issue 15 (July 27, 2022), https://globaltaiwan.org/2022/07/the-ccps-14th-straits-forum-and-united-front-outreach-to-taiwan-youth/.

The European Union Crushes Taiwan's Hopes for a Bilateral Investment Agreement

By: Michael Malinconi

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A bilateral investment agreement (BIA) between Taiwan and the European Union (EU) has long been a sensitive issue for both parties. Taiwan has historically advocated for such a deal in an effort to further institutionalize its growing economic ties with Brussels. Nevertheless, prospects for a transformative BIA between Brussels and Taipei recently suffered a significant setback when EU diplomats told Taiwanese officials that an agreement is unnecessary.

The Deal that Never Was

At an <u>event</u> held at the European Parliament on March 8, 2023, Taiwan's Vice Foreign Minister Roy Chun Lee (李淳) <u>stated</u> that a "bilateral investment agreement is top of our agenda, and has been for many years." Indeed, Taiwan President Tsai Ing-wen (蔡英文) has declared on multiple occasions her desire to accelerate a long-stalled BIA with the EU. The Taiwanese government is convinced that the agreement would <u>provide the confidence</u> to "expand investment and engagement, advance shared interests and values, and help shape a more sustainable, secure, and prosperous world."

Ultimately, after years of delays, the BIA has been rejected by EU officials, who reiterated that there is no economic rationale for such an agreement. Gunnar Wiegand, the European External Action Service (EEAS) managing director for the Asia and the Pacific, stated at the same event that the European Commission had considered a bilateral agreement under previous leadership, but that it had not progressed because "you negotiate new agreements when you need new agreements." EU officials also pointed to a lack of demand from the business community, which traditionally prefers to deepen economic relations with Taiwan through cooperation on a technical level, rather than through more headline-grabbing agreements.

The EU's decision means two things. First, amid a turbulent geo-

political environment, the European Commission wants to be cautious about moves that could anger the People's Republic of China (PRC). Second, the EU believes that economic relations with Taipei are well-addressed under the current framework. EU officials have explained that since conditions for European investors in Taiwan are already stable, a BIA would be redundant. Instead, the EU is demonstrating its political engagement with the island through other means.

This view is not shared by many European lawmakers. "I don't agree with that, nor does the overwhelming majority of the European Parliament, which has voted in favor of seeking a Taiwan BIA several times," said Member of the European Parliament (MEP) Reinhard Bütikofer, chair of the European Parliament's delegation for relations with the PRC. "The reason for that stance is very clear. Not only would such a deal benefit both sides economically, but it would also contribute to enhancing the political support for Taiwan as a partner democracy against PRC threats." [1]

The idea of an EU-Taiwan BIA first <u>arose in 2015</u>, though this was never followed by actual talks. At the time, the European Union was negotiating the controversial <u>Comprehensive Agreement on Investment</u> (CAI) with the PRC. Concurrent EU-Taiwan negotiations on a similar agreement could potentially have created a beneficial synchronization for Brussels's placement strategy in the region. The conclusion of investment agreements with both side of the Taiwan Strait within a short period would have created a three-way win for the EU, the PRC and Taiwan. The CAI, however, following the worsening of EU-PRC relations, has never been ratified.

Nonetheless, the PRC has reiterated that any formal pact with Taiwan would represent a breach of the EU's "One-China Policy." In its complaints, Beijing often refers to Sir Christopher Soames' 1975 <u>statement</u> that "the [European Economic] Community does not entertain any official relations with Taiwan or have any agreements with it." However, this claim has been firmly dismissed by Nabila Massrali, an EU spokeswoman, <u>who told the South China Morning Post</u> that "it is the EU which assesses what falls within the scope of its One-China policy." Accordingly, she claimed that the bloc could "strengthen trade and investment ties with Taiwan."

Furthermore, the PRC itself has an <u>Economic Cooperation</u> <u>Framework Agreement</u> (ECFA) with Taiwan, while other countries like <u>New Zealand</u> and <u>India</u> have already signed trade and investment agreements with Taipei. The US and Canada have also entertained the notion of <u>moving closer</u> toward bilateral

trade and investment agreements with Taiwan.



