

Appendix 164 -- Taiwan Official Position on PRC's Anti-Secession (Anti-Separation) Law (2005)

Source: Ministry of Foreign Affairs, Republic of China (Taiwan), available at: <http://www.taiwan.gov.tw/ct.asp?mp=999&xItem=13556&ctNode=1938>

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I. Foreword

On March 14, the People's Republic of China disregarded the concerns of the international community and passed the so-called "Anti-secession Law". In response to China's contempt for Taiwan's sovereignty, its unilateral steps to change the status quo, the escalation of tensions across the Taiwan Strait and actions which have given rise to a cross-Strait crisis, the Republic of China solemnly proclaims its opposition to this Law.

The Republic of China calls on the international community to address the Law's violation of international law, its impact on Taiwan's democratic development, its harm to cross-Strait relations and its threat to regional security, and to take pro-active measures to restrain China's aggressive behavior and safeguard Taiwan's right to exist in the international community.

II. Main Contents of and Intentions behind the "Anti-secession Law"

(I) Main contents

The "Anti-secession Law" contains ten articles. Main items of the Law's content which deserve attention include:

1. Defining Taiwan's status: The Law proclaims that "Taiwan is a part of China", and that "accomplishing the great task of reunifying the motherland is the sacred duty of all Chinese people, including Taiwan compatriots" [Articles 2 and 4].

2. Circumscribing the cross-Strait issue: The Law proclaims that the Taiwan question is one left unresolved from the Chinese civil war of the late 1940s. It also states that resolution of the "Taiwan question" is China's "internal affair" and is not subject to interference from any outside forces [Article 3].

3. Imposing preconditions: The Law proclaims that the principle of "one China" is the basis for peaceful reunification of the country [Article 5].

4. Adopting non-peaceful means: The Law unilaterally defines the following conditions under which China can employ non-peaceful means and other necessary measures to protect its sovereignty and territorial integrity: (i) in the event that the "Taiwan independence secessionist forces" should act under any name or by any means to cause Taiwan's separation from China; (ii) the occurrence of "incidents entailing Taiwan's secession from China"; or (iii) the complete exhaustion of possibilities for peaceful reunification. Under the above-mentioned circumstances, the Law authorizes the State Council and the Central Military Commission to decide on and execute non-peaceful means [Article 8].

(II) Major intentions

1. To unilaterally establish a dominant position: Through the "Anti-secession Law", China is attempting to simultaneously play the roles of lawmaker, judge and law enforcer.

2. To establish a legal basis for the military invasion of Taiwan: Through the "Anti-secession Law", China has changed its Taiwan policy from a mere political statement to a legal basis, paving the way for an invasion of Taiwan.

3. To take a strong stance in the international community: China is reiterating its position to the international community that the Taiwan issue is an internal affair, and that there is a “red line” that cannot be crossed. The law can be used by China as a bargaining chip with all parties concerned with the cross-Strait situation.

4. To justify a hypocritical democracy: Through the passage of the “Anti-secession Law” by the National People’s Congress, China is claiming to be “reflecting public opinion”. It is trying to make its rigid stance towards Taiwan appear democratic and justifiable.

III. Criticism of the “Anti-secession Law” (I) Violation of International Law

1. Violation of the principles of people’s sovereignty and self-determination: According to the principles of sovereignty and self-determination as stated in the UN Charter, the sovereignty of Taiwan belongs to its 23 million people. In addition, based on the Montevideo Convention of 1933 on the Rights and Duties of States, which stipulates the qualifications of a state, as well as related diplomatic practice, it is undeniable that the Republic of China is a sovereign and independent state. The “Anti-secession Law”—a domestic law unilaterally enacted by China—claims that Taiwan is a part of China and suggests that non-peaceful means may be arbitrarily employed by China to achieve unification. This is not only a violation of the principle of self-determination but also infringes upon the sovereignty of the Republic of China.

2. Violation of the Spirit of Peace: The UN Charter clearly stipulates that the UN was founded to maintain international peace and security. It also establishes the principle of the renunciation of the use of force in resolving disputes among nations. The UN Declaration on the Rights of People to Peace (1984) proclaims the sacred right of all peoples to peace, and requests that member states eradicate war from the life of mankind, denounce the use of force in international relations and bear in mind the fundamental principle of settling disputes through peaceful means as set forth in the UN Charter. Since the “Anti-secession Law” is only a domestic law, and since Taiwan does not fall within China’s jurisdiction, the Law is not applicable to Taiwan. However, the “non-peaceful means” set out in the Law, and against Taiwan, openly violate the spirit of peace as set out in the UN Charter and the UN Declaration on the Rights of People to Peace.

