

China's New Non-Military Offensives against Taiwan

Russell Hsiao

Taiwan Factor in the US-Japan Alliance

Amrita Jash

On Taiwan, the Communist Party of China is Gaslighting the World

Shirley Kan

Countering Cognitive Warfare: Taiwan's Defense Against Party Influence in Kinmen

Ian Murphy and Eric Chan

The Constitutionality of Taiwan's Death Penalty: Discussions at the Recent Constitutional Court Hearing

Maria Wilkinson

China's New Non-Military Offensives against Taiwan

By: Russell Hsiao

Russell Hsiao is the executive director of the Global Taiwan Institute (GTI) and editor-in-chief of the Global Taiwan Brief.

Since the election of Lai Ching-te (賴清德) as the president of the self-governing democracy of Taiwan, officially known as the Republic of China (ROC, 中華民國), Beijing has been turning the screws on the island-nation—and not just in the [military domain](#). [National security officials](#) from Taiwan are now sounding the alarm about a noticeable shift in the Chinese multi-domain pressure campaign against the island democracy. Indeed, [multiple indicators](#) are pointing to a more aggressive turn in Chinese Communist Party (CCP, 中國共產黨) General Secretary Xi Jinping's (習近平) approach to Taiwan in the months ahead.

While a change in Beijing's strategy was already visible in the latter half of Tsai Ing-wen's (蔡英文) second term—particularly in the military space—recent activities in the non-military space—in the areas of diplomatic/political, legal, information/united front, and economic measures—are perhaps most troubling. Additionally, they are broadly indicative of a comprehensive shift in Beijing's overall approach from deterring Taiwan's independence to compelling its unification with the People's Republic of China (PRC, 中華人民共和國)—by military force if necessary.

Diplomatic and Political Pressure

On the diplomatic front, Beijing is currently going after Taiwan's 12 remaining diplomatic partners. Since 2016, Taiwan's international diplomatic presence has steadily diminished, from 22 diplomatic partners to only 12. Just days after Lai's unprecedented presidential victory—[which represented the first time that a political party won three consecutive terms for president in Taiwan—Beijing flipped the small Pacific nation of Nauru](#).

Taiwan's last dozen diplomatic partners are vulnerable to PRC enticement and coercion to varying degrees. Although the current president of Paraguay—Taiwan's last remaining diplomatic partner in South America—has expressed strong personal support for continuing ties with Taiwan, Paraguay stands as a potentially acute reminder that many of these last remaining steadfast diplomatic partners are seemingly

The Global Taiwan Brief is a bi-weekly publication released every other Wednesday and provides insight into the latest news on Taiwan.

Editor-in-Chief
Russell Hsiao
Associate Editor
John Dotson
Staff Editor
Adrienne Wu

The views and opinions expressed in these articles are those of the authors and do not necessarily reflect the official policy or position of the Global Taiwan Institute.

To view web sources cited in the published papers (underlined in printed text), visit <https://global-taiwan.org/issues/vol-9-issue-14/>.

Global Taiwan Institute
1836 Jefferson Place NW,
Washington DC 20036
contact@globaltaiwan.org

To subscribe, visit
<http://globaltaiwan.org/subscribe/>.

© 2024 · Global Taiwan Institute

always one election away from switching recognition.

While Beijing's diplomatic successes against Taiwan are clear, Taipei has made important advancements in raising its international visibility and political engagement with other like-minded partners on the world stage with the support of like-minded friends. Therefore, it is unsurprising that Beijing is now putting more emphasis on not only enticing but pressuring Taiwan's non-diplomatic partners to downgrade political ties and support cross-strait "reunification." Indeed, Beijing appears to no longer seek a political endorsement from other countries for its "One-China Principle" (一個中國原則), but is now [pressuring other countries](#) to take action that actively supports the PRC's position on "reunification."

In the past, some countries that maintain diplomatic relations with the PRC have been asked to have Taipei move its representative office from the capital to other locations, or to put pressure on Taipei's local representative offices to remove any reference to the Republic of China or Taiwan from the name of their *de facto* embassies. China has also [continued to pressure](#) countries with which it has diplomatic ties to deport Taiwan nationals accused of criminal activities to the PRC rather than back to Taiwan.

Countries that have recently established unofficial ties or have increased their political ties with Taiwan also find themselves increasingly in the cross-hairs of Beijing's diplomatic offensive—the cases of Lithuania and the Czech Republic are prime examples of this. Other pressure tactics could include applying sanctions against people and other entities for engaging with Taiwan, limiting the consular activities of Taiwan's foreign missions, and restricting government contacts with Taiwanese counterparts and supporters of Taiwan.

The fact that British lawmaker Conservative MP Tim Loughton from the Inter-Parliamentary Alliance on China was [denied entry to Djibouti](#) in April 2024 is potentially instructive of Beijing's future tactics in this space. In such instances, not only are Taiwanese lawmakers and persons sanctioned or wanted by Beijing singled out, but also other lawmakers from third countries who have run afoul of Beijing's policies on Taiwan. Such persons could be potentially denied entry or surveilled in third countries, which are either allied or significantly influenced by Beijing.

Propaganda and United Front Work

In addition to diplomatic pressure, the CCP is also ramping up its [political warfare activities](#), particularly in the areas of overt united front work and propaganda directed against Taiwan's central

government and ruling party. This is particularly noteworthy in the CCP's attempts to co-opt Taiwan's key opposition parties. In addition to existing ties with the Kuomintang (KMT, 中國國民黨), the CCP showed interest in the Taiwan People's Party (TPP, 台灣民眾黨) throughout the presidential campaign—and particularly after the elections, in which the TPP walked away with a decisive minority of seats in the Legislative Yuan.

Since beginning his post as KMT vice chairman in October 2021, [Andrew Hsia \(夏立言\) has led the official party channel for dialogue to China](#) at least eight times. Notably, there has been a [plethora](#) of other cross-strait exchanges headed by various factions of the KMT that began in 2024. The delegation that raised the most eyebrows is perhaps the one led by Fu kun-chi (傅崐萁)—an influential power broker among local factions of the KMT and the current caucus whip for the KMT. In April—just a month before the inauguration—[Fu brought a delegation of local faction members to China](#). Local factions are instrumental in influence peddling during local elections. Although there have been [insinuations of collusion](#) because of the correlation in the timing between these visits and the controversial reform measures adopted by the opposition parties immediately after the inauguration, it should be noted that the authorities have not yet provided clear and convincing evidence of a conspiracy.

Chinese disinformation and propaganda also remain rampant in Taiwan's information space. Taiwanese national security officials are [particularly concerned](#) by AI-enabled efforts spreading disinformation on social media platforms, including Chinese-owned platforms like *Duoyin* (抖音, TikTok) and *Xiaohongshu* (小紅書) that have large user bases in Taiwan. Additionally, so-called "local collaborators"—with the support of traditional media—are increasingly parroting the CCP's talking points, thereby increasingly blurring the line between what may be legitimate political opposition and Chinese government propaganda.

Russian propaganda disinformation tactics and narratives used against Ukraine are also increasingly more visible in the Chinese approaches to Taiwan. This is indicative of the increasing cross-pollination of Chinese and Russian disinformation and malign influence tactics. One [recent example](#) was a disinformation case concerning the fabricated news carried by a major news outlet about US pressure on Taiwan to establish a biowarfare lab in Taiwan, which appeared intended to stoke American skepticism among the general public. As Chinese support for Russia's invasion of Ukraine continues and the Chinese-Russian "unlimited partnership" grows, there will likely be more sharing of tactics, techniques, and procedures in Chinese malign influence activities in Taiwan.