Image: President Tsai Ing-wen greets MEP Reinhard Bütikofer while receiving a visiting European Parliament delegation in December 2022. (Image source: CNA)

Taipei's Wrath

A few days after the event, the Taiwanese media outlet Central News Agency (CNA) <u>strongly rebuked</u> the EU for its decision, criticizing the justification presented: "[I]f dialogue could replace more institutional bilateral agreements, wouldn't the EU's agreements with other countries be in vain?" Taiwan's Representative to the EU, Remus Li-Kuo Chen (陳立國), <u>bitterly commented on the issue to Politico</u>: "While the US and Canada are currently negotiating economic and trade agreements with Taiwan, we hope that the EU will also look to adopt concrete and creative ways to deepen its cooperation with Taiwan."

More importantly, the same article warned that such decision by Brussels could impact its chip diplomacy. The EU has recently expressed the desire to strengthen its high-tech supply chain, particularly relating to semiconductors, while increasing its autonomy. After the Russian invasion of Ukraine, the worsening of EU-PRC relations, and rising concerns about tensions in the South China Sea, Brussels wants to reduce its dependence on Russia and the PRC for energy and raw materials and secure its supply of high-tech goods. In pursuit of these goals, the EU has been trying to attract Taiwanese chipmaking investments, especially from Taiwan Semiconductor Manufacturing Company (TSMC, 台灣積體電路製造股份有限公司). The world's biggest semiconductor manufacturing company is currently deciding whether or not to build a semiconductor plant in Germany, which could help to meet strong European demands for TSMC's specialty processes and mitigate potential geopolitical barriers.

In the wake of the EU's statement about the BIA, these plans could be threatened.

The EU's Growing Relations with Taiwan

Despite its dismissal of a BIA, Brussels sees Taiwan as an important, like-minded partner, and has included the island in its discussions of how to strengthen its economic resilience in the face of Beijing's economic coercion. The economic links between the two sides are strong and growing.

In early June 2022, Brussels and Taipei upgraded their "<u>EU-Taiwan Trade and Investment Economic Dialogue</u>." By the end of 2021, the EU was the largest foreign investor in Taiwan, representing over 25 percent of Taiwan's total foreign direct investment (FDI) stocks, with a total value of over USD \$50 billion. In 2021 alone, the EU's FDI flows into Taiwan amounted to USD \$1.4billion (18.4 percent of Taiwan's total FDI inflow), higher than that from either the United States (9.4 percent or USD \$0.7 billion) or Japan (9.7 percent). The EU's FDI stock in Taiwan mainly originated from the Netherlands (72.9 percent), whose investments to build a more secure and resilient global supply chain in the semiconductor industry have been massive, though Germany (8.8 percent) and Denmark (6.5 percent) have also played major roles.

However, amongst Taiwan's FDI stock in the world, the EU plays a limited role. By the end of 2021, the EU held only 2.2 percent (USD \$8.0 billion) of Taiwan's worldwide FDI stock. The Netherlands held the largest Taiwanese FDI stock in the EU, accounting for 53.0 percent of the total investments, followed by Hungary (17.2 percent) and Luxembourg (8.0 percent). Nonetheless, Taiwanese investors continue to demonstrate confidence in the EU market and the potential for greatly expanded Taiwanese investment in the bloc. Taiwan's financial and insurance industries attracted 89.9 percent of EU-bound investment, followed by its manufacturing sector (5.4 percent) and wholesale and retail industry (2.9 percent). Taiwanese investments in the EU are steadily moving toward more high-tech, service-oriented fields, such as internet and communications technology (ICT) and financial services.

Brussels is also Taiwan's <u>fourth-largest trading partner</u>, with a bilateral exchange worth roughly USD \$64 billion, including a 29.7 percent increase in 2021. A significant portion of this trade includes Europe's <u>expertise in in the production of specialized chemicals and machine tools</u>, crucial in the chip industry.

Politically, EU institutions have increasingly recognized Taiwan's importance in recent years. The <u>EU Strategy for Cooperation in</u>

the Indo-Pacific, adopted in 2021, urges the Commission to sign a BIA and acknowledges Taiwan as a major partner in the Indo-Pacific region. Specifically, it states that "the EU will also pursue its deep trade and investment relationships with partners with whom it does not have trade and investment agreements, such as Taiwan." In recent years, the European Parliament has passed multiple non-binding resolutions and recommendations urging the Commission to begin consultations on a BIA in order to enhance the partnership. The European Parliament's approach has often seemed to differ from that of the other EU institutions. The reason lies in how each institution views the triangular relationship between Brussels, Beijing, and Taipei. While the Parliament considers the EU-Taiwan BIA to be a separate issue from the EU-PRC BIA, the Council and the Commission regard these two agreements as interlinked.

