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ASIA PROGRAM



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## Taiwan's Constitutional Reform: Domestic Inspiration and External Constraints

**ABSTRACT:** This Special Report discusses both domestic inspirations for and external constraints on Taiwan's constitutional reform. Minister Jiunn-rong Yeh of the Research, Development and Evaluation Commission, the Executive Yuan, Taiwan, argues that a new constitution could enhance Taiwan's democratic and effective governance, and help to develop a Taiwanese national identity. Professor Jacques deLisle of the University of Pennsylvania Law School contends that a new constitution would worsen cross-Straits relations and challenge U.S. policy toward China and Taiwan. Professor Alan M. Wachman of the Fletcher School of Law and Diplomacy maintains that mutual accommodation between China and Taiwan is possible through dialogue. While the three essays all recognize the inevitability of some sort of constitutional reform, they vary on its final direction as well as possible implications for Washington-Taipei-Beijing relations.

### Introduction

*Gang Lin*

Since Taiwan's political democratization starting in 1986, the Constitution of the Republic of China (ROC) has experienced six rounds of revision. In recent years, there has been a growing sentiment in Taiwan to create a new constitution through a national referendum. Many people in China and the United States are concerned that such a move might be a watershed leading to Taiwan's de jure independence from mainland China, thus bringing the two sides of the Taiwan Strait into a disastrous war.

What is the rationale behind Taipei's pursuit of a new constitution? What are the different calculations of Taiwan's politicians and ordinary people on such a controversial issue? What will be the advantages and disadvantages if Taiwan seeks to redefine its sovereignty and territory in the new constitution? What are Beijing's possible responses to Taiwan's constitutional reform, and the implications for the

United States? Does the United States have a role to play in influencing Taiwan's constitutional reform, or the methods by which such reform is carried out? The following three essays explore these and related issues.

The first essay, by Minister **Jiunn-rong Yeh** of the Research, Development and Evaluation Commission, the Executive Yuan, Taiwan, argues that Taiwan needs a new constitution because the previous six rounds of constitutional revision were undertaken to solve immediate political problems and eventually created more institutional deadlock and political instabilities. According to Yeh, the first call for a new constitution in Taiwan was made in early 1990. Because the then ruling party (Kuomintang, or KMT) feared losing its political dominance, these demands went nowhere. Incremental constitution revision became the watchword for the democratization process in the following decade.

According to Yeh, since Taiwan has been transformed into a full-fledged democracy, it is time for political elites and ordinary citizens to

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engage in lengthy and comprehensive deliberations—instead of short-term political bargains among political parties—for a new constitution. The current constitution, with its many articles added over the years, is so unreadable that ordinary people (even law students and sometimes lawyers) can have trouble comprehending fully the current constitutional arrangement. Yeh contends that the difference between constitution-amending and constitution-making is actually very slight. An updated list of human rights and more effective mechanisms for human rights protection should be incorporated into the new constitution. He concludes that a new constitution would enhance Taiwan's effective governance, promote deliberative democracy, and help to develop a new Taiwanese national identity, even though it might provoke Beijing's opposition or even hostility.

In the second essay presented here, Professor **Jacques deLisle** contends that the principal arguments offered by Taipei for why Taiwan needs to undertake constitutional reform involve questions of Taiwan's status and cross-Straits relations. Constitutional revision that reconfirms Taiwan's democracy and protection of human rights would highlight Taiwan's independent status in the contemporary world. Substantially revising the constitution will inevitably make the document more clearly Taiwanese, and more deracinated from its mainland origins and Pan-China claim.

DeLisle points out that differences between making a new constitution and revising the current one

are legally and politically significant, as a new constitution is often associated with a new state. Moreover, to change or replace the constitution through a referendum or other direct popular action would open the door wider to more radical substantive changes to the constitution, including redefining Taiwan's territory in such a way as to renounce Taiwan's claim to the mainland. The idea of submitting a revised constitution to a 2006 referendum was a staple of President Chen Shui-bian's platform—although the notion was absent from his carefully vetted inauguration speech. The controversy over Taiwan's constitutional reforms poses new challenges for U.S. policy toward China and Taiwan, creating a dilemma between U.S. pursuit of its “realist” national interests and support for democratic values.

The third essay, by Professor **Alan M. Wachman** of the Fletcher School of Law and Diplomacy, maintains that Beijing perceives Taipei's constitutional “re-engineering” as provocative. Beijing believes President Chen Shui-bian has a “timetable for independence,” and that the introduction of a new constitution represents one giant step toward that objective. From this point of view, Beijing has done nothing to signal its population that accommodating Taiwan's determination to remain autonomous may better serve the national interest and enhance the possibility of China's eventual unification. The entire policy and propaganda apparatus of the PRC is, on this matter, now locked into a form of “groupthink with Chinese characteristics.”

According to Wachman, mutual accommodation between the two sides of the Taiwan Strait is still possible if Taiwan can persuade Beijing that it has not foreclosed some types of association with China. The United States should caution Taiwan that it cannot be truly independent so long as it is dependent on the U.S. military umbrella for survival. It may be time for the United States to contemplate how a reduction in arms sales to Taiwan can serve as an incentive to Beijing to accept Taiwan's autonomous status.

Senior Associate Bonnie S. Glaser of the Center for Strategic and International Studies offered commentary on these three essays when they were first presented at a July 21, 2004, seminar sponsored by the Woodrow Wilson Center's Asia Program. She argued that Taiwan's inspiration for a new constitution is greatly constrained by Beijing's opposition on

## THE ASIA PROGRAM

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this sensitive issue. After the collapse of the Soviet Union, most Eastern European nations were democratized and wrote new constitutions. In contrast, Taiwan still faces “a 800-pound gorilla” which has drawn clear red lines against Taiwanese independence and constitution-making. It is because of U.S. intervention that Taipei has not redefined its territory as limited to the island. However, one should not rule out the possibility, Glaser cautioned, that President Chen Shui-bian may eventually resort to a referendum for constitution-making. To prevent a war between China and Taiwan, the two sides should resort to negotiation and confidence building, starting with small moves, such as cooperation on science and technology or on anti-pollution measures in the Taiwan Strait.

This Special Report discusses both domestic inspirations for and external constraints on Taiwan's constitutional reform. While the three essays all recognize the inevitability of some sort of change in the constitution, they vary on its final direction as

well as possible implications for Washington-Taipei-Beijing relations. In other words, to what degree Taiwan's constitutional reform is—or should be—constrained by external factors remains debatable. For example, the Taiwanese Yeh insists that Taiwan's constitutional reform has nothing to do with a declaration of independence, while deLisle emphasizes Beijing's possible reaction against a new round of constitutional reform in Taiwan. Many American readers will find it easy to disagree with one perspective or another in these pages, as will readers from the PRC and Taiwan. However, many believe that Beijing and Taipei should resort to negotiation and confidence building amidst the growing tension across the Taiwan Strait, and that the United States should encourage cross-Strait dialogue. We hope this Special Report will help policymakers and opinion leaders develop an informed understanding of the complexity of Taiwan's constitutional reform, and seek out possible solutions to prevent a war across the Taiwan Strait in the years to come.

# Hope or Nope: The Second Call for a New Constitution in Taiwan

JIUNN-RONG YEH

## BACKGROUND FOR REFORM

A call for a new constitution for Taiwan made by President Chen Shui-bian and the ruling Democratic Progressive Party (DPP) during 2003 has fueled serious debates both on the island and in the world. The ruling party contends that the current constitution—after six rounds of revision during the 1990s—has not been able to empower government agencies to deliver 1) good and effective governance, 2) democracy and the rule of law, 3) human rights protection, and 4) long-term stability and prosperity. Having regarded Chen's call for a new constitution as merely a campaign strategy, the opposition camp nonetheless rushed to propose a competing agenda—constitutional revision. Consequently, “constitution making” (writing a new constitution) and “constitution amending” (attaching amendments to the current constitution) became the different mottos for the two major political coalitions, mirroring their ideological divide on national identity.

In fact, the battle between constitution making and constitution amending is anything but new. The first call for a new constitution was made in early 1990. The questions contemplated then included: Would serious implementation of the Constitution of the Republic of China (ROC)—primarily designed in the late 1940s for governing the Chinese mainland—suffice to bring about democracy in Taiwan? Was it necessary to revise the constitution to adapt to the changing circumstances in Taiwan? If so, what scale of revision, large or small, was needed? If a large scale of revision was required, why did not Taiwan simply make a new constitution? In the eyes of many radical reformers, a new constitution was imperative to promote and sustain Taiwan's democracy in the long run.

The grand debate ended with a political compromise to undertake a gradual constitutional reform. The then ruling party (KMT) feared losing its political dominance. A constitutional reform on a



small scale that could both meet the demand for political openings and preserve regime continuity was in the best interest of the KMT. The movement of making a new constitution was thus losing momentum. Incremental constitutional revision became the watchword for the democratization process in the following decade. The six rounds of constitutional reform were undertaken to solve immediate political problems rather than making comprehensive arrangements that could further facilitate democratic values and the rule of law. Shortsighted reforms exacerbated constitutional vagueness and institutional inconsistency, which created even more political deadlock and instabilities.

Notwithstanding such piecemeal constitutional reforms, Taiwan eventually transformed itself into a full-fledged democracy. Whereas the constitution still claims that ROC sovereignty extends to the Chinese mainland, the six rounds of revision have made major political offices open to fair and competitive elections, and enfranchised fully the Taiwanese people. In 2000, the then opposing DPP surprisingly won the presidential election. An

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unprecedented, peaceful transfer of governmental power was witnessed in Taiwan. In the 2001 legislative elections, the DPP performed very well and turned into the biggest—while not yet the majority—party in the Legislative Yuan. In the 2004 presidential election, the DPP sustained its governing position, and the KMT and its allies remained opposition parties.

Seen in this way, the ROC Constitution with all its piecemeal revisions—other flaws or imperfections put aside for the moment—may have not impeded the process of democratization. It might even suffice to say that the constitution has nurtured a healthy atmosphere for political competition during the transition. If so, would it be necessary now for Taiwan to proceed with another round of constitutional revision or even to write a new constitution? Why does Taiwan need a new constitution since the island has already successfully transformed itself into a democracy?