A New Feature: Lawfare

The most notable feature in the PRC's new multi-domain offensive against Taiwan is the use of a suite of lawfare measures, which include the application of law enforcement instruments intended to extend the claimed jurisdiction of Chinese authorities and constrain that of the Taiwanese authorities.

Extra-Territorial Applications of Domestic Law

Specifically, there are clear signs that Beijing is broadening the application of the *Anti-Secession Law* (ASL, 反分裂国家法). Since its passage in 2005, the ASL was [primarily used](#) as a rhetorical instrument for the legal justification of China's use of military force against Taiwan. On June 21, based on the ASL and other legal measures, the PRC promulgated the "[Opinions on Punishing the Crimes of Splitting the Country and Inciting Splitting the Country by 'Taiwan Independence' Diehards](#)," (關於依法懲罰「台獨」頑固分子分裂國家、煽動分裂國家犯罪的意見), which could [apply criminal punishment](#), even the death penalty to "secessionists" in absentia.

In particular, the [guidelines](#) specify actions that constitute the "crimes of secession" and "incitement to secession," including:

1. "Initiating or establishing organizations, plans, or programs aimed at promoting Taiwanese independence.
2. Attempting to alter Taiwan's status through legislative means or referendums.
3. Seeking international recognition of Taiwan as an independent entity.
4. Using one's job or influence, such as in government, education, or media, to misrepresent or falsify the history of Taiwan's status as part of China.
5. Consistently taking part in or playing a major role in activities that support Taiwanese independence."

This could be seen as Beijing's response to what it views as internationalization and increased external interference in the Taiwan issue in recent years. As written, the excessively broad law notably does not limit the application of these laws by geographical scope of citizenship, which could presumably include both ROC citizens and non-ROC citizens. These guidelines signal a new phase in the PRC's new multi-domain offensive against Taiwan and its supporters and represent an especially nefarious form of lawfare. As it stands, it could be a particularly gross application of transnational repression by plausibly justifying, under its domestic law, the forcible repatriation of persons to

the PRC—and further signal the "Hong Kongization" of Taiwan in terms of the application of domestic law and regulations.

Legalization of its "One-China Principle" through UNGA Resolution 2758

In addition to the application of domestic legal measures to extend PRC jurisdiction over Taiwan and its administered territories, China has also been [more aggressively forcing](#) its distorted interpretation of UN General Assembly Resolution 2758 in an attempt to legalize its "One-China Principle." In its statement declaring the switch in its recognition of the PRC, the government of Nauru [cited UNGA Resolution 2758](#) as a legal basis for supporting its decision. Moreover, civil society groups applying to join international organizations have been barred from admission due to the misleading application of UNGA Resolution 2758.

Hostage Diplomacy

As the PRC seeks to increasingly extend its laws and jurisdiction over Taiwan and its people, in a report delivered to the Legislative Yuan, Tsai Ming-yen (蔡明彥), the director of the National Security Bureau (NSB, 國家安全局)—Taiwan's premier intelligence agency—revealed how "[in the past 12 months, 15 Taiwanese have been detained or undergone trials after entering China and the two special administrative regions, while 51 have been interrogated by border officers—and the number is increasing.](#)" The NSB director also noted with concern that the number of cases concerning national security investigations involving PRC covert influence has been [increasing in recent years](#)—raising the specter of potentially more extraordinary measures.

Maritime Law Enforcement and Civil Aviation for Contesting and Limiting Territorial Jurisdiction

Beijing is using the unilateral application of its domestic law and regulations as a form of lawfare to constrain the legal space of the Taiwan government—and deter other countries from engaging with it. These measures seem intended to limit the Taiwan government's agency, and represent Beijing's efforts to deny the existence of the ROC and the objective reality that the ROC and PRC are two separate jurisdictions.

The Chinese authorities are not issuing new laws per se and Beijing's legal claims over Taiwan have not changed. Still, the PRC is beginning to enforce these claims—with implications for other competing claimants with territorial disputes with China. Similar to how the PRC has begun to suddenly and arbitrarily [enforce certain regulations](#) on Taiwanese companies operating in China for coercive political purposes, it is now increasingly utilizing the

China Coast Guard (中国海警局)—a paramilitary force used for maritime law enforcement that is directed by the Central Military Commission (CMC, 中央軍事委員會), and increasingly deployed with the People's Liberation Army Navy (PLAN, 中國人民解放軍海軍)—in patrols around Taiwan—in order to enforce its maritime and territorial claims over Taiwan. Some of these activities by purportedly non-military vessels include increasingly encroaching upon the 12 nautical miles of territorial waters claimed by Taiwan, conducting maritime surveillance around Taiwan, detention of ROC citizens for alleged illegal fishing, forced inspection of civilian vessels, and PRC civilian intrusion into the harbors. Indeed, the PRC appears to be shifting from a previous stance of tacit acknowledgment that the PRC and ROC are two separate jurisdictions toward denying it.

Economic Coercion

In the economic sphere, Beijing leans heavily on coercive economic tools through a combination of [targeted suspension](#) of preferential tariff terms, selective bans of imported goods, expanded import restrictions on a range of products beyond just agricultural and aquatic goods, [arbitrary regulatory enforcements targeting select companies for their political activities](#), and the [sanctioning of individuals and organizations](#). Although such measures do not yet represent a significant departure from the PRC's longstanding strategy, Beijing will likely dial up these tactics to apply even greater pressure on Taiwan's new leadership in the years to come.

Conclusion

The intensification of these non-military measures is broadly indicative of a comprehensive shift in Beijing's overall approach from one of deterring Taiwan's independence to compelling its unification with the PRC, Beijing does not appear to have abandoned its desire for "peaceful reunification," and it would prefer to annex Taiwan without the use of military force.

However, in a review of the Chinese measures taken from 2016 to now, Beijing's current stance represents a departure from its prior stance of tacitly acknowledging the separate jurisdictions of the PRC and ROC, to now seemingly deny this objective fact.

Although these gray zone actions are non-kinetic by operational standards, if the PRC's actions to systematically erode the ROC's legal space with such activities go unchallenged and take on other more challenging forms—compounded by its aggressive military activities—the situation could escalate and become dangerous. It bears noting that such PRC lawfare tactics are likely intended to provoke a response (or inability to respond) from

the United States and Taiwan. If not properly managed, these tactics could drive a wedge between Taiwan's new leadership and the United States. Going forward, clear communication between Washington and Taipei is essential and any response on either side must be carefully calibrated.

With the US election slated for November, Beijing is unlikely to dramatically scale up its actions in the coming months lest it raise the Taiwan issue into a national election issue. What is visible now is likely only a preview of the actions to follow. Vigilance is paramount.

The main point: While a change in Beijing's strategy was already visible in the military space during the latter half of Tsai Ing-wen's second term, recent activities in the non-military space (diplomatic/political, legal, information/united front, and economic) are troubling and broadly indicative of a comprehensive shift in Beijing's overall approach from deterring Taiwan's independence to compelling its unification with the PRC.

Correction: A previous version of this article incorrectly identified the country that denied entry as Somalia.

Taiwan Factor in the US-Japan Alliance

By: Amrita Jash

Dr. Amrita Jash is an assistant professor at the Department of Geopolitics and International Relations, Manipal Academy of Higher Education (Institution of Eminence), India.