Since the 1990s, the EU has <u>adopted diverse forms of recognizing Taiwan in economic and political arenas</u> under its "One-China Policy." Many EU member states have already entered into economic agreements and other forms of cooperation with Taiwan, such as agreements on tax evasion, investment promotion, or cultural exchange. Nevertheless, such agreements include limited—if any—legal obligations, and are generally negotiated at the national or subnational level through representative offices.

Taiwan's admission to the World Trade Organization (WTO) in 2002 institutionalized economic interactions with the EU under a multilateral framework, and marked a key milestone in the relationship. Specifically, the WTO provides a forum for the island to act as a separate customs territory. By utilizing WTO mechanisms, the EU could potentially negotiate and conclude a BIA with Taiwan and further institutionalize the economic ties between the two. First, the BIA could increase the extent of the EU's recognition of Taiwan's governmental authority to enact international agreements, and promote the mutual recognition of governmental measures on investment protection, promotion, and facilitation. Second, the BIA's dispute settlement provisions could galvanize recognition of Taiwanese investors in the international economic order.

A BIA to Further Deepen Relations

While the EU's desire to avoid angering the PRC is understandable, it should be acknowledged that Taiwan plays—and will continue to play—an important role in future supply chain networks, especially in the semiconductor sector. With a <u>Global Value Chain participation index of 60.8</u>, Taiwan is one of the most deeply embedded actors in global value chains. [2] The EU should unequivocally recognize that a discussion on an EU-Tai-

wan BIA would not only have implications for trade interests, but also for the role of trade in geopolitical relations and for fostering the EU's values.

An investment agreement would facilitate the development of a more liberal, transparent, and well-regulated market, as well as enhance investors' understanding of each other's market regulations and mitigate strict local content requirements for certain sectors. Moreover, Taiwan could offer fresh business opportunities for the EU's medical technology industry and world-leading green energy sector. The Taiwanese government has put in place a range of ambitious green energy production goals, including a vast increase of its offshore wind capacity. Further investments in the island's energy sector could represent a great opportunity for European firms, who have already won large proportions of the development projects from now until 2025.

However, the EU cannot expect to have the cake (i.e., prosperous economic relations with Taipei without a BIA) and eat it too (i.e., enjoy a growing cooperation in the semiconductor industry). As an interim solution, Taiwan and the EU will continue holding discussions on less politically charged areas, such as technical barriers, digital economy, and an agreement on artificial intelligence regulatory or standardization cooperation. With Taiwan's expertise in critical technologies, and the mutual desire to diversify away from the PRC in the long-term, starting a dialogue on resilient supply chains should also be a priority.

An EU-Taiwan BIA could not only promote the EU's economic and geopolitical interests by increasing EU-Asia connectivity, but it could also demonstrate Brussels' solidarity with like-minded trade partners and contribute to the resilience of European supply chains. The EU should recognize that Taiwan's economic prosperity and security are deeply connected to European interests.

The main point: The EU is not willing to bring forward the project of a bilateral investment agreement with Taiwan. The decision has more to do with Brussel's fear of angering the PRC than with the benefits of bilateral cooperation with Taipei. Nonetheless, the refusal to discuss a BIA could have serious repercussions for Taiwanese investments in Europe and for the EU's chip diplomacy.

- [1] Comments by MEP Reinhard Bütikofer to the author.
- [2] This metric measures the percentage share of global value chains relative to value added in gross exports.

The "Citizen Judge Act" and Its Implications for Major Criminal Cases in Taiwan's Legal System

By: Maria Wilkinson

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In January of 2023, Taiwan began to implement the provisions of the <u>Citizen Judge Act</u> (CJA, 國民法官法), in accordance with legislation passed by the Legislative Yuan (立法院) in 2020. The new law will make for a fundamental change in the way that major criminal cases—particularly potential death penalty cases—are decided by the courts. Before 2023, a criminal case at the district level would have only been heard by three professional judges: a head judge and two supplementary judges. As provided for under the <u>Citizen Judge Act</u>, selected cases will now be adjudicated by a collaborative or mixed court system: one that retains the three appointed professional judges, but adds six lay judges—similar to the <u>Japanese</u> or <u>German</u> models of lay jurors—who are to be drawn from the general public.