## REASONS FOR THE SECOND CALL

To answer these questions sufficiently, we must first know the functions of a new constitution—what it may deliver to sustain young democracies that face domestic and global challenges. While Taiwan missed the first call for a new constitution in the early 1990s, many new democracies seized the unusual moment and wrote new constitutions.<sup>1</sup> Derived from theory as well as practice, a new constitution serves a young democracy in at least three ways: managerial efficiency, democratic deliberation, and identity building.<sup>2</sup>

I will first explain these functions, and then examine whether the current ROC constitution is still short of these functions and whether Taiwan really needs a new constitution.

### *Managerial Efficiency*

The managerial function that a new constitution may provide seems obvious. A well-functioning democracy requires a clearly defined institutional structure, which empowers government agencies to deliver the public good, and constrains them from abusing power—thus allowing the private sphere to flourish. With political and economic transitions in tandem, it is even more important for transitional societies anxious about global competition to estab-

lish a sophisticated and impartial judicial system to protect human rights and business activities.<sup>3</sup>

To guarantee effective and good governance, constitutional clarity in both procedure and substance is important. Unfortunately, many studies have shown that political compromise and incremental reform, which were common in the third-wave democratization process, are likely to create constitutional vagueness and institutional inconsistency prone to political deadlock and instability.<sup>4</sup> Not until constitutional clarity is obtained—either through constitutional re-engineering or strong intervention of a court—could constitutional stability be maintained.

As President Chen pointed out in his 2004 inaugural speech, the ROC Constitution has serious problems in managing state affairs.<sup>5</sup> The managerial flaws of the existing constitutional regime are three-fold: fragmentation of the constitution, deadlock-prone institutional arrangements, and stagnation in revising the constitution.

*Fragmentation of the constitution.* As mentioned earlier, the ROC Constitution was revised incrementally during the last decade. Worse yet, the six rounds of revision took the form of amendments—a separate document attached to the constitution containing 10 new articles, which were composed in such a dense and complex way that they altered or suspended about 60 provisions—more than one-third of the constitution.

Nearly all of the major constitutional institutions and their powers and functions were altered one way or another. These changes include 1) powers and the direct election of the presidency, 2) powers and electoral redistricting of the Legislative Yuan, 3) the appointment of the premiership (the head of the Executive Yuan) and checks and balances between the Legislative Yuan, the Executive Yuan and the president, 4) the redefined role of the Control Yuan (from a representative organ to a ombudsman-like institution), 5) jurisdiction of the Council of Grand Justices and the appointment and tenure of Grand Justices, 6) functions of the Examination Yuan, 7) suspension of provincial government and redistribution of powers between national and local governments, and 8) an enumerated list of policies, such as pursuit of sustainable development and protections of women, farmers, and aboriginals.

In other words, the scale of the past revisions was far from small, leaving only the chapter of funda-



mental rights unaffected. Additional articles would have worked well (as the amendments to the U.S. constitution have done), had the scale of revision been small and few provisions been altered or suspended. But unfortunately, such was not the case. Rather, complicated by the additional articles, constitutional provisions have become fragmented. Neither the integrity of the ROC Constitution that the KMT initially sought to preserve nor the constitutional clarity remains. The constitution, with its many articles added over the years, is so unreadable that ordinary people (even law students and sometimes lawyers) can have trouble comprehending fully the current constitutional arrangement. This flaw, from a standard point of constitutional law, justifies a new constitution. Other democracies have done the same thing for the same reason—why not Taiwan?

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*Deadlock-prone institutional arrangements.* The story of Taiwan's six rounds of constitutional revision exemplifies the problem of shortsighted reform. As a short-run political crisis was dissolved, long-term institutional difficulties emerged.

The first two rounds of revision addressed the political crisis caused by the aging of representatives in the National Assembly, the Legislative Yuan and the Control Yuan. The reform aimed to comprehensively reelect these positions. But once these three bodies became democratic, more intricate difficulties concerning checks and balances among them began to surface. Unfortunately, the additional articles remained unhelpful on these issues for many years. The battle between the National Assembly and the Legislative Yuan did not end until the sixth round of constitutional revision in 2000. The power demarcation between the Control Yuan and the Legislative Yuan, especially regarding their competition for overseeing the administration, remains an unresolved issue even today.

The third round of constitutional revision in 1994 tackled straightforwardly the issue of direct presidential elections, but again neglected more important institutional arrangements associated inevitably with an increasingly powerful presidency. It was anticipated that the fourth round of constitutional revision in 1997 would address in detail the triangular relationship among the president, the premier, and the Legislative Yuan. Unfortunately, however, without a firm consensus on a governmental system, one minor alteration in the triangular relationship actually created more problems than it solved.<sup>6</sup>

Today, Taiwan's president is directly elected by the people and enjoys full power to appoint the premier, thus controlling—indirectly or directly—the administration. Within the current government structure, however, it is still the premier who should be responsible to the Legislative Yuan, and there are no effective checks and balances between the Legislative Yuan and the president. Although the Legislative Yuan can render a vote of no confidence to the premier who is appointed by the president, the president, in response, can dissolve the Legislative Yuan. The latter, in fear of dissolution and the cost of re-election, is therefore unlikely to initiate any vote of no confidence, thus losing almost indefinitely its effective check on the president. Some argue that the revised institutional arrangement resembles the French semi-presidential system, but it is clear that the French system employs stronger checks and balances to constrain presidential powers.

This ill-designed institutional arrangement has destabilized Taiwanese politics since 2000, when the KMT-led political opposition occupied majority seats in the Legislative Yuan, but found no effective way to check presidential powers. The constitutional crisis resulting from the suspension of the fourth nuclear power plant by the Chen administration in 2000 and 2001 was attributable to the same deadlock, to which the No. 520 Interpretation rendered by the Council of Grand Justice provided no intelligible solution.

The sixth round of constitutional revision in 2000 was again crisis-driven. The Judicial Yuan ruled in the No. 499 Interpretation that the earlier constitutional revision that extended the terms of the Legislative Yuan and the National Assembly was



unconstitutional. Without much time for contemplating constitutional consequences, the National Assembly rushed to suspend itself and concede its powers to the Legislative Yuan. Notwithstanding such a revision, the Legislative Yuan is yet equipped with sufficient powers to check the powerful presidency.

These institutional flaws certainly require a thorough constitutional rearrangement. Until then, the Taiwanese government will continue to experience institutional difficulties in delivering the good and effective governance so desired by a society facing global competition.

*Stagnation of the amending process.* As the 2000 revision suspended the National Assembly that had theoretically enjoyed supreme power in constitutional revision, the constitutional amendment process in Taiwan was changed accordingly. At present, the power of amending the constitution is primarily in the hands of the Legislative Yuan. When the Legislative Yuan proposes for constitutional amendment, three hundred ad hoc delegates to the National Assembly are elected within three months and a convention is called to decide whether or not to approve the proposed amendment. The length of the convention is no more than a month, and the tenure of delegates expires as soon as the convention is adjourned.

This rather complicated and difficult amendment process was again (not surprisingly) a political compromise. Both the KMT and the DPP agreed to reduce sharply the National Assembly's functions, but the KMT insisted on preserving the name "National Assembly." Without a thorough debate, the ruling party chose unwisely to preserve the National Assembly, but suspend most of its original powers, creating new problems in the constitution.

Yet another round of revision is insufficient to solve such problems as the above. The three hundred elected delegates to the ad hoc National Assembly gather only for a short time. Such an arrangement resembles a type of public referendum—which certainly would surprise many who have opposed any form of referendum for constitutional re-engineering.

### ***Democratic Deliberations***

The democratic function of a new constitution is related primarily to the process. Making a new con-

stitution with a broad base of consensus facilitates the ongoing democratic process. In the third-wave democratization process, an elite settlement through negotiation between incumbents and opposition was common. While elite negotiations might be crucial in speeding up the democratization process in the beginning, they cannot sufficiently sustain democracy in the long run. The final constitutional compromise must be grounded on political resolutions that are transparently and deliberatively discussed in public forums, with highly mobilized support throughout the country.

The constitution-making process of South Africa during 1994 and 1996 exemplified such a great process. While South Africa started democratization with an elite settlement during the 1992–1994 roundtable talks, it continued the democratic process through enthusiastic and genuine public debates on promulgating a new constitution. When the new constitution was adopted in 1996, South Africa had completed not only democratic elections, but also—more importantly—the building of a deliberative democracy. In other words, the call for a new constitution entails a genuine democratic process, by which initial top-down political bargains are transformed into bottom-up constitutional deliberations. Until that happens, the new values and principles developed during the transition period—even very good ones—will never be fully recognized and entrenched among the people.

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Taiwan's past political transition was short of democratic deliberations. The six rounds of constitutional revision were largely negotiated pacts between major political parties. Hopefully, the second call for a new constitution will provide Taiwan with a renewed chance to develop, in a more democratic way, the broadest possible consensus on institutional arrangements and a set of values and principles. These values and principles, especially an updated list of human rights and related mecha-

nisms, were largely ignored in past reforms, as political players merely focused on institutional arrangements pertaining their interests.

### ***Identity Building***

The identity-building function of constitution making can be observed from a broad perspective. By way of constitution making, at least three kinds of identity may be formed: first, the identity of a new nation, i.e., national identity<sup>7</sup>; second, the identity of a new constitutional regime, i.e., constitutional identity<sup>8</sup>; and finally, the identity of a new civic and constitutional culture, i.e., civic or cultural identity.<sup>9</sup>

It is without doubt that making a new constitution can help form a new national identity. A constitution, enacted by people living in a confined territory, defines their unique identity by enfranchising them while disenfranchising other peoples. For instance, as much as the U.S. constitution has sustained an American identity, the making of a new constitution in the European Union since 2002 is producing a new European identity. Forming a national identity, however, has never been the sole purpose of any constitution making. Other ways can cultivate a new national identity more effectively, such as language programs and ethnic policies.

