

Taiwan has Already 'Declared' Its Independence

By Lin Cho-shui

Of all the lines that Beijing has said that Taiwan must not cross, declaring independence has always been regarded as the most inviolate.

If Taiwan were to take the gamble and cross that line, the argument goes, it will have moved closer to “de jure independence,” or legal separation from the mainland, and Beijing would have little choice but to engage it militarily.

And yet, Taiwan has repeatedly “declared” its independence ever since the island’s process of democratization began at the end of the last century.

Taiwan has effectively declared independence by re-drawing its lines of autonomy — in other words, by relinquishing its territorial claims on the mainland and applying its constitution only within the bounds of the Taiwanese islands it has in effect drawn “independent” borders.

Using this reality as our point of departure, we can see that independence occurs on four different levels: 1) through declaration by the nation’s head of state, 2) through a popular vote and collective expression of will, 3) through the exercise of power as a sovereign nation, with the Taiwan islands as sovereign territory and sovereignty rooted in the people of Taiwan, 4) through the writing of a new Constitution.

In 1971, the United States and its allies promoted a “two-China” policy in order to allow membership in the United Nations (UN) to both the People’s Republic of China (PRC) and the Republic of China (ROC). The idea was to resolve the unreasonable arrangement by which the PRC, which in fact ruled the mainland, was not a UN member, and the ROC, which ruled only Taiwan, held “China’s” membership.

The governments on both sides of the Taiwan Strait rejected the two-China policy. Chiang Kai-shek’s Kuomintang government insisted that the government of the ROC represented all Chinese, both in Taiwan and on the mainland, because its parliament had been elected by the Chinese people and the president had been appointed by this parliament. By contrast, the gov-

ernment of the PRC could not claim legitimacy through general elections.

In order to maintain the tenuous argument that Taiwan's National Assembly represented all Chinese, Chiang repeatedly delayed parliamentary elections. It was not until the 1980s, by which time the average age of a member of the National Assembly was somewhere in the 80s, that new elections were seen as necessary. This clearly underscores the challenges that faced Taiwan as it balanced national sovereignty against democracy.

The governments on each side of the Taiwan Strait have ruled their respective territories for close to 60 years now. Many of Taiwan's actions, including parliamentary elections and redrawn borders, resemble those of a sovereign nation. Again and again, they have elicited Beijing's fierce disapproval. The most salient of these actions include: publicizing nautical charts on

the PRC. China and Taiwan do not have a mutually recognized Constitution).

Owing to the stand-off between the two sides, China's dealings on trade with Taiwan, including customs clearance and other issues, are handled according to International Trade Law. This means that as exchanges deepen Taiwan is constantly in a position of "declaring" its legal separation from the mainland. Or, we might say more accurately, that as actual practice increasingly assumes independence, China must more loudly denounce it.

Having no way of exercising real sovereignty over cross-strait affairs, China has worked to limit Taiwan's possibilities for "de jure independence" by maintaining that such actions as formulating a new constitution, holding a referendum, changing the territory's name or making a verbal declaration of independence all constitute declarations of legal separation.

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which Taiwan's sovereignty claims are limited to the waters of the Taiwan and Penghu islands; signing airspace accords with other nations; annulling Taiwan's provincial government, so the territory can no longer be regarded as a Chinese province; making amendments limiting the jurisdiction of Taiwan's Constitution to the islands of Taiwan, Penghu, Kinmen and Matsu, thus canceling its applicability to all mainland Chinese; handling entry and exit of all Chinese using Taiwan's immigration law and setting up its own customs regime so that trade with China was no longer regarded as domestic trade. (While Hong Kong and China maintain separate customs jurisdictions, Hong Kong's customs rights come ultimately from the Constitution of

Beijing has therefore fallen into a logical trap because it has tacitly agreed that de facto independence is acceptable. But the line between de facto and de jure can be difficult to discern with any clarity. President Chen Shui-bian's elimination of the National Unification Council and his announced plans for a referendum on United Nations membership should be seen as moves toward legal separation. But if Beijing takes that tack, it will put itself in the difficult position of having to decide whether or not to use military force against Taiwan. The only other option would be to grope for an out by saying these are merely "efforts" toward independence, that the referendum on UN membership did not in itself constitute "real" independence. In this

context, I should point out that Chen said in his first formal presidential address in 2000 that, “The Republic of China is a sovereign and independent nation, its sovereignty belonging to the 23 million people of Taiwan.” This was tantamount to declaring that the Republic of China is a sovereign nation. But Beijing’s response was to pretend it hadn’t heard the speech.

Naturally, there are serious questions also facing Taiwan. Even if it continues to assert its independence in various forms, or formally declares independence, the international community may feel no obligation to acknowledge Taiwan. There is, of course, also the fact that the scales of power are overwhelmingly tipped in China’s favor. Moreover, while support for “unification” within Taiwan has slipped significantly since democratization began in the 1990s, it remains a force. Taiwan must therefore proceed with extreme caution in declaring independence. This is why former President Lee Teng-hui had to dial it back after he promoted his “two Chinas” formula all those years back, and why Chen has bobbed and weaved for eight years within the confines of his “Four Noes” policy that pledged not to take overt steps toward formal independence in exchange for China not taking military action against Taiwan.

If Taiwan hopes to garner recognition from the international community once it declares independence, it must act with consistency, firmness and determination. In the 1990s, when the Baltic republics declared their independence from the Soviet Union it was not until the popular will was manifested through referenda that other nations acknowledged them. In the same way, when Taiwan vacillates on the question of independence, this discounts the quality of its declarations. Taiwan cannot ensure it will be recognized by other nations if it declares independence, but it will surely not be recognized if it does not affirm its independence. This is why Beijing is doing everything in its power to prevent Taiwan from declaring independence.

But so long as the fact of separateness persists, Taiwan cannot help but take on the behavior of a sovereign nation, and so it will continue to

“declare” independence in various forms. The question, in other words, is no longer whether or not to declare independence, but whether it is feasible *not* to declare independence.

This is the reality under the leadership of the Democratic Progressive Party, and I’m afraid it will continue to be so under whatever leadership, despite differing methods and intensity. It would be best for Beijing to grow gradually accustomed to this reality and face it pragmatically. As for Taiwan, when all is said and done it is a small

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nation that must be wary of how it handles the question of a “declaration.” I should emphasize in closing that China’s goal in pressuring Taiwan on independence and insisting on the one-China position is basically to reserve the right to launch a civil war against Taiwan on the grounds that the cross-strait standoff is an internal affair. While this danger is not imminent, it makes the situation highly unpredictable, and this is something everyone concerned about peace in East Asia should think deeply upon.

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