For the next three years, these citizen judges will take part in cases in which the defendant is accused of intentionally committing a crime that caused the death of a person, and which therefore could potentially be punishable by death. A guilty verdict will require the support of six of the nine judges hearing a case, and therefore takes the sole power of decision away from the three professional judges. Following this initial three-year period, the current legislation calls for the system to be expanded: from January 1, 2026, citizen judges will take part in cases in which the defendant is accused of committing an offense punishable with a minimum prison sentence of more than 10 years.

From the enactment of this system, the Judicial Yuan (司法院) will have a six-year assessment period. The Judicial Yuan has been tasked with constructing a "Committee for the Assessment of the System of Civil Participation in Criminal Trials" (國民參與審判制度成效評估委員會), to be composed of 15 members. Each year the assessment committee is required to conduct research and submit an annual assessment report on the implementation of the system. During the assessment period, only 300 cases are to be heard under the lay judge system. After this, legislators have set a limit of around <u>0.19 percent of all cases per year</u> (roughly 600 cases total) that will use the lay judge system.

In order to be eligible to serve as a lay judge, citizens must be over 23 years old, have finished the basic national education for their generation (the policy recognizes the minimum education required at the time of one's birth), and must have lived in a court's jurisdiction for at least four consecutive months. [1] Lay judges cannot be lawyers, soldiers, police officers, convicted criminals, or hold specific posts in government. Citizens may also be excused from service if they are a teacher, a student, over 70 years old, or have other compelling causes such as illness or business commitments.

The Theoretical Background of the Citizen Judge Act—and Concerns About Its Implementation

The Citizen Judge Act was written in an attempt to create a more transparent and democratic judicial system. Taiwan's CJA is part of a greater <u>international movement</u> toward bringing lay judges or jurors into criminal court proceedings. As argued by Rieko Kage in Who Judges? Designing Jury Systems in Japan, East Asia, and Europe, these changes have been supported by political parties around the world shaped by "New Left"-oriented policies, which seek to increase direct political participation in democratic processes. [2] Direct political participation is also known as "deliberative democracy," a political theory that emphasizes the need for public deliberation to justify laws and decisions. [3] In essence, deliberative democracy aims to create a more informed citizenry by requiring its citizens to defend their opinions. While such systems are by no means perfect, they are nevertheless seen by the public as more legitimate. [4]

Critics, however, argue that the same criticism can be heard about lay judge systems. Lay judges and professional judges will be disproportionately cognizant of court language and procedures. In this setting, lay judges must inevitably lean on the expertise and advice provided by the professional judges in order to form their own opinions. Despite the apparently greater presence of transparency and legitimacy in court proceedings, decisions will tend to reflect the views of elites or professional judges, thereby upholding existing hierarchies and biases.

In the past, the judicial system has served as a gatekeeper between the court and lay people. The official legal language used during trials tends to be complicated and convoluted, to the extent that only those who have studied law may be able to understand the proceedings. Prosecutors and defense lawyers will need to adapt to using more common language in the court, potentially posing challenges throughout the legal process. Due to this language gap, expectations of citizen judges have been lowered when it comes to their written verdicts. Profes-

sional judges write their verdicts in three parts; facts, evidence, and reasoning for their decision making. Citizen judges are not required to provide systematic reasoning in their written verdicts—and verdicts will thus be limited to the facts and evidence presented during the trial, without explanation of the court's reasoning underlying a decision. The lay judge system—in an attempt to be more transparent to the public—could potentially become less transparent at this stage, as the public will not have access to the rationales underlying decisions. In turn, this could potentially impact the viability of appeals: if the written record lacks detailed reasoning, appellate courts may not be able to evaluate trial court decisions in a meaningful way.



Image: Legislators supportive of the Citizen Judge Act celebrate its passage in a publicity photo in the Legislative Yuan (July 22, 2020). (Image source: Website of Legislator Su Chiao-hui [蘇巧慧]).

