

**Testimony before the U.S.-China Economic and Security Review Commission
Hearing on “Rule by Law: China’s Increasingly Global Legal Reach”**

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Testimony prepared by

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Panel II: The CCP’s Violation of International Laws and Norms

Co-Chairs Commissioner Carte Goodwin and Commissioner Jacob Helberg, distinguished Members of the Commission, thank you for inviting me to participate in this hearing.

My testimony today will primarily address the People’s Republic of China’s (PRC or China) deployment of “legal warfare” or “lawfare” (法律戰) as a coercive tool to compel Taiwan into compliance. In response to the Commission’s inquiries, I will specifically focus on three key aspects: 1) China’s efforts to isolate Taiwan within international organizations, 2) Chinese domestic lawfare initiatives targeting Taiwan, and 3) China’s attempts to employ lawfare within Taiwan.

I will begin by examining the Chinese Communist Party (CCP) government’s strategic manipulation of its own “one China principle” to conflate it with internationally accepted norms. This approach aims to exclude Taiwan from international organizations, thereby creating the impression that questions regarding Taiwan are solely China’s “domestic affairs” and that any external interference would be unwarranted. Subsequently, I will delve into Beijing’s current contemplation of enacting additional coercive legislation aimed at Taiwan. This includes an analysis of China’s existing sanctions lists, which target a number of Taiwanese officials and organizations, labeling them as so-called “Taiwan independence diehards” (台獨頑固分子). Moreover, I will address China’s violations of cross-strait agreements intended to serve as political leverage against Taiwan. In conclusion, I will explore the implications of Chinese lawfare on cross-strait stability and propose appropriate responses for both Taiwan and the United States to effectively counteract these tactics.

I. Chinese attempts to isolate Taiwan in international organizations

In 1971, the United Nations General Assembly (UNGA) passed Resolution 2758, recognizing the PRC as the sole legitimate representative of China in the United Nations and its Security Council, while simultaneously expelling representatives of Chiang Kai-shek. Since then, the PRC has been persistent in its efforts to prevent the Republic of China (ROC)—which has come to be known as “the ROC on Taiwan,” “the ROC (Taiwan),” or Taiwan—from participating in most international organizations and treaties, including economic institutions.

Over half a century later, Taiwan has experienced remarkable transformations, transitioning from an authoritarian regime under the rule of Chiang Kai-shek and his successor, Chiang Ching-kuo, to a flourishing democracy. Despite these significant changes, Taiwan’s isolation in international organizations continues due to China’s obstruction. Taiwan remains excluded from the United Nations and its specialized agencies and legal institutions, such as the World Health Assembly (WHA) and the International Civil Aviation Organization (ICAO). Non-UN-affiliated intergovernmental organizations (IGOs), like the International Criminal Police Organization (INTERPOL), have similarly denied Taiwan access. Even Taiwanese civilians holding Taiwan passports have been barred from entering U.N. buildings.

Taiwan’s exclusion from international institutions not only disenfranchises the island’s 23 million population but also hinders global governance, which could benefit significantly from Taiwan’s contributions as a valued partner. While Taiwan’s democratic government, unlike during the Chiang era, no longer claims to represent China in the international system, challenges to Taiwan’s “international participation” (國際參與) have lasted for decades. The primary source of this challenge stems from political pressure exerted by Beijing. However, when advocating for Taiwan’s exclusion, Beijing’s position often relies on an unquestioned and misguided normative basis within the international institution in question.¹

¹ See Jerome A. Cohen & Yu-Jie Chen, *Taiwan’s Meaningful Participation in the World Health Organization Would Implement, not Violate, UN Principles*, THE CHINA COLLECTION (May 14, 2020), <https://thechinacollection.org/taiwans-meaningful-participation-world-health-organization-implement-not-violate-un-principles>; Jessica Drun & Bonnie S. Glaser, *The Distortion of UN Resolution 2758 and Limits on Taiwan’s Access to the United Nations*, GERMAN MARSHALL FUND (Mar. 24, 2022), <https://www.gmfus.org/news/distortion-un-resolution-2758-and-limits-taiwans-access-united-nations>; Madoka Fukuda, *China Is Using a UN Resolution to Further Its Claim Over Taiwan*, THE DIPLOMAT (Aug. 26, 2022), <https://thediplomat.com/2022/08/china-is-using-a-un-resolution-to-further-its-claim-over-taiwan>; Chien-Huei Wu & Ching-Fu Lin, *Taiwan and the Myth of UN General Assembly Resolution 2758*, VERFASSUNGSBLOG (Apr. 14, 2023), <https://verfassungsblog.de/taiwan-and-the-myth-of-un-general-assembly-resolution-2758>.

The most striking example of this tactic to exclude Taiwan is Beijing’s campaign to conflate UNGA Resolution 2758 with its own “one China principle,” which asserts that Taiwan is part of China. Plenty of instances exist in which Chinese diplomats have claimed that Beijing’s “one China principle” represents an international consensus or embodies the “basic norms governing international relations.”² After Speaker Nancy Pelosi visited Taiwan in August 2022, China issued a White Paper on “The Taiwan Question and China’s Reunification in the New Era,” asserting that “Resolution 2758 is a political document encapsulating the one China Principle whose legal authority leaves no room for doubt and has been acknowledged worldwide.”³

Such claims are false, as many countries have their own policies that do not accept Beijing’s “one China principle.”⁴ Beijing’s intensified efforts are not only aimed at isolating Taiwan but also at promoting the “one China principle” internationally, so as to create the appearance that Taiwan is a matter of China’s internal affairs. This confusion would be particularly useful to Beijing in the event of conflicts across the Taiwan Strait, which China would almost certainly claim to be an “internal war” (內戰), rather than an invasion to annex Taiwan.