A more important result of constitutional making is “constitutional identity.” A new constitution stands for a new common ground, upon which people who are often divided in transitional societies may be united. It also becomes a new symbol with which people can identify. By adopting a new constitution that meets the criteria of democracy, rule of law, human rights protection and constitutionalism, the new regime sends a strong signal to its own people that they have something of which to be proud.<sup>10</sup> This function was vividly observed in the constitution making of many Eastern European nations. By making a new constitution modeled on the West, Eastern European nations found their way to “Europe.”

A more subtle form of identity bestowed by the constitution-making process is civic or cultural identity. Through democratic deliberations empowering citizens to participate, a civil culture associated with modern constitutionalism can be nurtured. The formation of civic identity, while not easy, is pivotal to the long-term sustainability of constitutional democracy.

Clearly, Taiwan has lacked these three kinds of identity. The KMT government brought the ROC Constitution to Taiwan in 1949. The Taiwanese people have never enjoyed the chance to make a new constitution, by which their national identity, constitutional identity and civic identity could be formed. To a great degree, however, the processes of democratization and constitutional reform since the 1990s have helped form these kinds of identity. As numerous studies have shown, the process of democratization in Taiwan was in tandem with, and to some extent fueled, the pursuit of national identity. With an independent—and a more advanced—constitutional regime, the Taiwanese people feel quite different from the people in China or Hong Kong. The strengthening of national, constitutional and civic identity in Taiwan must be distinguished from the pursuit of independence.

### **PROSPECTS FOR THE SECOND CALL**

As examined above, it is clear that previous rounds of constitutional reform have produced many serious problems that require further constitutional solutions. For managerial, democratic and identity reasons, the making of a new constitution in Taiwan is imperative to solve constitutional hurdles left by piecemeal reforms, and, perhaps even more importantly, to equip the island with good and effective governance, deliberative democracy, and a new identity.

Facing an increasingly fragile domestic environment and a competitive global market, Taiwan must not miss the second call for a new constitution. The remaining issue is in what ways the initiative of a new constitution can be carried out. What new prospects will be seen this time? Building upon lessons learned from past incremental reforms, I argue in this paper that constitutional reform should involve optimal timing, a deliberative process, and a comprehensive approach.

### ***New Timing***

Timing is critical to the success of the renewed call for a new constitution. As mentioned earlier, the first call for a new constitution came in an earlier stage of democratization. Under the circumstances, priority had to be given to political solutions such as opening elections, rather than any careful design of





institutional arrangement or constitutional value and principles.

But the current situation is different. As a full-fledged democracy, Taiwan must reflect thoughtfully upon constitutional problems and tackle institutional details carefully. Other young democracies have done the same thing. After having gone through the initial difficult years of transition, democracies such as South Africa, Poland, and even Thailand made new constitutions. As transitional politics stabilized, political elites and ordinary citizens could engage in lengthy and serious deliberations rather than being consumed by short-term political bargains.

When is the best time for a new constitution? President Chen mentioned several times that deliberation of a new constitution would begin with his second term in 2004, to be completed in 2007, and the new constitution would become effective in May 2008 at the expiration of his second term.

I think the timing put forth by Chen is proper, as is the president's role in constitution-making. Having been reelected, President Chen enjoys a greater degree of political legitimacy than before in calling for a new constitution. With no chance for continued tenure after 2008, he is removed from excessive political pressures and stands in a fairly neutral position in directing the process of constitutional reform. Comparative constitution-making literatures have taught us that one of the greatest dangers in constitution making is politicalization—the entrenchment of special interests in the document. As far as President Chen's agenda for constitutional reform is concerned, such danger would be avoided in Taiwan.

### *Deliberative Process*

The past rounds of constitutional reform in Taiwan were characterized as elite settlements, as discussed earlier. Political solutions to the problems of democratization were developed at the roundtables of political parties or in the meeting rooms of the National Assembly, rather than in public forums of citizens and minority groups. To speak fairly, none of the constitutional revisions gained highly mobilized support from citizens. This must not happen when constitution making is renewed.

In sharp contrast with elite settlements, citizen's thorough deliberative participation is required in the

renewed process of constitution making. In summer 2004, Secretary General Su Chen-Chang (on behalf of President Chen) traveled to talk with professional/interests groups, ethnic minorities, and citizen representatives in exchange for their comments on constitutional re-engineering. This was partly to keep the DPP's earlier promise of expanding citizen engagement in the course of constitution making. But such actions are not enough. More vigorous efforts must be made to bring public deliberations, such as citizen conferences, public debates, and educational programs, into the process. In fact, we may learn from other successful examples of constitution making, just as South Africa and European countries have done. To facilitate broad-based citizen engagement, these countries created citizen participation programs in the course of making their constitutions, employing traditional constitutional conferences as well as modern technologies such as web-sites, e-mail, and multi-media equipment.<sup>11</sup> The broader the base of participation, the less interest-driven the final product would be.

Is a referendum required for the making of a new constitution? For me, the answer is yes. Many new democracies have held such a referendum without a clear constitutional requirement to do so—why not Taiwan? With more popular and deliberative forms of democracy being emphasized today, public referenda are regarded as one of the most important constitutional mechanisms by which a broad based decision-making can be accomplished. Holding a referendum does not necessarily suggest any failure of the representative system. Besides, a referendum, successfully pulled off, can contribute significantly to a strong and mature civic culture, thus helping to sustain democracy in the long run. More importantly, as discussed above, the procedural requirements of the current amendment process resemble a particular kind of public referendum by involving three hundred elected delegates to the National Assembly. Either a genuine referendum or a process resembling a referendum is appropriate for Taiwan's constitution making.

### *Comprehensive Approach*

Ad hoc problem solving was the pattern of incremental constitutional revisions in Taiwan. However, this pattern produced as many, if not more, managerial difficulties in the long term as it solved. Worse

yet, institutional details crowded out other items on the agenda that were often more important—such as expanding human rights, addressing past injustices, and finding a more balanced approach to economic and environmental development.

A comprehensive range of constitutional re-engineering must be considered this time. In addition to an updated list of human rights, other issues to be addressed include the establishment of more effective human rights protection mechanisms such as a human rights commission or ombudsman; final decisions on government and judicial systems (one Supreme Court or separate high courts including constitutional court); the separation of powers between national and local governments; and finally, national policies such as the welfare state, sustainable development, protection of aboriginal and other ethnic minorities, and related language and educational policies. These are issues that have been discussed seriously in other constitutional assemblies of new democracies confronting competitive global challenges. There should be no exception to Taiwan's constitutional agenda.

Regarding more controversial issues such as the redefinition of sovereignty and “governing territory,” President Chen has made clear in his inaugural speech that these issues are off his agenda at this time. Chen's position certainly releases tension across the Taiwan Strait and ameliorates the concerns of the international community. However, the Taiwanese people should have a chance to reflect thoroughly upon these issues. The deliberative process is as important as the final decision. Europeans have taken decades to reflect—through numerous constitutional conferences, public debates and referenda—on their decision to unify. The ultimate solution to the relationship between Taiwan and China should involve more—rather than less—open and deliberate constitutional discussions.

## CONCLUSION: CHALLENGES AHEAD

Taiwan missed the first call to make a new constitution in the early 1990s. Now a full-fledged democracy, Taiwan should seize a second chance for constitutional re-engineering. The past rounds of incremental reforms produced more serious problems than they solved. For the managerial, democratic

and identity reasons discussed above, the second call for a new constitution is an opportunity for Taiwan to overcome constitutional hurdles and, perhaps even more importantly, to equip itself with good and effective governance, deliberative democracy and a new identity.

Understandably, China has opposed Taiwan's agenda for constitutional re-engineering. The United States also has raised some concerns over political harm that Taiwan's constitutional making might cause to regional stability. Interestingly, in the course of Taiwan's transition to democracy, not a single constitutional reform failed to provoke China's opposition or even hostility. One major example was the decision on direct presidential elections. But Taiwan would not have become a full-fledged democracy without these reforms. Besides, China has made or amended its constitution several times since the 1980s. Taiwan's constitutional re-engineering has nothing to do with the final decision on cross-strait relations, not to mention a declaration of independence. A carefully crafted new constitution could enhance Taiwan's internal stability, therefore facilitating regional cooperation. Should Taiwan succeed in grand constitutional reform, it could set an example for emerging democracies in the region.

Many new democracies make new constitutions on their way toward constitutionalism. The Taiwanese people, however, must exercise more prudence in designing procedures and making substantive changes. As stated earlier, as long as an ad hoc National Assembly is required to approve any constitutional revision—resembling a de facto national referendum—the difference between constitution amending and constitution making is but slight. Thus, the apparent tension between political alliances insisting on constitution amendment and those insisting on a new constitution has no solid constitutional ground. In fact, comparisons of constitution-making experiences shows that the relationship between constitution amending and constitution making is relative and should not be exaggerated.<sup>12</sup> During this renewed chance for constitutional regeneration, political leaders in Taiwan must abandon their ideological differences and concentrate on crafting a new institutional framework for Taiwan's long-term sustainability.