In emphasizing during their April 2024 meeting in Washington DC that their "alliance cooperation" had reached "new heights," US President Joe Biden and Japanese Prime Minister Fumio Kishida expressed the desire to further expand their engagement to reflect the "global nature" of the partnership. As their [Joint Leaders' Statement](#) posited:

[Our] joint efforts are based on our shared fundamental respect for international law, including the protection and promotion of human rights and dignity, the sovereignty and territorial integrity of all states, and the prohibition on acquisition of territory by force. Our purpose as partners is to uphold and bolster the free and open international order based on the rule of law that has allowed so many nations to develop and prosper, and to ensure our Alliance is equipped to tackle the challenges of the 21st century.

The above statement highlights the joint commitment of both governments towards protecting the sovereignty and territorial integrity of all states, and the prohibition on acquiring territory by force resonates with the provisions of the *Treaty of Mutual Cooperation and Security between Japan and the United States of America* of 1960 (the earlier version of the Treaty was signed in 1951).

In light of the growing Chinese threat to Taiwan, one aspect of the US-Japan relationship that deserves further attention is this: What does a rise in cross-Strait tensions imply for the US-Japan alliance, and how do concerns surrounding Taiwan factor into alliance dynamics?

Mentions of Taiwan by Japanese and American Leaders

In 2021, sending a warning message to China, former Japanese Prime Minister Shinzo Abe categorically [stated](#):

An armed invasion of Taiwan would be a grave danger to Japan. A Taiwan emergency is a Japanese emergency, and therefore an emergency for the Japan-US alliance. People in Beijing, President Xi Jinping in particular, should not have a misunderstanding in recognizing this.

From this statement it is evident that China's increasing military activism over Taiwan has provided an impetus to the United States and Japan. In reaffirming on April 16, 2021 that the US-Japan Alliance has "become a cornerstone of peace and security in the Indo-Pacific region and around the world," Biden and then-Japanese Prime Minister Yoshihide Suga issued a [US-Japan Joint Leader's Statement](#) titled "U.S.-Japan Global Partnership for a New Era." Specifically, the readout stated: "We underscore the importance of peace and stability across the Taiwan Strait and encourage the peaceful resolution of cross-Strait issues." This marked the first such explicit mention of "Taiwan" in a US-Japan leader's statement—however, the precursor to it was set with the [US-Japan 2+2 Dialogue](#) in March 2021, which "underscored the importance of peace and stability in the Taiwan Strait." Criticizing the Biden-Kishida Summit, China's Foreign Ministry responded, [saying](#):

We have taken note of some of the developments at the summit of the leaders of the United States and Japan, which, despite China's serious concerns, have launched smear campaigns against China on issues such as Taiwan and maritime affairs, and have grossly interfered in China's internal affairs, in serious violation of the basic norms of international relations.



Image: Japanese Prime Minister Fumio Kishida (at podium) and US President Joseph Biden (right) appear together for public remarks during their White House summit (April 10, 2024). (Image source: [Japan Prime Minister's Office](#))

Agreements between the United States, Japan, China, and Taiwan

Of note, both Washington and Tokyo officially maintain a position of strategic ambiguity towards the issue of Taiwan's sovereignty given their acknowledgement of a "One China Policy." The Joint Communiqué between Washington and Beijing (Normalization Communiqué) signed on January 1, 1979 outlines:

The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan. [...] The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.

Similarly, the [Joint Communiqué](#) between Tokyo and Beijing signed on September 29, 1972 outlines:

The Government of Japan recognizes that Government of the People's Republic of China as the sole legal Government of China. The Government of the People's Republic of China reiterates that Taiwan is an inalienable part of the territory of the People's Republic of China. The Government of Japan fully understands and respects this stand of the Government of the People's Republic of China, and it firmly maintains its stand under Article 8 of the Potsdam Proclamation.

Despite having no formal diplomatic ties, the US government

maintains a “[robust unofficial relationship](#)” with Taiwan, and under the [1979 Taiwan Relations Act](#) considers “any effort to determine the future of Taiwan by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern.” Despite the lack of formal diplomatic ties, this Act makes the provision that the United States “will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.” For instance, in June 2024, the Biden administration approved a new USD \$360 million weapons sale to Taiwan—which includes 291 Altius-600M systems (drones with warheads) and 720 Switchblade drones known as “extended-range loitering munitions.” In [Washington’s view](#), the sale:

[S]erves US national, economic, and security interests by supporting the recipient’s [Taiwan] continuing efforts to modernize its armed forces and to maintain a credible defensive capability. It will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

While Japan does not directly sell arms to Taiwan, it has prioritized its security alliance with the United States to collaborate on joint exercises or defense planning related to Taiwan. For instance, in the context of China’s intensified military activities around Taiwan, Japan’s 2021 defense white paper [posited](#):

[T]he United States has demonstrated a clear stance of supporting Taiwan in military aspects, such as transits by U.S. vessels through the Taiwan Strait and weapon sales. Stabilizing the situation surrounding Taiwan is important for Japan’s security and the stability of the international community. Therefore, it is necessary that we pay close attention to the situation with a sense of crisis more than ever before.

This brings into perspective the direct correlation between the United States and Japan on the issue of Taiwan. That is, in the post-World War II period, Japan’s Taiwan policy has been conditioned by the American containment strategy—as a result of which, it is influenced by Washington’s political orientation towards Taiwan. This was reflected in the military alliance between Tokyo and Washington, as codified in the first version of the *Treaty of Mutual Cooperation and Security*, signed in 1951. According to [Article I of the Treaty](#):

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a

manner that international peace and security and justice are not endangered and to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

Modern Developments in US-Japan Security Cooperation

The scope of the alliance was further expanded with the 1997 *US-Japan Defense Guidelines*, which broadened the alliance’s focus: from the defense of Japan, to that of responding to “[situations in areas surrounding Japan](#).” There is a direct correlation between the US-Japan alliance and peace and stability in the Asia-Pacific region (now known as the Indo-Pacific region). In this matrix, Taiwan looms large in the security calculus of the US-Japan alliance. In case of a conflict in the Taiwan Strait, if the United States decides to intervene, it is only natural for Japan to also become involved. For instance, in the aftermath of China’s missile tests in the Taiwan Strait in 1996, Japan reaffirmed its alliance with the United States and provided logistical support for American military operations in the Taiwan Strait under the revised 1997 guidelines given the expansion of the focus of the alliance from the defense of Japan to the maintenance of peace and stability in the region. More recently, from June 7-18 this year, for the first time Japan’s Self-Defense Forces joined the US military’s [Valiant Shield exercise](#)—one of America’s largest warfighting exercises in the Pacific, which can be read as a response to China’s [Joint Sword-2024A](#) exercise around Taiwan in May. Thereby, in tackling the China challenge, this joint military exercise provided a further boost to the US-Japan alliance’s deterrence and response capabilities.

China’s growing military capabilities and aggressive posturing have pushed Taiwan into the spotlight of the US-Japan Alliance. Balancing support for Taiwan with avoiding actions that could provoke China remains a challenge. So far, both Washington and Tokyo have been navigating the complex situation strategically by balancing their interests and seeking to maintain regional stability. Thereby, if Taiwan is attacked, in all possibility, the United States will intervene and Japan will follow—as neither the United States nor Japan will cater to Beijing’s demands at Taipei’s expense.

The main point: China’s increasingly aggressive posture towards Taiwan has raised significant concerns for the United States and Japan. Although balancing support for Taiwan while avoiding provocative actions remains a challenge, both Washington and Tokyo have strategically navigated the situation in the past—

and neither will cater to Beijing's demands at Taipei's expense.

On Taiwan, the Communist Party of China is Gaslighting the World

By: Shirley Kan

Shirley Kan is an independent specialist in Asian security affairs who retired from working for Congress at CRS and serves as a founding Member of GTI's Advisory Board.