(II) Harming Taiwan’s democratic development

1. Denying democratic values

The main difference between Taiwan and China is that Taiwan adheres to democracy and human rights while the People’s Republic of China is still a one-party dictatorship that deprives its people of rights and freedom, and which has been condemned by the international community for its poor human rights record. Over the past five decades, Taiwan has been transformed from an authoritarian regime into a pluralistic democracy. Its people enjoy full civil and political rights. They are given the power to amend the Constitution and directly elect the head of state and legislators, the freedom to congregate and associate, and the freedom of expression and the press. Their basic human rights are fully protected. However, under the “Anti-secession Law”, autocratic China will be able to unilaterally interpret Taiwan’s efforts to deepen the democratization process as an attempt towards independence, and use force against Taiwan as a result. This represents not only a gross contempt for freedom, democracy, human rights and other universal values, but also a major departure from the noble values of

human civilization.

2. Violation of the opinion of the people of Taiwan

“The Republic of China is an independent and sovereign state. Taiwan’s sovereignty belongs to the 23 million people of Taiwan. Only the 23 million people of Taiwan may decide on the future of Taiwan”. This statement represents the greatest consensus within Taiwan’s society today concerning the issues of national sovereignty and the future of Taiwan. It is also a common position shared by both the ruling and opposition parties in Taiwan. A recent opinion poll shows that more than 90% of the people of Taiwan agree with this position. Although China has repeatedly claimed that it “places its hope on the people of Taiwan”, the newly enacted “Anti-secession Law” contradicts the will of the people of Taiwan in every way. As an opinion poll taken in early March 2005 showed, 93.4% of the population of Taiwan disfavor China’s use of the “Anti-secession Law” as an excuse to invade Taiwan. On March 4, the Legislature passed a resolution, in accordance with the consensus among the ruling and opposition parties, that called upon Beijing to use extra caution before taking any further steps.

(III) Harming the development of peaceful cross-Strait relations

1. A unilateral change to the status quo

For more than half a century, neither side of the Taiwan Strait has been subject to the other. All opinion polls conducted in Taiwan show that 80% of the population favors maintenance of the status quo in cross-Strait relations. It is also in keeping with mainstream opinion in the international community that the two sides of the Taiwan Strait maintain the status quo and solve disagreements through dialogue and peaceful means. However, by providing a legal basis for unilateral interpretation of the “One China principle” through the “Anti-secession Law”, and by claiming that unification is the “legal obligation” and “sacred responsibility” of the people of Taiwan, China has unilaterally changed the status quo in the Taiwan Strait.

2. A departure from the trend towards easing tensions in cross-Strait relations

Improving cross-Strait relations has been the consistent stance of the government of the Republic of China. Since last year, we have continued to express our goodwill to alleviate military tensions across the Strait, end antagonism and improve cross-Strait relations. In addition to reiterating our stance on the “Five No’s”, we have called for negotiations and the establishment of a framework for peaceful and stable interaction between the two sides of the Strait. During the Lunar New Year Holidays in 2005, direct flights across the Strait were undertaken for the first time. This was a sign of easing tensions in the Strait, and the reaction of the international community to these direct flights was positive. For a long time, China has been threatening Taiwan militarily and isolating us diplomatically. This is the main reason why cross-Strait relations have been unable to improve. Therefore, China should refrain from threatening and isolating Taiwan. Yet China has insisted on passing this “Anti-secession Law”, and is threatening to use force against Taiwan. This will only further separate the two sides and further estrange the peoples on either side of the Taiwan Strait.

3. Distorting the nature of cross-Strait problems

In terms of the development of cross-Strait relations, the people of Taiwan demand that China respect the existence of the Republic of China, the right of the people of Taiwan to peaceful development and freedom of choice, and Taiwan’s space in the international community. Yet

by passing the “Anti-secession Law” and threatening to use force against Taiwan, China has attempted to deceive the people of Taiwan by extending some minor incentives to them in the economic and trade spheres, completely distorting the nature of cross-Strait problems. In fact, what China most needs—and what Taiwan can provide—is a democratic system, complete freedom and the protection of human rights.