## ENDNOTES

1. For example, South Africa adopted a new constitution at the end of 1996, and Poland and Thailand did the same thing in 1997.
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5. See Chen Shui-bian, "Paving the Way for a Sustainable Taiwan," May 20, 2004, available at [http://www.president.gov.tw/php-bin/docset/showenews.php4?\\_sectopm=5&\\_rid=1684](http://www.president.gov.tw/php-bin/docset/showenews.php4?_sectopm=5&_rid=1684).
6. Jih-wen Lin, "Transition Through Transaction: Taiwan's Constitutional Reforms in the Lee Tenghui Era," *American Asian Review*, Vol. 20 (2002), No.2, pp. 123-155.
7. Christina Murray, "Constitutional Beginning: Making South Africa's final Constitution," *Little Rock Law Review*, Vol. 23 (2001), p. 809.
8. Michel Rosenfeld, "Constitution-Making, Identity Building, and Peaceful Transition to Democracy: Theoretical Reflections Inspired by the Spanish Example," *Cardozo Law Review*, Vol. 19 (1998), p. 1891.
9. Bruce Ackerman, *The Future of Liberal Revolution*.
10. Upendra Baxi, "Universal Rights and Cultural Pluralism: Constitutionalism as a Site of State Formative Practices," *Cardozo Law Review* Vol. 21 (2000), p. 1183.
11. Vicki C. Jackson and Mark Tushnet, *Comparative Constitutional Law* (New York: Foundation Press, 1999).
12. For example, Hungary and South Korea amended their Constitution to such a degree that almost resembled a new one. See Istvan Pogany, "Constitutional Reform in Central and Eastern Europe: Hungary's Transition to Democracy," *International and Comparative Law Quarterly*, Vol. 42 (1993), p.332; Kyong Whan Ahn, "The Influence of American Constitutionalism on South Korea," *Law Journal*, Vol. 22 (1997), p. 71.

# Reforming/Replacing the ROC Constitution: Implications for Taiwan's State (-Like) Status and U.S. Policy

JACQUES DELISLE

## NEW CONSTITUTION OR REVISED CONSTITUTION?

Much controversy has swirled around whether the planned constitutional change in Taiwan will take the form of extensive revision of the existing constitution of the Republic of China (ROC) or replacement of the old charter by a new one. Attention has focused on the precise terms President Chen Shui-bian and others have used: the “new constitution” in Chen’s campaign language; the “new version of the constitution” in the English version of Chen’s May 2004 inaugural speech; the “constitutional re-engineering project” or “reform” to which Chen has also referred; and the “amendment” favored by opposition leaders.

Much of the reason for this flap over language lies in the connection between a “new constitution” and independent statehood. A new constitution is often associated with a new state. A constitution that is merely “revised” assumes continuity of a prior state operating under an altered but ongoing constitution. To be sure, a new constitution does not necessarily mean a new state. The United States is most unusual—operating under an eighteenth-century charter with relatively few amendments. The People’s Republic of China (PRC) is governed by its fourth constitution, and China (which long predates the PRC) has had still more constitutions, including the ROC Constitution now operative on Taiwan.

Nonetheless, a new constitution at least fails to *confirm* the continuity of statehood. A new constitution for Taiwan resonates strongly with assertions of new statehood because of two factors that are especially worrisome for the PRC and inspiring for advocates of Taiwan’s independence. First, post-World War II decolonization broke up the unitary sovereignty of major Europe-centered empires, and newly sovereign states in Africa and Asia



declared independence with new constitutions. Second, with the post-Cold War disintegration of the Soviet bloc, newly independent states adopted new constitutions. (Significantly, these were scrutinized by the West for democratic pedigrees as conditions for recognition.)

Thus, when President Chen and others in Taiwan say that a new constitution would not necessarily change Taiwan’s status, they are legally correct. Politically, however, the connection of a new constitution with a declaration of statehood is strong and inescapable, particularly in light of views on the mainland, among Taiwan’s pan-blue bloc and elsewhere that Chen’s strategy is to achieve independence by semi-stealth tactics. As official PRC sources phrase it, Chen’s plan to make a new constitution in 2006 and implement it in 2008 is “virtually a timetable for Taiwan’s independence,” especially in the wake of Chen’s statement of “*yibian yiguo*” (one country on each side of the Strait) and his calls for a constitution suitable to the “independent, sovereign nation” of Taiwan.

Chen’s flirtation with a “new” constitution may reflect, variously, 1) attempts to press as far forward

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as possible on the independence front; 2) desires to energize the pan-green's base<sup>1</sup>; 3) attempts to keep the pan-green's more extreme wing in line, especially amid Lee Teng-hui's calls for a fully "new" constitution that would break continuity with the ROC; or 4) efforts to depict accurately what proponents for constitutional reform expected—*de facto* discarding of the 1948 charter.

Yet, even mere "revision" can hardly avoid raising similar issues. As Chen himself has said, substantially revising the constitution will inevitably "indigenize" it, making the document more clearly Taiwanese, and more deracinated from its mainland origins and Pan-China claim. Moreover, Chen at times has downplayed the distinction among phases such as "new," "new version" and "amendment," indicating that any form of constitutional reform can be used to achieve the same ends.

In the end, however, differences between a "new" and a "revised" constitution remain legally intelligible and politically significant. Because the notion of a "new" constitution so resonates with new statehood, the reasons for retreat to "mere" revision proved compelling for most advocates of constitutional reform in Taiwan.

### ARGUMENTS FOR REPLACEMENT AND REVISION

If replacement or revision of the constitution were to be justified as anything other than a move to press status issues, arguments for the change had to invoke other ends. Chen and other proponents of constitutional reform have articulated several such aims. Many of them—on the face or perhaps as a matter of genuine intent—do not say anything about Taiwan's status. But, given the law and politics of Taiwan's status and cross-Straits relations, these goals cannot avoid implicating questions of statehood and independence.

Some explanations assert that the old constitution—drafted across the Strait more than half a century ago for a large underdeveloped country with no history of democracy—simply does not fit an industrialized, democratic society of 23 million people in the 21st century. Chen and his allies have made this point explicitly, pointing out infirmities of the current charter and estimating that two-thirds of the articles need revision.

The status question emerges as soon as one begins to consider possible remedial changes. A solution to the identified problems means making a constitution that is, as Chen and others have asserted, indigenized for Taiwan—a charter of government that is more clearly of, for and by the people of Taiwan. In Chen's mid-campaign formulation, constitutional reform or replacement would solve the problem that the 23 million people of Taiwan do not have a constitution genuinely belonging to them. As Chen put it in his second inaugural speech, a new version of the constitution will be a "contract" between the government and the people of Taiwan.

In addition, constitutional revision that reaffirms or emphasizes Taiwan's democracy and protection of human rights would resonate with questions of status in the contemporary world. Emphasis on features that distinguish Taiwan's polity from that of the PRC is consistent with Taiwanese leaders' long-pursued strategy of invoking post-Cold War international law and politics. The global community and, to a certain degree, legal doctrine no longer treat the sovereign state as a "black box" and instead assess the "character" of states' internal orders, enhancing the status of human rights—protecting democracies and diminishing the standing of authoritarian states with poor human rights records. More simply, such revisions focus on promoting democracy and protecting rights of inhabitants of Taiwan, people distinct from those on the mainland not governed by that constitution.

Another related line of argument focuses on shortcomings of the government structure mandated by the current ROC constitution. Proposals to address these issues call for basic changes to institutional structure—affecting separation of powers, the existence of major government organs, and so on—to make the structure more suitable for an entity that is distinct from mainland China.

Other arguments, including one that Chen adumbrated during early phases of the presidential campaign, more directly invoke principles of democracy and human rights and, in turn, have implications for claims to international status that I have already noted. Chen and others have asserted that adopting a new or revised constitution is a proper and necessary step in "deepening" or "advancing" Taiwan's democracy, and an inherent and fundamental "right" of the Taiwanese people.



Finally, when any of these arguments occur in close proximity to references to Taiwan's "independent" or sovereign "normal nation" status, the arguments for constitutional renovation come perilously close to Beijing's charges (an independence agenda courting a military response) and Washington's fears.

### PROCESSES OF CONSTITUTIONAL CHANGE

How constitutional change is effected in Taiwan has significant implications for issues of Taiwan's status and, in turn, the crisis-prone politics of cross-Strait relations. The procedural options for changing the constitution have officially narrowed to one that will rely upon a conventional, constitutionally prescribed process. The Chen administration apparently recognized early that more extraordinary routes are politically impossible. The accepted route will hew to the terms of the existing ROC constitution, which requires a supermajority (three fourths) agreement first in the Legislative Yuan and then in an ad hoc National Assembly (to be convened specifically to approve the amendments). This process exudes procedural regularity and constitutional continuity, certainly far more than other recently contemplated means for altering the constitution.

Nonetheless, the promise to rely on this ordinary process does not completely exclude less orthodox procedures that can raise issues of Taiwan's status. In his 2004 inaugural, Chen called for a Constitutional Reform Committee to seek consensus on changes that ultimately would be adopted by the constitutionally prescribed process. Chen's statement that this committee must include members from across the political spectrum and a variety of experts in order to avoid the errors of past piecemeal and partisan reforms and to insure a long-term focus may be simply a sensible approach to major constitutional reform. It may be a realistic bow to political circumstances by a president who eked out a disputed victory and will face a Legislative Yuan in which his party lacks the supermajority necessary to pass constitutional amendment proposals.

Still, the committee may have implications for Taiwan's possible independence trajectory. Chen's calls for a long-term focus, looking beyond partisan aims to the national interest, suggest more solemnity and a more fundamental character of potential

amendments—a tone at odds with Chen's portrayal of many contemplated changes as "technical" or "engineering" matters. Chen's remarks about the committee also seemed to leave open the theoretical possibility that constitutional reform might use a different, less orthodox process if consensus warranted.

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*The idea of submitting a revised constitution to a 2006 referendum was a staple of Chen's campaign—although the notion was absent from his carefully vetted inauguration speech.*

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A popular "referendum" or "plebiscite" has been much discussed and remains in play, even after the opting for the constitutionally prescribed process for change. The idea of submitting a revised constitution to a 2006 referendum was a staple of Chen's campaign—although the notion was absent from his carefully vetted inauguration speech.

In the context of Taiwanese politics and cross-Strait relations, any reference to referendum leads promptly and ineluctably to questions about Taiwan's status. "Referendum" has long been associated with the former program of the Democratic Progressive Party (DPP), which, before it came to power, called for a referendum on independence. As a two-time presidential candidate and as the head of the DPP, Chen has been at pains to distance himself and his party from the venerable vision of a Republic of Taiwan. But, he has kept linkages between referenda and independence alive, insisting that any change to the status quo of an independent Taiwan be subject to the approval of the people through a referendum.