It is overdue to counter the Communist Party of China's (CPC, 中國共產黨) [1] gaslighting the world regarding the Republic of China (ROC, 中華民國)—commonly called Formosa or Taiwan—because that distortion of reality is dangerous political warfare. The CPC employs an abusive pattern of misleading propaganda and controlling behavior to make foreign countries, media, and the United Nations (UN) alter their histories, perceptions, and reality. The ROC still exists, and ironically, President Lai Ching-te's (賴清德) May 20 inauguration in Taipei displayed more Chinese tradition than any CPC plenum. Radical Beijing is changing both its [“One China” Principle](#) and the cross-strait status quo. In Washington, opposition to unilateral changes to the status quo is not sufficient yet. A new presidential or congressional campaign of deterrence and leadership is needed on [UN Resolution 2758](#) and the United States' “One China” Policy. US urgency is needed as much as Taiwan's urgency in deterrence and defense.

Getting Away with Gaslighting

The CPC's narrative is replete with lies, pushed not only by its propaganda machine but also parroted by foreign media. In fact, since 2008, Kuomintang (KMT, 國民黨) and Democratic Progressive Party (DPP, 民進黨) Presidents Ma Ying-jeou (馬英九), Tsai Ing-wen (蔡英文), and Lai Ching-te have upheld their positions as the ROC President and the status quo—without undertaking *de jure* moves for a “Republic of Taiwan.”

It was only an excuse for the CPC to blame Lai's formal, Chinese-style [inauguration](#) for the People's Liberation Army (PLA)'s *Joint Sword-2024A* exercise on May 23-24, 2024. After all, the *Joint Sword 2024A* was a [pre-planned exercise](#), not a reaction to any “provocation.” Nor was it even the first such exercise, since last year saw *Joint Sword-2023*.

The CPC's gaslighting is not limited to military tensions but also

restricts Taiwan's participation in international organizations. Ironically, the World Health Organization (WHO) allows the People's Republic of China (PRC) to participate but not the ROC (Taiwan), despite the fact that the PRC violated the WHO's International Health Regulations during the COVID-19 pandemic, according to the July report of the Nonpartisan Commission on [China and COVID-19](#).

Messing with the Status Quo

The current strategic context in which the CPC overturns the global rules-based order is different from that of the 1970s, when its “One China” Principle and foreign “One China” Policies were discussed. Today, the CPC's goal of “national rejuvenation” aims to coerce and defeat others, putting Taiwan, the US, and other countries “out of business.”

The CPC has altered the approach of its “One China” Principle *a la* the [Scarborough Model](#) in the South China Sea, using insidious, incremental changes to achieve *a fait accompli* with failed US and other foreign deterrence.

In July 1978, before the US diplomatic switch from the ROC to the PRC, [Deng Xiaoping](#) (鄧小平) assured a key Congressional delegation about respecting Taiwan's reality in working toward a peaceful resolution. Instead, the CPC has threatened to use its rising [military capability](#) to attack and annex Taiwan. Moreover, since 2020, PLA aircraft have regularly crossed the [median line](#) in the strait, reneging on past observation of the demarcation.

The CPC rejects cross-strait dialogue, blaming the DPP, when the KMT likewise insists on the sovereign ROC. The CPC also blames the DPP for the impasse by hyping the “One China” right Principle with a so-called “1992 Consensus.” However, the actual allusion is to an expedient rhetorical cover for functional CPC-KMT talks in 1992 without political agreement, originally called “One China, Different Interpretations (一中各表).” [This author](#) spoke to KMT politician Su Chi (蘇起) and explained that he rephrased the label as “Consensus” in 2000 for an even [more ambiguous phrase](#).

In a subtle shift in the CPC's message to Taiwan in 2019, [Xi Jinping](#) enticed all political parties to send representatives for talks that would cover the “1992 Consensus.” Thus, the CPC departed from the 1979 message that called for dialogue with Taiwanese authorities. Additionally, the CPC's English-language propaganda applies the fake label of “reunification,” even though Taiwan was never a part of the PRC.

Applying the same strategy in international organizations, the

CPC egregiously lectures the UN, distorting General Assembly [Resolution 2758](#) of 1971 to pull an international cloak over a claim to Taiwan. This propaganda masks political warfare to justify violence. CPC Defense Minister and Admiral Dong Jun (董軍) spoke at the Shangri-La Dialogue on June 2, 2024. Dong threatened “self-destruction” for so-called separatists, [falsely citing](#) UN Resolution 2758.

More coercive lawfare threatens Taiwan. Also in June, the CPC announced a [Coast Guard Regulation](#) to authorize boarding and holding Taiwan’s vessels, and threatened the [death penalty](#) with “Guidelines for Punishing Die Hard Taiwan Independence Separatists.” On July 3, China [seized](#) a Taiwanese fishing boat.

Urgency Instead of Business-As-Usual

The CPC increasingly messes with the status quo, escalates tensions, and distorts reality. While twisting narratives and accusing others of changes, the CPC departs from past approaches to its own “One China” Principle and a promised peaceful resolution of cross-strait disputes.

So, how can we counter the CPC’s gaslighting and defend peace with urgency? Contrary to assumptions, safeguarding the status quo can mean re-setting the United States’ “One China” Policy.

The strategic environment has transformed since the 1970s. President Biden’s [National Security Strategy](#) realistically points to the PRC as “the only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to do it.” The strategy promises to leverage multinational coalitions.

Moreover, former Deputy National Security Advisor Matt Pottinger describes the current context as China’s Cold War against democracies to subvert the US-led global order with an “Axis of Chaos,” explaining in [Foreign Affairs](#) in May/June and an interview on [PBS](#) on July 12.

Biden’s Equally Significant Points on Jurisdiction and Defense

Washington repeatedly has stated opposition to unilateral changes to the status quo, including in the [National Security Strategy](#). But Beijing is getting away with not only messing with the status quo but also manipulating its “One China” Principle in the world.

In 2022, Biden [stated significantly](#) that the United States’ “One China” Policy does not mean that China has the jurisdiction to go in and use force to take over Taiwan, although the media tend to fixate on his equally significant [commitments of US forces](#) to help defend Taiwan. In June 2024, he was quoted as [not](#)

[ruling](#) out the use of US military force.

The National Security Council should build on these points with a new presidential statement to correct the narrative on UN Resolution 2758 and re-set or clarify our “One China” Policy, just as former presidents have done to leave their legacies. In issuing the third US-PRC Communique on August 17, 1982, [President Reagan](#) issued a US statement about a peaceful resolution and arms sales. In 2000, President Clinton emphasized that a peaceful resolution must come with the [assent](#) of Taiwan’s people.

Clarifying UN Resolution 2758

Contrary to the CPC’s lie, the United Nations has never acknowledged or recognized the PRC’s claim over Taiwan. The international community did not determine Taiwan’s status.

For years, [this author](#) has called for countering the [CPC’s falsehood](#) at the United Nations and [reinforcing the truth](#) that UN Resolution 2758 did not settle [Taiwan’s status](#). That [resolution](#) never even mentioned Taiwan, only allowing the PRC to join the United Nations as the representative of China. But the Trump Administration did not challenge China’s lie.

The Biden Administration has started to criticize China but is not yet telling the whole story, speaking at senior levels, and exercising the full extent of proactive US leadership of like-minded countries. Information needs to be deployed among the diplomatic, information, military, and economic (DIME) policy tools. Defense strategy relies on [integrated deterrence](#) that includes integration across military and non-military domains, including information.