(iv) Threatening regional security

1. Hastening preparation for the use of force against Taiwan

China continues to hasten its preparation to use force against Taiwan. Its defense budget grows at a two-digit rate every year—growing by 11.6% in 2004 and 12.6% in 2005. Its total defense budget for 2005 has reached almost US\$30 billion, though the actual figure is estimated to be between US\$65 billion and US\$76 billion, making it the third highest in the world. China fired missiles near major ports in northern and southern Taiwan in 1996, and has continued to conduct military drills targeting Taiwan over the years. In recent years, China has increased its deployment of missiles aimed at Taiwan by more than 100 missiles per year. The total number of Chinese missiles targeting Taiwan are expected to reach 800 in 2006. In addition, China has continuously acquired new submarines, with these vessels appearing many times in the Taiwan Strait and the waters of Taiwan’s east coast. According to estimates, China will possess as many as 50 modern submarines by 2006.

In recent years, China’s wording on the use of force against Taiwan has become increasingly rigid. In its 2000 Defense White Paper, China claimed that “the Chinese People’s Liberation Army has the absolute determination, confidence, ability and means to safeguard state sovereignty and territorial integrity”. In 2002, it said that “China’s armed forces have the resolve as well as capacity to check any separatist act”. In 2004, it even said that “the Chinese people and armed forces will resolutely and thoroughly crush” any intention of Taiwan independence at any cost.

The trend shows that China’s “Anti-secession Law” is in fact a law that authorizes war.

2. Expanding the conditions under which force can be used

China has insisted on its stance of not renouncing the use of force against Taiwan. Before 2000, it announced that it would use force against Taiwan under the following three conditions: (i) a declaration of independence in Taiwan; (ii) the occurrence of internal strife in Taiwan, and (iii) the intervention of foreign powers. In February 2000, China issued the Principle of One China and Taiwan Problems. In this document, it changed the conditions for the use of force against Taiwan to the following: (i) the occurrence of events leading to the separation of Taiwan from China under any name; (ii) the invasion or occupation of Taiwan by foreign countries; (iii) the refusal on the part of the Taiwan authorities, sine die, to reach a peaceful settlement on cross-Strait reunification through negotiations. The “Anti-secession Law” of 2005 has further expanded the conditions to include “the event that ‘Taiwan independence’ secessionist forces should act under any name or by any means to cause the fact of Taiwan’s separation from China, or that major incidents entailing Taiwan’s secession from China should occur, or that possibilities for a peaceful reunification should be completely exhausted”. It is obvious that the conditions set by China to use force against Taiwan have become even broader, that the definition of these conditions has become even more ambiguous, and that China has given itself greater discretion to use force against Taiwan. In other words, the threat

that China poses to security in the Taiwan Strait is even greater.

3. Endangering regional security

Taiwan is located in the first chain of islands in the West Pacific. All flight and shipping routes between locations in Northeast and Southeast Asia pass through the Taiwan Strait. The peace and stability of East Asia hinges much on cross-Strait security, and the international community should thus pay close attention to this issue. In a joint declaration by the Japan-US Security Consultative Committee this year, "...encouraging the peaceful resolution of issues concerning the Taiwan Strait through dialogue" was listed as a common strategic goal. In its "Anti-secession Law", China declared that it will use force against Taiwan based on unilateral conditions. China also opposes the intervention of foreign countries, using the pretext that the cross-Strait issue is an internal affair. As a result, China's behavior will bring the situation in the Taiwan Strait to the verge of a potential conflict and, subsequently, endanger regional security and stability, making neighboring countries victims of disaster.

1. Conclusion

In the face of China's passage of the "Anti-secession Law"—a law that changes the status quo in the Taiwan Strait—the government of the Republic of China reiterates the following: both sides of the Strait should resolve disputes through dialogue based on the principles of democracy, freedom and peace; the government of the Republic of China will insist on its steadfast stance of "reconciliation without flinching; standing firm yet avoiding confrontation", and will continue to safeguard its national sovereignty, strive to improve cross-Strait relations and make sure that peace in the Taiwan Strait is preserved.

The United States, Canada, Japan, Australia, New Zealand and the European Union have all expressed opinions since the passage of the "Anti-secession Law" in China on March 14. They have opposed China's intention to solve the Taiwan issue through non-peaceful means, have called on China to resume cross-Strait dialogue as soon as possible, and have urged China to not take unilateral action that could raise tensions in the Taiwan Strait. The government of the Republic of China welcomes and appreciates statements by these nations towards protecting democratic values and ensuring peace and security. We also hope that all democratic and peace-loving nations will work to protect democracy, prosperity and peace in the Taiwan Strait by such concrete methods as opposing arms sales to China and assisting Taiwan's entry into international organizations.