The controversy over the referendum law adopted in fall 2003 and over the two referendum issues on the ballot during the March 2004 presidential election did little to sever the connection. Critics in Taiwan and the PRC suspected that the Chen administration saw referenda as a precedent for a future vote on the question of Taiwan's status. These concerns were exacerbated by the backdrop of inchoate and quickly muddled discussions in 2002 of a possible law to permit a referendum on Taiwan's status, amid the tumult over Chen's statement that there was "one country on each side of the Strait."



The two questions put to the voters in 2004 were freighted with implications for Taiwan's status, albeit in a complex and indirect way. By addressing whether Taiwan should enhance its defense capabilities if the PRC did not end its threats to use force or move its missiles from the coastal area opposite Taiwan, the first referendum issue implicitly invoked a right to self-defense by Taiwan and an obligation of the PRC not to use or threaten to use force—international legal rules that apply clearly and robustly only in relations among states. The second referendum issue, which concerned the pursuit of a “peace and stability” framework for cross-Straits relations had similar resonances. Both questions assumed or asserted long-standing Taiwanese claims of equal status with the PRC. On expansive readings favored by Beijing's Taiwan watchers and some proponents of Taiwan's independence, this implied claims to full sovereign statehood.

During the earlier debate over the referendum law, Chen and others floated several possible referenda, most of which had implications for Taiwan's status. One asked whether Taiwan should be represented in the World Health Organization (WHO), a United Nations-affiliated organization. The PRC has uncompromisingly opposed Taiwan's participation in the WHO, and insisted that allowing a separate Taiwanese presence in the states-member-only organization would implicitly grant Taiwan undue state or state-like status. Others asked whether Taiwan should have a new constitution or the legislature should be shrunk (an item still on the reformers' agenda). Such contemplated but not pursued referenda implied claims to sovereignty, for essentially the same reasons that potential constitutional reforms did.

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*The absence of legal effect and, in some cases, the substantive banality of contemplated referenda may even make criticism more credible that they are rehearsals for an independence referendum and constitute sneaky incremental steps toward a formal declaration of independence.*

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Any implications for status issues might seem to be diminished by the fact that the contemplated referenda would lack legal effect. Nonetheless, holding or even talking about non-binding referenda that address status-related issues can still shift the center of political gravity in Taiwan and foreshadow a later referendum that would address status issues more squarely. Moreover, the absence of legal effect and, in some cases, the substantive banality of contemplated referenda may even make criticism more credible that they are rehearsals for an independence referendum and constitute sneaky incremental steps toward a formal declaration of independence.

Other potential referenda could purport not merely to endorse but to effectuate constitutional changes, including those with strong implications for Taiwan's status. Current legislation does not permit a constitutional change by referendum. It would require a Herculean reading of sparse and long-dormant provisions of the ROC Constitution—derived from the political thought of Sun Yat-sen on people's powers of referendum and initiative—to enact legislation to authorize such a process.

An amendment to permit constitutional revision by referendum would be legally unproblematic (but politically difficult). Chen and the DPP have urged amendments to give much larger roles to referenda in making future constitutional changes, but legislators have balked at the idea of employing referenda for initiating, rather than ratifying, constitutional reforms.

Of greater conceptual, but lesser practical, interest is whether an extra-constitutional referendum might amend or replace the constitution. The matter is surprisingly unsettled even in the United States, despite its long history in constitutional analysis and democratic discourse. A respected position holds that, because sovereignty resides in the people and the constitution is their instrument, the people are free to change their constitution through means other than those specified in the constitution. Such an approach seems fanciful, but perhaps not inconceivable in Taiwan. As the aftermath of the 2004 presidential election briefly suggested, constitutional institutions and processes might not be so legitimate or entrenched in Taiwan that they would be secure from challenge, particularly amid a crisis over the constitution itself. Political theory and legal doctrine provide strikingly little ground for declaring such

extra-constitutional means illegal or stopping them politically.

Any referendum or direct popular action to change or replace the ROC Constitution would further evoke the old “independence referendum” and could open the door to more radical changes to the constitution, including ones implying or asserting independent statehood.

### CONTENT OF CONSTITUTIONAL CHANGES

Whether constitutional revisions imply assertive claims about Taiwan’s status will depend largely on the specific content of those changes. Yet, amid the discussion of replacement or revision, as well as the relevant means, the substance of possible amendments was long left very vague and still remains uncertain. Political calculations surely contributed. How far the administration can go depends on unsettled politics, including the outcome of legislative elections in December 2004. Getting too precise about content too early risked fragmenting coalitions and triggering sharper criticism from opponents in Taiwan and troubled observers in the PRC, the United States and elsewhere.

Still, many of the contours of possible change have emerged and implicated issues of Taiwan’s status, albeit often indirectly and perhaps unintentionally. Chen has pledged not to transgress the conditional “four no’s and one not” promise in his 2000 inaugural speech: no declaration of independence, no change in the national title, no incorporation of former President Lee Teng-hui’s “state-to-state” language in the constitution, no referendum on independence or unification, and not to drop the National Reunification Council as well as the Guidelines for National Unification. In his second inaugural speech, Chen reiterated that changes inconsistent with his earlier promise were off the agenda.

Changes that ignored these restrictions would have international legal significance and bring political crisis. A change in the national title to the Republic of Taiwan (or other similar names), a binding referendum favoring independence (or a nonbinding referendum followed by implementation), or a formal declaration of independence could clearly cross one possibly remaining Rubicon defined by the international law of statehood. Since

the early 1990s, Taiwan’s leaders have increasingly asserted that Taiwan has the legal requisites of statehood (territory, population, effective and independent government, and the capacity to engage in international relations—*de facto* on a grand scale and *de jure* with a few states). Many changes incompatible with the “four no’s and one not” could satisfy an additional, implicit requirement for statehood: a formal declaration of statehood, ideally, in the form of a U.S.-style July 4 proclamation or the similar statements issued by post-Soviet states in 1991. This requirement has been approached more closely, but perhaps not met fully, by President Chen’s assertion of “one country on each side” of the Strait and his claim of a “sovereign” Taiwan (even though muddied by later explanations that what he meant was merely “parity” of sovereignties), and by President Lee’s remarks about special state-to-state relations and the lack of need to “declare independence” again for an ROC that had been a state for nearly a century (in a statement that was, at best, problematic as an international legal argument).

Changes that strain or reject the “four no’s and one not” might not be securely off the agenda. Former President Lee and others have called for amendments to change the name of the country, dropping references to the ROC. Against that background, Chen recently has raised again the controversial issue by supporting “Taiwan” as the appropriate term for the nation, in at least some international contexts.<sup>2</sup> Moreover, the “four no’s and one not” are themselves conditional on a premise—a fragile one amid recurrent PRC saber-rattling—of Beijing’s having no intention to use force against Taiwan. Also, the stated reason for Chen’s eschewing of amendments on sovereignty, independence and the like in his May 2004 inaugural speech was not that these changes were beyond the pale, but merely that such changes required a social consensus that had not yet been achieved.

Several discussed amendments conforming to the “four no’s and one not” could still raise questions of status. First, the constitution might be altered to declare that the territory of the ROC is limited to Taiwan and the minor islands. Chen has said that planned reforms will not do this. But Lee Teng-hui and others have pushed for it and Chen has left some wiggle room, putting national territory on the list of topics about which there was no social con-



sensus. Because a defined territory is a key legal criterion of statehood and because the principal lacuna in Taiwan's implicit case for statehood can be described as a failure to "line up" the entity declared to be sovereign with the entity that has the tangible requisites of statehood, such a "rectification of (territorial) claims" would be legally significant and, thus, political crisis-creating. It would go beyond the previous—not constitutionally enshrined—step taken by former President Lee Teng-hui, when Taipei announced that the ROC's current "jurisdiction"—but not necessarily sovereignty—was limited to Taiwan and other small islands.

Second, the constitution will likely be altered to address some of the asserted political-structural infirmities of the existing charter. Primarily, these are said to lie in a system that is typically described as half-parliamentary and half-presidential, and in a legislature that is too large by half. The former feature produces political stalemate and risks governmental paralysis under conditions of divided democratic government that the mainland framers of the ROC Constitution never foresaw. The large size of the legislature is criticized as being needlessly costly and conducive to corruption in a small country. Proposed amendments addressing these issues quickly gained the legislature's endorsement. While such changes and arguments for them have nothing obvious to do with independence, the planned revisions have features of indigenization, severing of continuity and invocation of Taiwan's democratic polity that, as we saw earlier, resonate with questions of status.

Third, other proposals have called for altering other government structures and deleting traces of ideology in the ROC Constitution. These include reducing the number of branches from five to three (dropping the Examination Yuan and the Control Yuan), eliminating the National Assembly (which was reduced to roles of ratifying constitutional amendments and approving impeachment, and has been slated for elimination under a proposed amendment that has secured legislative endorsement) and provincial government (already gutted to a mere shell), deleting references to Sun Yat-sen's principles, and removing what some see as quasi-socialist (and Sun-derived) principles of economic policy. These pertain on the surface and perhaps in practice to what would ordinarily be considered

internal matters that many countries alter without impact on issues of status. But in Taiwan, these reforms would do especially much to sever key symbolic elements of continuity with the pre-1949 ROC and connections with the Chinese mainland and its history.

Fourth, proposals to address human rights, including the rights of the disadvantaged and aborigines, are also seemingly matters of domestic politics and policy. But they can resonate with issues of Taiwan's status as well, for they again evoke the legally and politically relevant "human rights contrast" across the Strait, and underscore the sense of a Taiwan national community and identity. The latter point may be particularly salient, given Chen's complaint that the existing constitution is regrettably ambiguous on the issue of national identity.

Fifth, changes addressing fundamental matters (or numerous amendments on less important matters) can have an aggregative effect—suggesting discontinuity of a "new" constitution with an "old" one and implying stronger claims to separate statehood. Talk of revising two-thirds of the articles and making changes on matters as varied as conscription, voting age, branches of government, rights of aborigines, principles of economic regulation, and so on, points to this possibility.