In October 2021, then-[Deputy Assistant Secretary of State](#) Rick Waters said that “the People’s Republic of China has misused Resolution 2758 to prevent Taiwan’s meaningful participation” in international organizations.

In April 2024, [Deputy Assistant Secretary](#) Mark Lambert said that “the PRC increasingly mischaracterizes and misuses Resolution 2758 to serve its own interests; Beijing mischaracterizes the resolution by falsely conflating it with China’s one-China principle and wrongly asserts that it reflects an international consensus for its one-China principle; and Resolution 2758 has absolutely no bearing on countries’ sovereign choices with respect to their relationships with Taiwan.”

On May 1, [Secretary of State](#) Antony Blinken supported Taiwan’s participation at the World Health Assembly (WHA). But like [his predecessor, Michael Pompeo](#), Blinken has failed to counter the CPC’s big lie about Resolution 2758, even in this UN context.

On the same day, the House Foreign Affairs Subcommittee on the Indo-Pacific held a [hearing on the Taiwan Relations Act \(TRA\)](#). While Assistant Secretary of State Daniel Kritenbrink criticized China's mis-use of Resolution 2758, he was not as forthright as the [written statement](#).

Re-setting the "One China" Policy

It is time to re-think the "One China" Policy although not necessarily to discard it. Biden and State Department officials insist that they are not changing the policy. However, the issues are whether they are acquiescing to Beijing or drifting the policy from its original advantages and the [Congressional intent](#) of the TRA.

Some say the reality is that Taiwan is a country or that two Chinas co-exist. Some stay silent. Instead of perceived provocation or timid passivity in the face of Beijing's radicalism, Washington could re-set the "One China" Policy to its true form.

The policy's origins embodied creativity and ambiguity, even supporting the ROC's and PRC's dual representation at the United Nations in 1971. The United States did not explicitly recognize or acknowledge the PRC's claim over Taiwan. Since it does not discuss "one China," the TRA is not the legal basis of any such notion of the ["One China" Policy](#). The TRA does not stipulate US-Taiwan ties to be "unofficial," so Pompeo was reasonable to remove restrictions on the Executive Branch's contacts with Taiwan. The TRA expects the ROC's survival, requiring in Section 15(2) that "Taiwan" also means the same governing authorities recognized as the ROC prior to 1979. The TRA calls for resistance against both the CPC's coercion as well as the potential use of force.

In 1982, Reagan's [Six Assurances](#) included one of not altering the US position on sovereignty over Taiwan (without stating that position). US policy focuses on a peaceful process to determine Taiwan's unsettled status (without stating any objective).

Recommendations for Reality

1. The White House needs to regain control and leadership over the narrative on Taiwan, countering the CPC's gaslighting and twisting the US "One China" Policy. Washington needs to add a [policy objective](#) and an informational campaign about UN Resolution 2758.
2. Congress could reassert its traditional, critical policy role that includes telling the truth about UN Resolution 2758. For example, Senator Rubio introduced [S.Res.633](#) in April and Senator Risch introduced [S.Res.687](#) in May.

3. Washington's leadership is not sufficient yet. Multinational counters to Beijing on UN Resolution 2758 are needed, particularly, by the Group of Seven (G-7), NATO, and Quad.

In November 2023, the [European Parliament](#) reported on European Union-China relations and urged steps to "condemn China's increasing military provocation around the Taiwan Strait and oppose China's constant distortion of UN Resolution 2758..."

On May 24, 2024, the representatives in Taipei of eight countries [jointly stated](#) their support for Taiwan to be an observer in the WHA. However, Australia, Britain, Canada, Czech Republic, Germany, Japan, Lithuania, and the United States failed to dispel China's blatant lie about Resolution 2758.

In a speech on June 6 in Honolulu, [Australian Ambassador](#) to Washington Kevin Rudd criticized China's false narrative on Resolution 2758, though he could have said more.

4. Even without diplomatic recognition, foreign officials should refer to and contact the ROC (Taiwan) in recognition of its reality and legitimacy. With US diplomatic recognition from 1913 to 1978, the ROC still exists as a legitimate democracy of 23 million citizens. Sun Yat-sen is still honored as the ROC's founding father inside the Presidential Building and inside the Ministry of Foreign Affairs. There is still the ROC Postal Service.

The Vatican and other diplomatic partners recognize the ROC, not "Taiwan," contrary to news reports. The government in Taipei upholds the ROC, but the CPC tries to extinguish this single beacon of democracy in a Chinese culture.

The main point: The United Nations, foreign media, and national capitals need to counter the CPC's dangerous gaslighting about the ROC (Taiwan) and UN Resolution 2758.

[1] This author uses "Communist Party of China (CPC)" in recognition of official and literal translations.

Countering Cognitive Warfare: Taiwan's Defense Against Party Influence in Kinmen

By: Ian Murphy and Eric Chan

Ian Murphy currently works as a China Subject Matter Expert at SecuriFense Inc., where he helps organizations understand

developments in China's economy and foreign policy.

Eric Chan is a senior non-resident fellow at the Global Taiwan Institute.

In recent years, the relationship between Taiwan and the People's Republic of China (PRC, 中華人民共和國) has worsened, with Chinese Communist Party (CCP, 中國共產黨) General Secretary Xi Jinping (習近平) systematically employing all-domain coercion to isolate and pressure Taiwan into eventual unification. One of the principal coercive techniques employed by the CCP is [cognitive warfare against the Taiwanese public](#). Despite these challenges, Taiwan has largely demonstrated resilience against this coercion, countering Beijing's tactics with robust countermeasures.

However, Kinmen (金門) is an exception to this success story. Given its geography and economy, Kinmen is uniquely susceptible to PRC influence, and has been targeted through the weaponization of infrastructure and resource projects. Moreover, the CCP views political-economic integration between Kinmen and Fujian province as [useful propaganda and as an experimental model](#) for the integration of the rest of Taiwan. Many of the efforts that were temporarily put on hold due to the CCP's challenges dealing with COVID are [now being restarted](#). In the coming years, Taiwan should reassess both its defense policies and the economic development of Kinmen, to better address PRC cognitive warfare.

The Cognitive Warfare Campaign Against Taiwan

Cognitive warfare represents a strategic approach to conflict that seeks to [influence and control the thought process](#), political-military decision-making, and behaviors of targeted populations. This approach is integral to a [broader gray zone warfare strategy](#) that aims to achieve objectives in a deniable way, without tripping response triggers.

The CCP's cognitive warfare campaign against Taiwan generally employs a three-pronged approach, characterized by disinformation, military intimidation, and influence operations. The first prong—disinformation—is conducted through social media, traditional media, and cyber-attacks. Bot swarms and paid influencers on social media provide low-quality but massively distributed disinformation, such as the [Secret History of Tsai Ing-wen \(蔡英文秘史\) content](#) posted during the 2024 Taiwan elections. [1] Finally, the PRC continues to use [cyber-attacks on Taiwan's critical infrastructure](#), timed to elections; these efforts have evolved beyond the [denial of service attacks](#) used in the past, and now include [AI-generated fake news and content in-](#)

[sersion](#).

The second prong, military intimidation, involves the People's Liberation Army's (PLA) military exercises and frequent [incursions into Taiwan's airspace and maritime territory](#). These actions seek to [reinforce CCP propaganda](#) of military dominance, challenge international norms through [salami-slicing tactics](#), and deter potential external intervention in a future crisis. The final aspect is the use of influence operations, via a [carrot-and-stick](#) approach. As part of this approach, economic incentives and cultural exchanges are used to sway Taiwanese public opinion. These incentives are used to [amplify social or political divisions within Taiwan](#), promote economic dependence on the PRC, and erode Taiwanese identity by [portraying Taiwanese culture as an inseparable subset of Chinese culture](#).