Concerns Regarding Death Penalty Deliberations and Judicial Transparency

When determining the voting requirements for a defendant to be sentenced to death, the legislation has necessitated that a two-thirds vote (i.e., six out of nine judges) would be required for the punishment of death to be applied. Of the six judges who vote in favor of death, one must be a professional judge. Human rights experts, including former Vice President Annette Lu Hsiu-lien (呂秀蓮), have criticized this aspect of the policy, arguing that a unanimous vote (rather than the current requirement of a two-thirds majority) should be required given the seriousness of state-ordered execution. From this perspective, the death penalty should be handed down under only the most rigorous judicial procedures. A unanimous agreement confirms that there are no reservations regarding the ruling on the part of any of the judges involved.

According to Article 14 of the United Nations International Covenant on Civil and Political Rights (ICCPR), all individuals convicted of a crime have the right to have their conviction and sentence reviewed by a higher tribunal. Any person sentenced to death in Taiwan must go through an appeals process, and any limitations to this review would impose an unjust constraint on their right to a fair judicial review. Transparency in judicial decisions is particularly necessary for the due process safeguards that prevent the arbitrary deprivation of life, a standard outlined in Article 14 of the ICCPR.

Taiwan Alliance to End the Death Penalty (台灣廢除死刑推動聯盟), an NGO focused on the abolition of capital punishment in Taiwan, has presented concerns over the transparency of the new lay judge system in death penalty proceedings. The deliberation process for the judges takes place behind closed doors and is not recorded for future consultation. This confidentiality in the deliberations of lay judges has been justified on grounds that, if the deliberation process is made open to the public or defense lawyers, these closed-doors discussions will be released to the media—and could therefore taint the process. However, such opaque processes undermine the role of defense lawyers, as they are not engaged in the process—and therefore not allowed to ensure due process.

Prosecutors and defense lawyers are both unfamiliar and illequipped for a *voir dire* process by which citizen judges are selected. In the months and years following the act's implementation, defense and prosecutors will likely raise concerns about the court procedures with the new judge system. Defense lawyers have spent their career learning how to present their cases strategically to professional judges; taking on a case that will be evaluated by lay judges will require more work and effort for defense lawyers—involving novel strategies of defense, and therefore additional layers of complication.

Moreover, the CJA does not call for government funding to cover the costs of trials with lay judges. This could discourage lawyers from taking on these challenging cases, as they lack the financial incentive to do so. In turn, this could bring the CJA into conflict with Article 14 of the ICCPR, which mandates that all individuals should have equal access to legal assistance whether they can pay for it or not. The responsibility of providing adequate funding for legal aid services thus falls on the government.

Conclusions

As the CJA is still in the early stages of implementation, it remains unclear whether the lay judge system will be a benefit or detriment to Taiwan's society. Mock trials in Taiwan have so far

revealed that sentencing is more lenient with the inclusion of citizens. However, these mock trials were under controlled conditions. When the lay judge system meets the unpredictability of the courtroom—in an environment wherein both prosecutors and defense lawyers are inexperienced with the new system—due process may be in danger. Over the course of the next three years, as citizens and observers, we must closely monitor this new judicial process before we make definitive conclusions.

The main point: The recent enactment of the new *Citizen Judge Act* in Taiwan will place lay judges, drawn from Taiwan society, onto the panels of judges that decide major criminal cases. Many aspects of this law leave concern for proper due process in death penalty cases.

[1] In most cases, the educational provisions will require that citizen judges possess a high school diploma. However, some more elderly citizens in Taiwan might only have an education up to sixth grade, as this was the minimum standard for basic education during their earlier life. The *Citizen Judges Law* accounts for this in its language regarding standards for "basic national education" of a person's generation.

[2] Rieko Kage, *Who Judges?: Designing Jury Systems in Japan, East Asia, and Europe* (Cambridge: Cambridge University Press, 2017).

[3] Joshua Cohen, "Deliberation and Democratic Legitimacy," in Alan Hamlin and Philip Pettit (eds.), *The Good Polity* 15 (1989).

[4] Zachary Corey and Valerie P. Hans, "Japan's New Lay Judge System: Deliberative Democracy in Action?," *APLPJ* 12 (2010): 72.

The Potential of US-Taiwan Climate Diplomacy: Local Connections and Global Solutions

By: Adrienne Wu

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Recent forums on climate change and the environment, including last year's COP 27, have indicated that cities play an important role in reducing carbon emissions and finding sustainable solutions. As COP 27's panel on cities noted, cities are disproportionately responsible for carbon emissions, accounting for over 70 percent of global carbon emissions. To address this

growing issue, cities have come together in networks such as ICLEI-Local Governments for Sustainability (ICLEI) and C40 Cities Climate Leadership Group (C40), while the Biden Administration introduced the Subnational Climate Action Leaders' Exchange (SCALE). For Taiwan, this represents an opportunity to showcase its role as a responsible global citizen while strengthening diplomatic relations at a subnational level. In addition to drawing upon Taiwan's vibrant civil society and smart city capabilities, finding working solutions to combat climate change is a shared goal of cities in both Taiwan and the United States and would benefit both through greater cooperation.