Last, but far from least, proposals to alter procedures for future constitutional amendments—especially the pending plan to create a ratifying, but not initiating, role for popular referenda—open a vista of potentially broader and more fundamental changes to the constitution, including ones that would go more directly to issues of Taiwan's status or independence. It also of course would raise the full range of referendum-related issues noted earlier. The proposed amendment that has won legislative support is more symbolic or portentous than immediately transformative, but it is nonetheless significant and it may not be the last word on the issue.

## IMPLICATIONS FOR U.S. POLICY

The controversy over constitutional revision or replacement in Taiwan poses particularly difficult challenges for the United States and its policy—whether characterized as strategic ambiguity or strategic clarity—of not siding with whichever party is "at fault" in a severe cross-Strait conflict.

First, this U.S. stance and Americans' singular proclivity for legal or legalistic analyses (despite a venerable and recently highly visible disdain for international law) may well have skewed the recent cross-Strait wrangling (and much that has preceded it) toward legal or law-related arguments aimed at the crucial U.S. audience. A legal approach here is politically unhelpful, given international law's residually Westphalian proclivity for reducing cases of uncertain or disputed sovereignty to binary choices of "one state or two" and legal analysis's aversion to ambiguity and imprecision that often serve well in diplomacy.

Second, among sources of cross-Strait controversy, the constitutional reform question has been especially susceptible to contrasting characterizations. The PRC's assertions of stealthy Taiwanese independence and Taiwanese claims of mere domestic reform both have relatively high degrees of plausibility.

Third, the United States became very deeply involved in details of the referendum controversy, despite a well-grounded policy preference for avoiding such a role. U.S. officials vetted Chen's inaugural

speech, publicly admitted contradictions and problems in the U.S. "one China policy" exposed by the controversy over Taiwan's constitutional reform, and opined about whether and when a fellow democracy should hold a referendum.

Finally, Taiwan's asserted agenda of constitutional reform aimed at promoting democracy and human rights highlights an uncomfortable tension in U.S. foreign policy. It sharpens the dilemma between pursuit of realist national interests that seem to call ever more strongly for good relations with Beijing, and support for liberal democratic values embraced in Taiwan and emphasized in Taiwan's foreign policy agenda.

## ENDNOTES

1. As one member of the administration put it, DPP supporters would be less likely to find mere revision compelling, and might see it as a recipe for repeating the much-criticized piecemeal constitutional amendment processes of the 1990s.

2. A prominent presidential advisor has suggested that a name-changing amendment might be a second-stage reform.





# Constitutional Diplomacy: Taipei's Pen, Beijing's Sword

ALAN M. WACHMAN

## GROUPTHINK WITH CHINESE CHARACTERISTICS

Chen Shui-bian's plan to address deficiencies in the Constitution of the Republic of China (ROC) is, at most, merely a putative source of the escalating tension between the People's Republic of China (PRC) and the ROC. As with so much that emerges from the controversy about Taiwan's appropriate status, the apparent source of friction—in this instance, the constitution—is not really what the disagreement is about. While any change to the ROC Constitution may have symbolic import for both Beijing and Taipei, the dispute across the Taiwan Strait remains fundamentally territorial. The constitutional commotion is just a symptom of what has been an irremediable conflict about whether China encompasses Taiwan or not.

The reason Beijing views Chen's call to amend or rewrite the constitution as provocative is that the PRC leadership has convinced itself that Chen Shui-bian has a "timetable for independence," and that changing the constitution represents one giant step toward that objective.<sup>1</sup> In their minds, Chen is still adhering to the objectives laid out in the 1986 "Political Platform of the Democratic Progressive Party (DPP)" and the DPP's "Resolution Regarding Taiwan's Future" of May 1999. In those documents, the DPP stated a determination to "establish a new constitution drawn up to make the legal system conform to the social reality in Taiwan . . ." and proclaimed, "Taiwan is a sovereign and independent country. Any change in the independent status quo must be decided by all residents of Taiwan by means of plebiscite."<sup>2</sup>

Beijing fears that Chen Shui-bian plans to use the constitution as a way of foreclosing the option of Taiwan's unification with the mainland. Evidently, it makes little difference to the PRC leadership that Chen Shui-bian has insisted that he has no aim to adjust clauses in the constitution that deal with matters of sovereignty. The PRC also dismisses



as disingenuous Chen's assurances that his objective is to rationalize governance by ridding the constitution of anachronistic impediments to democracy. From Beijing's vantage it is not the constitution, per se, that is the problem, but Chen Shui-bian.

Beijing sees Chen as scheming to shatter the "status quo" in cross-Taiwan Strait relations with incremental steps toward a condition in which any prospect of unification by peaceful means is snuffed out. Beijing fears that Chen's machinations will result in assertions about the definition and governance of Taiwan as a sovereign state—expressed in constitutional terms—that will be put in a referendum before Taiwan's voters who are certain to embrace it as a legal avenue to self-determination.

Even though analysts in Beijing tend to believe that Chen will refrain from a formal declaration of independence, which the PRC has long identified as a *casus belli*, many PRC observers and officials expects Chen to shepherd his flock toward the endorsement of a constitutional framework that eradicates from the ROC Constitution vestigial institutional and semantic cues that Taiwan is only a part of China.

Using democratic consolidation as a guise, Chen is believed by Beijing to have embarked on a project

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of constitutional reform that will supplant the ambiguous, but temporarily tolerable, status quo with an unambiguous legal framework. Within such a framework, the PRC leadership is deeply worried that Taiwan—by whatever name—will depict itself as a sovereign state that is happily rid of structural reminders that it was once part of China. That, in Beijing's lexicon, would amount to "one China, one Taiwan," with which the PRC has always said it will not abide.

Beijing is also aware that Chen is likely to play up his devotion to democracy to garner sympathy abroad while casting the PRC as the dictatorial beast, once again seeking to throttle the popular will of a community that wishes to govern itself. In Hong Kong, the populace has embarrassingly exposed the PRC's commitment to the "one country, two systems" framework as premised on Beijing's role as arbiter of what occurs in both systems, vitiating that model for use with Taiwan and highlighting Beijing's insuperable authoritarianism.

Temperamentally disinclined to see sovereignty as flowing from the will of the governed, the leadership in Beijing sees democracy itself as a weapon in Chen Shui-bian's hands that he flouts with Washington and other sympathetic states in mind. The present leadership of the PRC knows, though rarely acknowledges, that the blunders of 1989 cost the PRC dearly and that its missile exercises of 1996 and other displays of distemper toward Taiwan brought few rewards. For that reason, Beijing is genuinely reluctant to be hoist again on its own authoritarian petard. However, the PRC feels Chen Shui-bian—abetted by the United States—is rapidly backing it into a corner in which it will have no option other than a military response, if only to preserve its credibility.

Indeed, Beijing now seems to be girding up its loins and mobilizing public support for the eventuality of armed conflict, even if that means a confrontation with the United States and further setbacks to economic and social development in China. Whether this is an elaborate ruse concocted for the purposes of psychological warfare to intimidate Taiwan and jolt Washington into restraining Chen Shui-bian is not easy to discern. What is beyond doubt, though, is that Beijing has done nothing to signal its population that accommodating Taiwan's determination to remain autonomous

may serve China's national interest, and enhance the possibility of eventual unification, better than a hostile, armed response will.

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***Beijing has done nothing to signal its population that accommodating Taiwan's determination to remain autonomous may serve China's national interest, and enhance the possibility of eventual unification.***

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Negotiating entails compromise. Considering that Beijing has not prepared its citizens to accept anything less from Taiwan than subordination to the "one country, two systems" formula, one may conclude that the leadership is not in an accommodating mood. The message that Beijing broadcasts at home and abroad is that what it defines as "separatism" must be crushed, what it defines as China's sovereignty and territorial integrity must be preserved, and that the PRC is prepared to eat whatever bitterness is thrown in its face in the furtherance of those abstract objectives.

Having been established at the top, these views have not been susceptible to much adjustment from below. The entire policy and propaganda apparatus of the PRC is, on this matter, appears locked into a form of groupthink with Chinese characteristics. While the PRC elite may have a nearly universal and reflexive commitment to unification, or at least an opposition to Taiwan's permanent independence, one could detect in recent years a wide range of views about how best to handle the issue of Taiwan. Within the past year, though, pluralism has given way to consensus, or at least an enforced uniformity.

Persuasive speculation about the reasons why this has happened focused on the struggle between Hu Jintao, president of the state and head of the Chinese Communist Party (CCP), and Jiang Zemin, who formally retired from those posts in 2002 but retained the chairmanship of the Central Military Commission until he relinquished his hold on it in September 2004.

Now that Hu Jintao has assumed the chairmanship of the Central Military Commission and is characterized as having won the struggle with Jiang



Zemin for succession, observers will be eager to see whether Beijing's posture toward Taiwan is adjusted. Even if the untidy transition to the fourth generation of leaders was not the principal cause of Beijing's increasing rigidity and belligerency toward Taiwan, it remains the case that ranks seem to have been closed on a policy of stridency and determination to derail what is imagined to be Chen Shui-bian's intentions to steer Taiwan to independence by 2008. Although Hu undoubtedly differs from Jiang in style and may establish a different order of policy priorities, there is no evidence as of this writing that he would treat the cross-Straits relationship differently than did Jiang Zemin and his leadership cohort.

### INTENTIONALLY (MIS)READING BETWEEN THE LINES?

The PRC's increasing hostility toward Taiwan generally and Chen Shui-bian particularly is the outgrowth of a process that has been unfolding for years. It began to intensify when former president Lee Teng-hui called on "the people of Taiwan to forge a new constitution and to change the nation's designation from the Republic of China to Taiwan" at the World Taiwanese Congress held on March 15, 2003.<sup>3</sup> Over the summer of 2003, Lee amplified his call for a new constitution and a new national title by saying that the ROC no longer existed. By contrast, Chen Shui-bian seemed eager to make the point that the ROC continues to exist, and that "It is not disputed that I was sworn in as the ROC's 10th president on May 20, 2000, in line with the nation's constitution."<sup>4</sup> Indeed, Chen can often be heard to refer to the Constitution of the ROC and his obligation to serve under it as president of the ROC.