The goals of this cognitive warfare strategy are to weaken public support for Taiwan's *de facto* independence, undermine confidence in Taiwan's government, and discourage international support for Taiwan. However, Taiwan has demonstrated strong internal resiliency, with a vibrant economy, a robust civil society capable of [rapid fact-checking](#), and a younger generation of Taiwanese [viewing themselves as having a distinct Taiwanese identity](#). Accordingly, more and more Taiwanese view [PRC power and influence as a threat](#) to that identity. However, these conditions do not hold on Kinmen. This means that the cognitive warfare campaign in Kinmen plays out differently, with a greater focus on influence operations through infrastructure.

The Infrastructure Lure for Kinmen

Kinmen's prior history as part of the Republic of China's Cold War-era fortress frontline against the PRC meant that Kinmen has had long-standing issues with economic self-sufficiency—particularly after the drawdown of the military garrison, which [numbered over 100,000](#) at the height of the 1958 Second Taiwan Strait Crisis. During a warmer period of Taiwan-PRC engagement, both sides sought to leverage Kinmen's geographic proximity to the PRC through the "[Three Mini Links](#)" (小三通)—a program of limited postal, transportation, and trade links established in 2001. This, in turn, has resulted in a tourism industry largely catering to Chinese visitors.

However, Xi has pushed for further integration between Fujian and Kinmen, with [economic integration](#) in particular being a [pet-project](#) of his since the 1990s. In 2019, Xi announced the "[Four New Links](#)" (新四通) program, with the aim of creating a "[Xiamen-Kinmen Living Circle](#)" (廈金同城生活圈). This program involves the provision of water, electricity, and natural gas from the mainland, along with a bridge to connect Kinmen with

Xiamen. This effort is now being accelerated amidst China's false narratives that both [promote distrust of Taiwan](#) and promise economic prosperity for Kinmen.

Promises of economic development are a strong incentive for Kinmen to cooperate with the mainland, as the island faces long-term economic challenges due to its PRC-dependent tourism economy, small export sector, and lack of self-sufficiency. The PRC has leveraged these challenges to promote [perceptions of the "inevitability" and "necessity" of infrastructure integration](#), while downplaying the national security risks.

While the Three Mini Links were the result of cross-Straits agreements, the PRC now pushes unilateral infrastructure projects in the name of the Four New Links. Two prime examples of this are the [Kinmen-Xiamen Bridge project](#) (金廈大橋) and Xiamen Xiang'an Airport (廈門翔安國際機場). While the PRC outwardly promotes these projects to Kinmen in terms of their economic benefits, PRC domestic media frames both projects as stepping stones towards integrating Kinmen—and later Taiwan—under PRC control.



Image: The completed construction of a trestle for the Kinmen-Xiamen Bridge, located on Xiamen island on the PRC side. The goal of the bridge is to connect Kinmen to the future Xiang'an Airport, and to thereby integrate Kinmen into the greater Xiamen area via direct transportation links. Unilateral construction is meant to put pressure on the Taiwan side to reciprocate. (Image source: [Xiamen News](#))

The Kinmen-Xiamen Bridge Project

The Kinmen-Xiamen Bridge project, the PRC's largest cross-

Straits infrastructure initiative as part of the Four New Links, exemplifies the ongoing integration strategy intended to leverage established dependencies. The PRC initiated construction unilaterally, completing the first trestle of the Xiamen section in May 2024. However, the bridge cannot be completed without the assent of Taiwan, a [topic that featured prominently in the 2024 Taiwanese elections](#). The Kinmen County government is [supportive of the project](#), citing the promise of economic benefits through the linking of Kinmen with the far larger Xiamen market. They also note the success of PRC investment in the [China-Kinmen Water Pipeline](#) in addressing local needs. However, China's motives extend beyond economic cooperation. By promoting increased [communication, trade, and tourism](#), the PRC aims to more closely integrate Kinmen with China—and thereby to bolster its political influence on the island.

Taiwan's [Mainland Affairs Council](#) (MAC, 大陸委員會) has rejected the proposed construction as a unilateral proposal by the CCP, and not consistent with the previously established Three Mini Links program because of the negative impact it would have on Taiwan's national security. The council also noted that the policies of the CCP have shifted to a focus on [maximizing intimidation and suppression](#) of its outlying islands. MAC's concern is that China's initiatives to integrate Kinmen into Fujian will expand to other outlying islands, with Matsu particularly vulnerable. These are not unfounded concerns, given the development of the Xiamen Xiang'an Airport as an accompanying project to the bridge.

The Xiamen Xiang'an Airport

The Xiang'an International Airport is a mega-infrastructure project currently under construction on Dadeng Island (大嶝島) in Xiamen. Upon its [expected completion in 2026](#), the new facility is slated to replace the existing Xiamen Gaoqi International Airport (廈門高崎國際機場) as the city's main aviation hub. This airport project is quite literally connected to the Kinmen-Xiamen Bridge project: both are designed as part of the transportation network for the ["Xiamen-Kinmen 'City Life Circle,'"](#) itself a component of the [Belt and Road Initiative](#) (BRI, formerly known as "One Belt, One Road," 一帶一路).

This project is a significant strategic investment by China, advertised as addressing capacity constraints, enhancing regional connectivity, promoting cross-Straits exchanges, and fostering economic development. Planning and construction [began in 2007](#), with construction of the main terminal building [beginning in 2022](#). The [first phase of construction](#) will feature two 3600 meter runways and will be capable of accommodating 45 mil-



Image: A graphic depicting the location of the future Xiang'an – Xiamen Airport currently under construction, and corresponding transportation infrastructure, with the island of Kinmen at lower right. The currently incomplete Kinmen-Xiamen Bridge would connect Kinmen to the new airport. (Source: Investinxiamen.org)

lion passengers per year, with the [second phase](#) adding two more runways and accommodations for 75 million per year by 2040. For Taiwan, the airport project has attracted far less political commentary than the bridge, but represents a differing, long-term threat. The bridge is a physical connection, and thus it is easy to [envision the military threat](#) this would pose to Kinmen. However, the proposed airport raises a number of gray zone issues.

The first of these would be the utilization of Xiang'an Airport to monopolize air travel into Kinmen. Combined with the bridge, Xiang'an Airport would serve to replace not just the PRC's own airport, but Kinmen's existing (and far smaller) Shangyi Airport (尚義機場). The PRC could speed the process of economically subsuming Shangyi Airport with unspoken threats to flight safety. Given the proximity of the two airports, continuous coordination would be needed to prevent aviation accidents. However, China has demonstrated a pattern of dangerous unilateral changes and lack of communication, as seen in its opening of [new air routes near Taiwan's median line](#) and outlying islands [without consultation](#).