Climate Action Through City-to-City Diplomacy

Conducting diplomacy on a local level has multiple advantages when it comes to both constructing climate policy and fulfilling Taiwan's goals. From an environmental standpoint, the fact that cities are the main contributors to carbon emissions makes cities a fitting place to begin when looking for climate solutions. Additionally, researchers have found that cities are also better than federal governments at setting more ambitious goals to tackle climate change. This can be expanded into transnational climate diplomacy through city-to-city engagement and collective action organized through networks. Subnational diplomacy is particularly beneficial for Taiwan because it allows officials to interact with Taiwan without taking a clear stance on Taiwan's international status and creates opportunities for Taiwanese cities to help promote Taiwan's national brand. As a result of this strategy, Taiwan has numerous sister city partnerships with cities all over the world, with 131 of those sister city partnerships in the United States alone.

Although subnational diplomacy may be a more accessible form of outreach for Taiwan, it is not without its own obstacles. In 2021, Taiwan-based think tank Taiwan NextGen Foundation (台灣世代教育基金會) found that while subnational partnerships are important for building people-to-people ties, they are often under-publicized and rely heavily on the motivation of local actors. As a result of these challenges, a number of sister city relationships have become inactive, while some Taiwanese cities have begun to rethink their approaches. For instance, Chief of International Affairs for Kaohsiung City Evelyn Tzeng stated that Kaohsiung was no longer looking for new cities with which to sign partnerships, but instead was focusing on common areas of interest.

Current US-Taiwan sister city relationships are often cultural, economic, or civic-oriented, with partnerships <u>hosting dragon boat races</u>, <u>holding festivals</u>, <u>donating personal protective</u>

<u>equipment</u>, and <u>improving transportation</u>. If local actors in the United States and Taiwan are able to discover areas of shared interest and capitalize on the benefits of working together on climate issues, then cooperation on climate policy could also be added to this list of activities.

Climate Action Through Intermediaries

Besides direct city-to-city interaction, another way in which cities can be involved is through an intermediary, such as shared membership in city networks or through non-profit organizations that do work in both countries. The Taiwanese non-profit International Climate Development Institute (ICDI, 國際氣候發展智庫) assists Taiwan's transition to carbon neutrality by educating Taiwanese and encouraging dialogue between Taiwan and the global community through collaborative projects with governments, academic institutions, and non-governmental organizations. Last year, ICDI jointly organized the Taiwan Climate Action Expo with the American Institute in Taiwan (AIT), the Biodiversity Research Center of National Taiwan University, and Cathay Financial Holding Co. The expo, held in Taipei, showcased concepts for addressing climate change, including the ICDI and AIT youth engagement program.

As in sister city partnerships, there is room for more US engagement at a local level. For instance, although ICDI partnered with AIT for the Taiwan Climate Action Expo and has continuing partnerships with <u>Climate Action Network International</u> (CAN), ICLEI, and <u>WeGo</u>—two city network organizations that also have member cities in both the United States and Taiwan—ICDI's Sustainable Cities Forum has yet to secure the participa-



Image: The signing ceremony for an MOU on local energy governance by ICLEI, ICDI and the Industrial Technology Research Institute (ITRI, 工業技術研究院) at the 2023 Kaohsiung Smart & Sustainable City Forum and ICLEI Member Assembly. (Image source: provided by ICDI)

tion of any US mayors since the event first began in 2017. The most recent forum, the 2023 Kaohsiung Smart & Sustainable City Forum and ICLEI Member Assembly, secured a variety of local governance participants, including speakers from Hungary, the United Kingdom, Canada, Thailand, and Australia, making the lack of a US presence all the more noticeable. Additionally, of the partnerships listed on ICDI's website, the only one that is based in the United States is Stanford University. The lack of US participation in events such as ICDI's Sustainable Cities Forum is a wasted opportunity for US climate action leaders to learn more about Taiwan's approach to tackling climate change and discover areas of common interest. In turn, this could potentially revitalize sister city ties.