However, on September 28, 2003, Chen Shui-bian called for a new constitution when he addressed a convocation of Democratic Progressive Party (DPP) members celebrating the party's 17th anniversary. Chen explained why a new constitution was warranted, by focusing on problems in the constitution that impeded the consolidation of a rational democratic system. On the day after Chen's speech, Chiou Yi-jen, then the secretary-general of the presidential office, stated that "drafting a new constitution does not necessarily mean changing the country's official title" and the presidential

spokesman clarified that Chen's call did not invalidate the "five no's" in his first inaugural address.<sup>5</sup> Still, the PRC is convinced that objectives laid out in the DPP platform of 1986 continue to control Taiwan's ruling party and President Chen. Having decided that Chen is entirely untrustworthy, opposing what it sees as efforts by Chen to de-Sinify Taiwan, knowing Chen rejects the concept of "one China," and in the context of ever-more assertive calls by Lee Teng-hui for a Republic of Taiwan, the PRC has blurred the distinction between Chen's call for constitutional reform and Lee's calls to devise a new constitution for a state called Taiwan.

Within days of Chen's remarks about a new constitution, the PRC initiated a campaign to characterize Chen's announcement as having insidious motives. Guo Zhenyuan, a research fellow with the China Institute of International Studies, was quoted in a report carried by the *Xinhua News Agency* as accusing Chen of saying something he had not said. Guo stated that

Chen also showed his "true colors," contradicting his 2000 promise of no declaration of Taiwanese independence, no incorporation of the "two states" remarks into the constitution, no change of the so-called country's name, and no referendum on Taiwan independence during his tenure as leader.<sup>6</sup>

Guo did not explain how he arrived at this conclusion. Similarly, a report in Hong Kong's *Ta Kong Pao* made the connection between Chen's timetable for a new constitution and a "timetable for independence," although it did not specify why it viewed these as the same. The article stated, in part,

This is probably the first time Chen Shui-bian flagrantly set a timetable for promoting "Taiwan's independence." It is also his official call for "Taiwan's independence," provoking all Chinese people, including Taiwanese compatriots. Chen Shui-bian's mentality of "rushing independence" has once again been thoroughly exposed.<sup>7</sup>

From that point forth, the die was cast. Protestations from Chen notwithstanding, the PRC persisted in castigating him for operating from a

timetable for independence. As Taiwan's presidential election campaign heated up and as Chen mismanaged the activation of the referendum law, Beijing saw in each step ever more reasons to believe that its analysis of Chen's intentions was accurate. Chen and his administration were, at times, diplomatically injudicious and could have allayed the PRC's anxieties more persuasively by preserving with greater effect the potential for accommodation between Beijing and Taipei. However, Chen has not said anything about a "timetable for independence" and did repeatedly specify many administrative and procedural problems that warranted constitutional change and rationalization. He has also reiterated his commitment to the five no's.

By the fall of 2003, the PRC was operating more on the basis of its anxieties than in response to Chen's own assertions. Beijing had worked itself up into such a fever about the possibility that Chen would press for a new constitution ratified through a referendum that Hu Jintao evidently came down hard on the Central Leading Group for Taiwan Affairs for its failure to address the Taiwan issue more effectively. According to a report in Hong Kong's *Hsin Pao*, President Hu "pointed out that the group 'did not have a strong will, failed to present clear-cut viewpoints, and did not adopt a firm attitude' in its communication with the U.S. side" about the Taiwan issue. The article makes clear that from that moment, the PRC leadership expected that a referendum, if held, would be the leading edge of a campaign for independence. The formula was clear. The PRC now believes that a new constitution will be drafted in 2006 and implemented, after receiving support through a referendum, in 2008 as Chen's tenure in office ends. On November 22, 2003,

Hu Jintao and Wen Jiabao unprecedentedly convened a Central Committee Politburo meeting to specially discuss the situation in the Taiwan Strait . . . The meeting maintained that if no limit was set upon the so-called "plebiscite on legislation" pushed for by Taiwanese authorities, they would have obtained a "legal source" (*fa yuan*) for Taiwan's independence; and if the proposal to "codify the referendum into the constitution" was formally adopted, Taiwan would become a completely independent country.<sup>8</sup>

It is not evident why Hu and Wen regard the amendment of the ROC Constitution as a legal source for Taiwan's independence when they do not regard the ROC Constitution in its present state as a legal source for ROC sovereignty over all China. Indeed, one wonders whether they are bothered more by the potential humiliation that would come from a plebiscite that might expose the lack of commitment by Taiwan's voters to unification or to the establishment of constitutional language reflecting that view. In any case, ever since November the referendum and constitution have been perceived by the PRC leadership as components of a scheme toward independence. The reelection of Chen Shui-bian in March 2004, after a most contentious election, was undoubtedly a severe blow to the hopes of the PRC. One response was to pre-empt Chen's inaugural address, punctuated though it was by conciliatory phrases, by issuing a statement on May 17, 2004, three days before the inauguration. In it, the PRC leadership articulated two stark options for Taiwan: acceptance of Beijing's demands or war. The statement read, in part,

The Taiwanese leaders have before them two roads: one is to pull back immediately from their dangerous lurch toward independence, recognizing that both sides of the Taiwan Strait belong to the one and same China and dedicating their efforts to closer cross-Strait relations. The other is to keep following their separatist agenda to cut Taiwan from the rest of China and, in the end, meet their own destruction by playing with fire.<sup>9</sup>

#### BEIJING'S ARAFATIZATION OF CHEN SHUI-BIAN

The paradox, here, is that although the PRC claims it will be mollified if the "Taiwan authorities" mouth the magic "one China" words, the PRC has already decided that it cannot trust Chen Shui-bian and that nothing he says is credible. In that respect, Beijing has painted itself into a corner by marginalizing Chen Shui-bian in a manner that mirrors what Israel under Ariel Sharon seems to have done to Yasir Arafat. One element of this marginalization is to discount what Chen says and to recast it in ways that conform to pre-existing views of what Chen



really means. For instance, following Chen's inaugural address of May 20, 2004, *Xinhua News Agency* reported "*Renmin Ribao* Publishes Signed Article, Pointing Out that Chen Shui-bian's May 20 Speech is 'Taiwan-Independence' Rhetoric with a Hidden Agenda." The author reviewed Chen's speech, and commented that although Chen did not use the phrase *yibian, yiguo* [each side, one state], "the whole speech was full of the notion of Taiwan as an 'independent country.' He was actually continuing to advocate 'each side, a (separate) country.' This showed that he had not given up his separatist 'Taiwan-independence' stance." Although Chen's speech did not call for a new constitution to be adopted by referendum, the author asserts that Chen's words "hid connotations of continuous efforts to promote the 'drafting of a new constitution for Taiwan's independence' in 2008." Deconstructing other phrases in Chen's speech, the author concludes, "These few words unmistakably showed what Chen Shui-bian was actually thinking deep down."<sup>10</sup> It is startling that otherwise well-regarded and highly-placed analysts and scholars working at think tanks and research institutions associated with the PRC government express themselves in terms of this rationale: Chen Shui-bian does not mean what he says, but we know what is really in his heart.

The PRC leadership has succumbed to a self-induced panic on the basis of what it imagines Chen Shui-bian really intends by the words it routinely dismisses. Anger and frustration have left Beijing deaf to rhetorical openings from Chen on which it might have built accommodation, and blind to olive branches offered by Taipei to calm roiled waters.

Analysts in the PRC assert that—from Chen's past association with the Taiwan independence movement—it is possible to know what he will do in the future. In its myopic focus on the intentions of the individual leader, rather than on the role of the individual within a broader political system that exercises constraints on ambitions, the PRC ignores the difference between an individual's dreams and the political posture of a person who holds office. Regardless what may be in Chen's heart, he is obliged to function in a political environment in which he has only the power to persuade his constituents and, in any event, must work with a vigorous opposition that will do anything in its power to

cut him off at the knees. Moreover, the PRC's view of Chen and the DPP as chugging along on a pre-determined path toward independence unmindful of political realities—chief among them the PRC's belligerence—fails to take note of slight moderation in the DPP's stated ambition. While there are plenty of people in and out of the DPP who probably would like for Taiwan to remain independent if there were no significant costs to doing so, even the DPP has bowed to the need for greater prudence. On its website, the DPP offers the view

As for the issue of sovereignty, since under present international conditions, it is impossible for either side across the Strait to compromise on this matter, the DPP prefers to avoid discussion with China on this sensitive yet contentious topic while dealing with the more practical and functional matters first.<sup>11</sup>

Beijing's preoccupation with the national leader reflects not just a lack of trust in Chen Shui-bian, but a fundamental misperception of the democratic process. Even in the authoritarian system he commands, Hu Jintao is not at liberty to dictate policy without regard to powerful constituencies. Yet, the PRC leadership seems to regard Chen Shui-bian as acting without concern for popular will or institutional checks that limit his power to simply declare independence—or agree to unification under the "one China" banner—by fiat. Beijing has neglected or discounted the fact that most respondents to public opinion polls in Taiwan express no interest in "independence" and prefer some version of the "status quo." They also seem to minimize the institutional and procedural hurdles that must be overcome to make any change to the constitution.

### THE ROC CONSTITUTION: IF IT AIN'T FIXED, DON'T BREAK IT

The focus on constitutional change as a means of establishing independence is a red herring. Chen Shui-bian and his predecessor, Lee Teng-hui, have repeatedly stated their views that the ROC is already a sovereign state that is independent of the PRC and has been one since 1912.<sup>12</sup> Moreover, the ROC Constitution of 1947 by which Taiwan has been governed contains numerous clauses that



underscore the sovereignty of the ROC and might be construed to challenge that of the PRC. While the PRC is enraged by the prospect that Chen will use constitutional reform as a way of asserting Taiwan's sovereignty and rally popular opinion to what it sees as Chen's crusade, there are already ample causes for Beijing's ire in the outdated document that Chen has been seeking to amend.