Another issue connected to the use of land reclamation for airport construction is that it serves as an excuse to change the physical environment in the PRC's favor. This is akin to the PRC use of [land reclamation in the South China Sea](#). Current land reclamation has already reduced the distance between Kinmen and mainland China from [six kilometers to three kilometers](#). This makes the recent PRC [denial of the existence of restrict-](#)

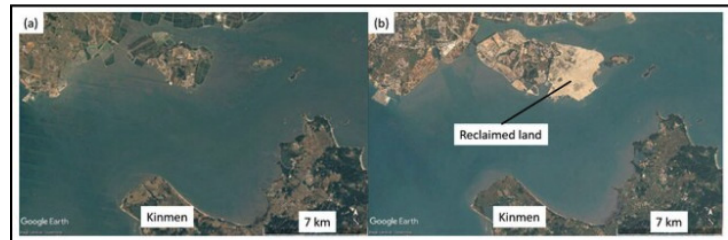


Image: Satellite images of Xiang'an Airport land reclamation between December 2010 (left) and December 2020 (right). The land reclamation essentially halves the distance between Xiamen and Kinmen, creating its own territorial realities through an ostensibly civilian infrastructure project. [2]

[ed waters around Kinmen](#), and the [surge in China Coast Guard presence](#) in the area, even more troubling. Combined with further reclamation, this could essentially allow the PRC to isolate Kinmen without firing a shot.

Conclusion

China's infrastructure projects are a critical component of its broader cognitive warfare strategy against Taiwan, which emphasizes a negative cycle of increasing dependency. Kinmen's reliance on the PRC for [critical resources like freshwater](#) has led to local calls for additional infrastructure. Such calls intersect with PRC propaganda, such as the proposal for a demilitarized ["Cross-Strait Peace Experimental Zone"](#)—which in turn would ease the way for additional gray zone coercion. After all, many of the tools the CCP uses for gray zone coercion—such as the China Coast Guard—are ostensibly civilian organizations, and not explicitly military.

Even more seriously, this is not something that can be isolated to Kinmen. In the 2024 Taiwan presidential elections, Taiwan People's Party (TPP, 民眾黨) candidate Ko Wenje (柯文哲) and the TPP [vocally supported the bridge project](#) as part of a "Kinmen First" platform. Ko sought to differentiate himself from similar supportive calls by the Kuomintang (KMT, 國民黨) by not making this support conditional on overall cross-strait relations. The KMT, in turn, [proposed a local referendum](#) on the matter. In this way, the CCP has used the bridge to force several wedges into Taiwanese politics—first by inserting the CCP narrative of a Cross-Strait Peace Experimental Zone [into broader Taiwanese politics](#), and second by getting a mainstream Taiwanese party to amplify CCP propaganda to the effect that Taiwan's politicians do not care about the people of Kinmen.

Taiwan's response to these challenges must involve a reassessment of its defense policy and economic development strategies for Kinmen. Just as the PRC utilizes cognitive warfare to

undermine the security of Kinmen, Taiwan cannot rely on its military alone to defend Kinmen. Kinmen can only be defended if its people want to be defended, and if the people feel a greater connection to Taiwan than they do to the mainland. This means strengthening civil resiliency and civil society on Kinmen, with a focus on the younger generations. Even more importantly, Taiwan should assist Kinmen in diversifying their economy away from over-reliance on exports and tourism from the PRC. Trade and tourism with the mainland should be a choice for Kinmen, but not the only choice for prosperity. PRC cognitive warfare against Kinmen seeks to isolate the island, and to create a sense of singular inevitability to its incorporation into the PRC. Taiwan's response should be to empower the people of Kinmen by connecting them to the global economy, thereby providing new opportunities and a worldview beyond the skyscrapers of Xiamen.

The main point: CCP cognitive warfare techniques aim to shape the thought and decision-making process of Taiwan's citizens, promoting the "inevitability" of unification. On Kinmen, the CCP does this through the use of unilateral infrastructure projects and resource dependency. Taiwan should reassess its defense and economic strategies for Kinmen—focusing on countering CCP narratives, fostering civil society engagement, and encouraging Kinmen's economic diversification.

[1] PRC state media, particularly "prestige" mouthpieces such as the *People's Daily* (人民日報), disseminates the official party line; while "tabloid" papers such as the *Global Times* (環球時報) are used for less reputable tasks such as spreading conspiracy theories or making thinly-veiled threats.

[2] Image adopted from: Min-Cheng Tu and YJ Huang, "Impact of Land Reclamation on Coastal Water in a Semi-Enclosed Bay," *Remote Sensing* 15 (2023), https://www.researchgate.net/publication/367173006_Impact_of_Land_Reclamation_on_Coastal_Water_in_a_Semi-Enclosed_Bay. Image original source: Google Earth.

The Constitutionality of Taiwan's Death Penalty: Discussions at the Recent Constitutional Court Hearing

By: Maria Wilkinson

Maria Wilkinson is an English correspondent for the NGO "Taiwan Alliance to End the Death Penalty," and a master's student

in the Department of International Affairs at National Chengchi University.

What do Voldemort, Confucius and Albert Camus all have in common?

One was a fictional villain, one a great Eastern philosopher before the common era, and one a French philosopher specializing in existentialism. While all from vastly different timelines, each found their way into the ideological discussions of the constitutionality of the death penalty that occurred in the [Taiwan Constitutional Court \(TCC\) on April 23](#).

Constitutional Civil Case No. 904052 for the Minguo Year 111 was petitioned by Wang Xinfu, the oldest man on death row (age 72), and all other 36 death row inmates were consolidated petitioners. The main questions raised in this hearing came in two parts (which may be found in the [May schedule of the TCC webpage](#)). First, is the death penalty, as one of the penalties by law, unconstitutional? Second, is the death penalty *system* to be considered constitutional? This second question asks which types of crimes for which the death penalty is applicable, the scope of criminal defendants eligible for the death penalty, and the supporting procedures for the death penalty.

During the TCC hearing, the constitutionality of the death penalty was posed through a series of ideological lenses. The main themes that kept coming back up for discussion around the basis of constitutionality were, whether the abolition of the death penalty was a "Western value" in conflict with "Eastern values;" whether Taiwan was bound to international norms on the death penalty; and the proper role of the constitutional court in interpreting the Republic of China (ROC, 中華民國) constitution in relation to human rights norms.

"Western Values" versus "Eastern Values" on the Death Penalty

A number of questions raised related to the cultural differences between states and their stance on the death penalty. If abolition of the death penalty were to be based in cultural differences, could Taiwan's notion of traditional Chinese familial vengeance as emphasized in society be the basis of the constitutionality of the death penalty in Taiwan?

One response came from Huang Cheng-Yi (黃丞儀), a researcher at the Institutum Iurisprudentiae of Academia Sinica, who first mentioned the difficulty of incorporating cultural differences in constitutional interpretation. If the emphasis by society is grounded in Chinese tradition, based on Confucian values, using this to evaluate ideas of the death penalty lacks a straightfor-

ward basis for interpretation. Huang detailed that China's imperial period saw a number of changes in its principles of the death penalty. After Emperor Han Wendi [漢文帝, personal name Liu Heng (劉恆), ruling from 180-157 BCE], abolished corporal punishment (肉刑, amputation or castration), for three to four hundred years the debate to reinstate corporal punishment rarely revolved around Confucianism—thereby making the necessity to include Confucian ideas in the modern debate on the constitutionality of the death penalty somewhat extraneous. Huang further stated that two judicial systems—Macau and Hong Kong—do not have the death penalty, meaning that Chinese societies have the ability to be death penalty free. Recalling these two systems, the argument that the death penalty is part of Chinese culture becomes less substantial.

As far as finding a principle of the death penalty based in Taiwanese ideology, Huang points out that the indigenous people of Taiwan have virtually no culture of the death penalty—so there is no precedence of the death penalty being a Taiwanese tradition.