Areas of Shared Interest

While Taiwan may be a more natural partner to the Pacific Islands, which share a more similar topography and climate to Taiwan, there are still many areas where Taiwan and the United States would benefit from sharing environmental data. The US Environmental Protection Agency (EPA) has acknowledged this at a federal level by signing an agreement with Taiwan's Environmental Protection Administration (EPA, 行政院環境保護署) to address shared issues such as mercury monitoring, air quality protection, managing electronic waste, creating Eco-Campus school partnerships, and improving environmental literacy. Partnerships looking to establish new cooperative programs addressing climate issues could use these pre-designated areas of interest as starting points.

Beyond directly addressing climate concerns, there is also potential for the United States and Taiwan to cooperate on commercial and governance-related solutions to environmental problems. For instance, Taiwan's Ministry of Economic Affairs' Water Resources Agency (WRA, 經濟部水利署) signed a memorandum of understanding (MOU) with Taiwan Semiconductor Manufacturing Company (TSMC, 台灣積體電路製造股份有 限公司) to install smart water systems in over 20 of their facilities. In addition to installing smart technology, TSMC contributed to improvements by donating new designs and upgrading the agency's sensors. More recently, TSMC also announced that it would be opening a water recycling plant in Tainan. Owing to the fact that water conservation is also of critical importance to the United States, local US governments may be interested in either employing Taiwan's smart water solutions or pursuing a similar public-private partnership (PPP) model. Other smart city projects that have been successful are: the Air Pollution Emergency Platform, which uses artificial intelligence to forecast air pollution levels and detect illegal emissions; and the Smart Aquaculture Monitoring System, which monitors water quality data to protect aquatic life. Smart Taipei has also partnered with Foxtron to develop green public transportation and are trialing a smart electric shuttle bus. By visiting Taiwan in-person, US mayors can see the benefits of using smart technologies and smart city planning that leverages cooperation between the public and private sectors to solve climate issues.

Moreover, these partnerships are not limited to only Taiwanese actors. Taiwan Power Company's (Taipower, 台灣電力公司) MOU with the German-based company Siemens Energy is another recent public-private partnership on climate issues. Looking toward Taiwan's goal to have net-zero emissions by 2050, the MOU aims to capitalize on Siemens Energy's hydrogen blending technology to upgrade an existing gas turbine located in Hsinta Power Plant (興達發電廠). If Taiwan and the United States pursue greater cooperation at a local level, there may be opportunities for private industries to sign similar transnational agreements that would bring additional economic benefits.

In short, collaboration on climate action through cities would not only help strengthen local ties and reignite inactive sister city partnerships, but it would also showcase some of Taiwan's biggest strengths—its civil society, good governance practices, and technology—while further solidifying Taiwan as a trustworthy partner in tackling global challenges.

Recommendations

- Utilize existing sister city agreements and prioritize cooperation on shared areas of interest: Due to potential interference from Beijing when creating new partnerships, cities may be hesitant to sign new sister city agreements. However, climate cooperation could help to revitalize stagnant sister city agreements or complement the programs of existing partnerships. To avoid creating more inactive agreements, interested parties should prioritize signing project-specific MOUs over general sister city partnerships.
- Publicize existing successes and programs while looking for local support: A lack of public knowledge about how sister city partnerships help the community has resulted in a lack of support for new agreements. In seeking new cooperation, interested parties should highlight the past successes of their partnerships and promote clear and concrete ways that the local community will benefit.
- Leverage interaction through non-profit organizations and networks: While there is some cooperation between Taiwan and the United States through AIT and at a federal

level, more can be done to connect local communities in the fight against climate change. Taiwan's Ministry of Foreign Affairs could help Taiwan cities build people-to-people ties at a local level by inviting US mayors to participate in Taiwanese forums held by non-profit organizations and to learn more about areas of shared environmental interest with Taiwanese cities.

The main point: Taking into consideration trends in climate action that highlight the importance of cities in climate policy, cooperation on climate action could be an area of shared interest for US-Taiwan city diplomacy. Drawing upon existing sister city partnerships, shared membership in environmental networks, and Taiwan's civic and technological strengths, local actors could cooperate on climate action initiatives that not only benefit the planet, but also strengthen people-to-people ties between the United States and Taiwan.

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