That Beijing would be so sensitive to the prospect of a new or revised constitution seems odd, considering that it denies that the ROC still exists. The PRC declared that the ROC was "overthrown" in the civil war of the late 1940s, and while it refers to the island as Taiwan, not the ROC, it has tolerated Taiwan existing as the Republic of China.<sup>13</sup> Ironically, even though Beijing refers to Taiwan as "Taiwan," it is unnerved by the prospect of Taiwan referring to itself as "Taiwan." Beijing is evidently more at ease when Taiwan refers to itself as the ROC because that name, at least, implies a connection to China.

That is not to say that the PRC is satisfied with Taiwan remaining autonomous, but it took some comfort from the long-standing KMT position that held open the possibility of unification. This is why the real cause of the present escalation of hostilities is not the constitution, but Beijing's perception of Chen Shui-bian's intentions. If Beijing believed that Chen had a genuine determination to work toward some form of accommodation on the matter of Taiwan's status, everything else he has done or pledged to do would appear much less threatening to the PRC's core interest.

As it stands, the PRC's view of the ROC Constitution seems to be that "if it ain't fixed, don't break it." That is, even though the PRC has long asserted that the ROC no longer exists as a sovereign state and even though the ROC Constitution of 1947 may be offensive in the eyes of the PRC, Beijing would prefer that Chen did not tamper with it, leaving a document that is bad enough alone. Any changes to the constitution draw attention to three discomfiting realities:

- (1) Beijing has failed to lure the people of Taiwan to see merits in unification;
- (2) the people of Taiwan—either by legislative means or by referendum—are capable of affirming their autonomy and intentions to remain apart from China; and

- (3) the PRC has failed to deter by threats of force what it deems to be separatist activity.

That leaves Beijing having either to swallow its pride at the cost of its credibility, or to make good on its threats to use force.

An elevation in hostility during the summer of 2004 stemmed in part from the announcement of the Dongshan military exercises that were to be conducted in September by the PRC, with a domination of Taiwan's airspace as the announced objective, as well as in other sharp rhetoric directed both at Taipei and Washington.<sup>14</sup> Although the exercises were reportedly cancelled at the end of August, the antagonism has not abated. The PRC leadership continues to see Chen Shui-bian and his efforts at constitutional "re-engineering" in the most threatening light, to ignore signals to the contrary, and to express resolve to match Chen's efforts, step by step, insuring that as he progresses along his timetable, Beijing will ratchet up its pressure on Taiwan.

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***With all parties donning their most unyielding masks of indignation and determination, and none now prepared to conciliate, the grave situation threatens to move beyond a point at which last minute solutions can be effective.***

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In the end, though, Beijing has signaled that if it must, it will put an end to this race and that it will ensure the situation is resolved on its own terms, not Chen's. Ominous warnings from Beijing have prompted Washington to dig in its heels, too, with the usual round of Congressional chest thumping about the sanctity of the Taiwan Relations Act. The PRC has used meetings with visiting U.S. Vice President Dick Cheney and National Security Adviser Condoleezza Rice and a September meeting between Secretary of State Colin Powell and Foreign Minister Li Zhaoxing to underscore the severity of the unfolding situation. With all parties donning their most unyielding masks of indignation and determination, and none now prepared to conciliate, the grave situation threatens to move beyond a point at which last minute solutions can be effective.



tive. Dialogue and incentives to accommodate are urgently needed.

Despite the bellicose tone of recent pronouncements from Beijing and Washington and a lively debate on Taiwan that results in what the PRC will see as further provocation, accommodation should still be possible if Taiwan were to act in ways that would persuade Beijing that it has not foreclosed on some types of association with China. Of course, there are vocal political constituencies in Taiwan who oppose any association with China, whether it be the PRC or some other Chinese state. That they cling to a vision of absolute and permanent separation, though, makes them a minority. A far greater number of respondents to public opinion polls on Taiwan have expressed a preference for the elastic concept of the “status quo,” and a healthy segment of those people are open to the possibility of association with China under appropriate conditions. Others might be persuaded that an association with China merited consideration if the incentives were structured persuasively, especially as those generations that act now in reaction to the suppression they suffered at the hands of the authoritarian KMT pass power to those generations that have known nothing but democracy in Taiwan.

This leads to a role for the United States. Perhaps it is time for Washington to consider how its own approach to this enduring dispute has impeded accommodation by both Beijing and Taipei. The sympathy Americans may feel for Taiwan's plight in the shadow of PRC threats has prompted policies and postures intended to support and defend Taiwan that have enraged Beijing and, paradoxically, may be contributing to an erosion of Taiwan's security. Beijing may be correct in seeing the robust military assistance that Washington has made available to Taipei as encouraging many in Taiwan to feel complacent about the likelihood of a PRC military assault and dismissive of Beijing's persistent rhetorical belligerence. Political actors in Taiwan who fail to take seriously enough the threat of the PRC may, indeed, have been emboldened to take steps that have contributed to an escalation of cross-Straits tensions. These, in turn, inflame Beijing's sense that it must act even more assertively if only to avoid being seen in Taipei and elsewhere as a “paper tiger.”

One approach to disrupt this potentially destructive cycle is to urge Taipei to see that it cannot be

independent so long as it is perpetually dependent on Washington to protect it from a military assault by Beijing. In that sense, Taiwan really cannot be independent unless it has the capacity to defend itself or persuade Beijing that what Taiwan experiences as independence may be labeled by Beijing as the endorsement of some version of the “one China” principle. Taiwan now seeks “peace, stability, and development.” These goals can only be attained if Beijing's belligerence can be quelled. An enduring condition of peace, stability, and development—to say nothing of independence—cannot be established and sustained if it must depend on a perpetual commitment of security by the United States.

Washington's long-standing good will does not mean Taiwan can expect the American security umbrella to remain extended indefinitely. Selling arms to Taiwan is not a long-term solution, it is a stop-gap measure. However, if Taiwan sees the U.S. commitment as permanent there is little reason for it to apply itself in search of a path to some mutually acceptable accommodation. If it understood American support as coupled to an expectation that Taipei act responsibly in concert with U.S. interests, it might exercise greater restraint and creativity without Washington's prompting. A failure by Taipei to balance its determination to remain autonomous with Beijing's determination to have Taiwan see itself as part of some entity called “China” does not appear to serve well the U.S. interest in avoiding the disruption of peace in the Western Pacific. Similarly, Beijing's unyielding view of Taiwan's status does little to take account of the realities of a burgeoning and distinct political identity on the island and the potential for amity and mutual benefit that would flow from a looser expectation of how the two sides of the Taiwan Strait ought to be bound.

For the solution to this problem to be peaceful, there is only one avenue: compromise. However, not only will Beijing and Taipei each have to compromise on matters of principle, but Washington will, too. Adjusting the posture that the United States has taken toward Taiwan will not be easy. For one thing, selling weapons to Taiwan makes Americans feel good about arming a democratic David to defend itself against an authoritarian Goliath. No right-thinking American political leader wants to take any step that would degrade Taiwan's security or cause Beijing to doubt Washington's inclination to inter-

vene on behalf of Taiwan should the cross-Strait controversy erupt in violence. However, the urge to stay the course must be reconciled with the recognition that absent divine intervention on David's behalf, Goliath was much more likely to prevail.<sup>15</sup> Washington should consider how American weapons sales, military coordination, and other forms of support to Taiwan threaten and infuriate the Chinese Goliath, driving him to battle. Considering how frequently the PRC raises with American officials its objections to U.S. arms sales to Taiwan, it may be worth exploring with interlocutors from Beijing what the PRC is prepared to "give" in order to "get" the United States to modify what it offers to Taipei.

On the matter of the constitution itself, Washington would be correct to ensure that Taipei has no doubt that fiddling with clauses pertaining to sovereignty, territory, or national title—even if they are expressed as "clarifications"—would be seen in Beijing as provocative, would do little to advance the goals of democratic consolidation that Chen Shui-bian has articulated as reasons for constitutional re-engineering, and are therefore both risky and insupportable. This is not a comfortable stance for Washington to adopt, as it suggests that the United States is less committed to allow a democratic process to take its course in Taiwan than it is to avoid the provocation of Beijing. If Taiwan were prepared to bear alone the consequences of triggering a PRC assault, then Washington's view of where prudent self-restraint must trump exuberant national self-expression would be irrelevant. Considering the expectation in Taiwan that the United States be on call to intervene whenever the PRC erupts in hostility, Washington is not amiss in stating its objections to symbolic actions by Taipei that could have devastating costs and Taipei would not be amiss in heeding those warnings.

#### ENDNOTES

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2. See "China Policy" on the website of the DPP (reproduced at [http://203.73.100.105/english/pub/LIT\\_12.asp?ctyp=LITERATURE&catid=1979&pcatid=0](http://203.73.100.105/english/pub/LIT_12.asp?ctyp=LITERATURE&catid=1979&pcatid=0)) and "Establishing of a Sovereign and Independent Republic of Taiwan," the first article in the "Party Platform of the Democratic Progressive Party" (reproduced at [http://203.73.100.105/english/pub/LIT\\_1.asp?ctyp=LITERATURE&pcatid=1975&catid=2121](http://203.73.100.105/english/pub/LIT_1.asp?ctyp=LITERATURE&pcatid=1975&catid=2121)); "Resolution Regarding Taiwan's Future Passed by the National Party Congress (8th Term, 2nd Meeting) May 8, 1999," (reproduced at <http://www.gio.gov.tw>).
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12. While Lee Teng-hui seems to have dissociated himself with that view since he left the presidency, Chen Shui-bian has not.
13. People's Republic of China, *White Paper on the Taiwan Question and Reunification of China* (Beijing: The State Council, August 1993).
14. "Three purposes of military maneuver at Dongshan Island," *People's Daily*, July 19, 2004.
15. In the Bible, David rejected King Saul's offer of armaments and went into battle dressed as he was, armed only with a staff, a sling and five smooth stones. David warned Goliath that he came in the name of the Lord and "on this day, the Lord will deliver you into my hand."



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