Law professor Yen Chueh-An (顏厥安) responded to the claim that it is hard to operationalize culture in terms of constitutionality by presenting the perspective of cultural constitutionalism, which in Yen's view is a necessary requirement to prevent the conversation from revolving solely around academic considerations. In addition, Yen argues that viewing the world in an east-west dichotomy is a mistake, as culture is complex and multifaceted. "Discussing culture isn't about the clash of civilizations between Eastern culture, Western culture, European culture, and Taiwanese culture, but about the value judgments, choices, and developments within cultures," Yen says. Yen further iterated that, "from a perspective of cultural balance, we cannot claim that the culture of the Republic of China predominantly advocates for the death penalty."

From the Ministry of Justice (MOJ) viewpoint, Deputy Director of the Department of Prosecutorial Affairs Chien Mei-Hui (簡美慧) indirectly referred to constitutional values by citing Xunzi: "Rewards not matching deeds, punishments not fitting crimes, there is nothing more serious or worse than this." This quote was interpreted by the MOJ to state that the death penalty allows for proportionality between crime and punishment, therefore necessary to balance society. The decision to cite a famous Chinese philosopher and an early architect of Confucian philosophy provides an implication as to which values the MOJ deems to be more relevant to Taiwan's constitutional values. In addition, the MOJ highlights that "the consensus of most Asian countries is still to maintain the death penalty."

While state systems are built and look to emulate others with similar values, the debate during the constitutional hearing provided a perspective as to whether retaining the death penalty was truly an Asian value, or Chinese value, as many in Taiwan argue. These conversations give an inkling that there is no sure historical perspective that could argue the death penalty is an Asian value—and as Yen Chueh-An argues, even if it is an Asian value, is it the value that Taiwan is stuck with?



Image: The interior of Taiwan's Constitutional Court, within the Judicial Yuan. (Image source: [ROC Constitutional Court](#))

Taiwan and International Norms

In 2009, Taiwan enacted the International Convention on Civil and Political Rights (hereafter referred to as ICCPR) into domestic law. As Taiwan is not a member of the United Nations, Taiwan has not been able to officially ratify the binding treaty. However, incorporating the treaty [into domestic law](#) applies a sufficient enforcement mechanism to require the international legal basis to be followed domestically. In addition, the legislative enactment uses language to also require any further general comments or resolutions on the ICCPR to also be practiced by Taiwan. The hearing discussion tried to determine where Taiwan seeks to stand under international law in conjunction with constitutional law.

The MOJ representatives, in their opening statements, acknowledged the requirements of the ICCPR on the death penalty in regards to which crimes shall be punishable by death. In addition, the MOJ noted General Comment No. 36, which further specifies that intentional murder is the only punishment eligible for the sentencing of death. The MOJ states that Taiwan follows all international directions, and claims that international reviewers have not found any violations to the covenant.

While the MOJ has made this comment, they neglected to acknowledge other aspects of [General Comment No. 36](#), such as the requirement for retentionist countries to gradually abolish the death penalty. Professor Hsieh Yu-Wei (謝煜偉) remarked that [Article 19\(2\)](#) of the Criminal Law indicates that the ability to bear responsibility should be reduced from "may" reduce the

punishment to “must” reduce the punishment in the application of the death penalty to better align with General Comment No. 36 of the ICCPR. This reinforces the present gap between Taiwan’s practice and ICCPR General Comments intention.

Commissioner Kao Yung-cheng (高涌誠) from the National Human Rights Commission argues that Taiwan is arbitrarily and disproportionately applying the death penalty—and that therefore it is in violation of the ICCPR. He further states that “as Taiwan has internalized both covenants (ICCPR and ICESCR), several international review conclusions have recommended that Taiwan abolish the death penalty to become a benchmark for human rights in Asia.” This is to contend to the justices that it is not only about the international legality of Taiwan’s role in implementing death penalty punishment, but it is also about the symbolic role Taiwan would play by abolishing the death penalty—and showing that Taiwan, although largely unrecognized by the international community, still recognizes and abides by international human rights norms.

The Court’s Role in Human Rights Norms

The role of Taiwan’s constitution, due to the nature of when the constitution came about, presents one question to which each justice may have varying answers. The ROC Constitution was enacted in 1947. During this period, the ROC Constitution was established in Nanjing, China. Now, the relationship between the constitution and the ROC presents an enigma as to how it should be viewed. As a democratic system, should the constitution also be interpreted to include democratic principles and values such as the right to life—or shall we interpret the functions and meanings of the constitution as envisioned under an authoritarian system?

Attorney Jeffrey Li (李劍非), reminded the court that in Interpretation No. 748 regarding same-sex marriage, the court stated that the protection of fundamental rights is a constitutional duty of the judiciary. Professor Yen added to how the court has seen its role in past cases by citing [Interpretation No. 261](#)—overturning previous [Interpretation No. 31](#), effectively saving Taiwan’s democracy and playing a significant role in reflecting the democratic values of Taiwan.

Additionally, Attorney Li continues, if the Constitution is to represent the principles of the present society, as some may advocate, then who must the justices listen to in order to rule on these principles? As Taiwan has presented an interest in gradual abolition since 2006 under the administration of Chen Shui-bian (陳水扁)—and reinforced this interest in human rights and gradual abolition in 2009, when Taiwan signed the ICCPR into

domestic law under the administration of Ma Ying-jeou (馬英九)—but if Taiwanese society is more invested in victims’ rights and retribution, whose ideas must place precedence?

The Association for Victims Support led the debate on public support, centered in the discussion around victims’ rights. Citing the public’s opinions as reflected in news media, the association highlighted both support for the death penalty among victims’ families, and also general public support for the death penalty in the past three years after high profile cases.

In the opening remarks of attorney Essen Lee (李宣毅), one of the petitioner’s legal representatives, he speaks as a family member to a murder victim. Lee presents his personal story of transformation from one once wishing to kill the perpetrator, to twenty years later, no longer sharing that same sentiment. Lee questions whether a court conviction truly brings restoration to the victim, as he states there is silent trauma that a court decision is incapable of healing.

Lee highlighted the story of Harry Potter to apply an analogy as to how Taiwan’s society may improve crime prevention. From books four to six of that series, Voldemort’s return was not accepted by the administrative system. Lee says this reluctance to recognize Voldemort’s presence occurred in order to prevent having to admit that mistakes were made by the wizarding government. Lee suggests we are better off learning from this fantasy series by facing evil in society at the root of the issues with remedies, rather than waiting until crime occurs.

On this issue, the MOJ held that there must be a societal consensus before the justices are able to declare the death penalty unconstitutional. The MOJ believes, from a perspective of separation of powers, that judges are required to adopt a self-restraining stance towards reviewing issues, and that rulings must be based on social development and public consensus.

The [Justices announced on July 12](#) that they will extend their deliberation time from three months to six months, with the official date of announcement still to be determined. This gives the court until September 23 to announce its decision. Several human rights organizations in Taiwan remain hopeful that the court will, even if not finding the entirety of the death penalty to be unconstitutional, recognize a number of components of the regulations and application of the death penalty to be unconstitutional. There remain a number of considerations that the justices must thoroughly consider. If the court decides to look purely at the use of the death penalty in Taiwan and determine whether it violates the constitution, there has been explicit evidence both presented at the hearing and from international

experts' submitted amicus curiae to illustrate how the death penalty has been applied arbitrarily and disproportionately, violating both local and international law. If the court feels that societal support is the major concern in this issue, the court will be responsible for specifying its reasons as to why Taiwan's use of the death penalty abides by the ROC Constitution.

The main point: In April, Taiwan's Constitutional Court heard arguments related to a challenge that the death penalty is unconstitutional, per the ROC Constitution. Arguments were conducted on multiple grounds, to include "Eastern" versus "Western" values, international norms, and victims' rights. The court is expected to render a decision related to these arguments sometime in September.