Invoking General Assembly Resolution 2758 to deny Taiwan’s international participation is also misleading. When U.N. member states adopted the resolution in 1971, they only voted on one issue:⁵ which government should represent China in the United Nations—the ROC government in Taiwan or the PRC government on the mainland? As member states could not reach a consensus on other issues including the question of Taiwan, the resolution that passed “recognize[d] that the representatives of the Government of the People’s Republic of China are the only lawful representatives of China to the United Nations.” In essence, UNGA Resolution 2758 (and similar resolutions that followed in the U.N. system) solely addressed the question of China’s representation. They did not tackle other questions, such as Taiwan’s representation, nor did they—nor could they—determine issues related to Taiwan’s sovereignty, which remains a fiercely debated topic under international law. Ultimately, the issues

² See, e.g., *Foreign Ministry Spokesperson Wang Wenbin’s Regular Press Conference on August 8, 2022*, MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE’S REPUBLIC OF CHINA (Aug. 8, 2022), https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/202208/t20220808_10737507.html.

³ *The Taiwan Question and China’s Reunification in the New Era* (台湾问题与新时代中国统一事业), TAIWAN AFFAIRS OFFICE OF THE STATE COUNCIL (国务院台湾事务办公室) (Aug. 10, 2022), http://www.gwytb.gov.cn/zt/zylszl/baipishu/202208/t20220810_12459866.htm.

⁴ Ja Ian Chong, *The Many “One Chinas”*: Multiple Approaches to Taiwan and China, CARNEGIE CHINA (Feb. 9, 2023), <https://carnegieendowment.org/2023/02/09/many-one-chinas-multiple-approaches-to-taiwan-and-china-pub-89003>.

⁵ See note 1.

of Taiwan's representation and sovereignty are beyond the scope of UNGA Resolution 2758 and similar resolutions based on it in U.N. specialized agencies.

Not only were the member states that cast their votes in 1971 cognizant of the limited scope of UNGA Resolution 2758, but then Chinese leader Prime Minister Zhou Enlai also made it clear that the PRC understood as much. Zhou noted that, if the Albanian Resolution (which later became UNGA Resolution 2758) passed, "the status of Taiwan is not yet decided."⁶ Despite this, Beijing continues to propagate its misinterpretation of UNGA Resolution 2758.

This persistent practice of misinterpretation, verging on misinformation and disinformation, renders the United Nations and its specialized agencies more susceptible to Chinese legal influence. It seems to have influenced the positions of some leaders and legal advice in these organizations.

For example, in 2007, when Taiwan's diplomatic ally attempted to submit Taiwan's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women to the United Nations, then United Nations Secretary-General Ban Ki-Moon responded, under the terms of UNGA Resolution 2758, "the United Nations considers Taiwan for all purposes to be an integral part of the People's Republic of China."⁷ The United States and other democracies later objected to this incorrect statement, prompting Ban Ki-Moon to backtrack and "confirm that the UN would no longer use the phrase 'Taiwan is a part of China.'"⁸

Controversy and confusion also surround Taiwan's participation in the world's top health organization. In 2005, China reportedly signed a secret Memorandum of Understanding (MOU)⁹ with the WHO Secretariat. Although the MOU has not been made public, reports indicate that the document demanded Taiwan's application for the WHO's technical assistance must go through China and that all exchanges between Taiwan and the WHO must be approved by Beijing.¹⁰ Subsequent WHO

⁶ *Memorandum of Conversation, Beijing, October 21, 1971, 4:42-7:17 p.m.*, OFFICE OF THE HISTORIAN, FOREIGN SERVICE INSTITUTE, <https://history.state.gov/historicaldocuments/frus1969-76ve13/d41>; this point is also highlighted in Drun & Glaser, *supra* note 1.

⁷ John Tkacik, *Taiwan's "Unsettled" International Status: Preserving U.S. Options in the Pacific*, THE HERITAGE FOUNDATION (June 19, 2008), <https://www.heritage.org/asia/report/taiwans-unsettled-international-status-preserving-us-options-the-pacific>.

⁸ J. Michael Cole, *UN Told to Drop 'Taiwan Is Part of China': Cable*, TAIPEI TIMES (Sept. 6, 2011), <https://www.taipetimes.com/News/front/archives/2011/09/06/2003512568>.

⁹ Ping-Kuei Chen, *Universal Participation Without Taiwan? A Study of Taiwan's Participation in the Global Health Governance Sponsored by the World Health Organization*, in ASIA-PACIFIC SECURITY CHALLENGES 263, 271 (Anthony J. Masys & Leo S.F. Lin ed., 2018).

¹⁰ *Id.* at 276; Melody Chen, *China Tries to Explain Memorandum*, TAIPEI TIMES (May 10, 2011),

internal memorandums in 2005 and 2010 further labeled Taiwan as part of China.¹¹

While there is reporting on the content of these documents, the fact that they are not available for public view raises questions about the transparency and accountability of global governance. In addition, the aforementioned documents considering Taiwan as part of China and thereby restricting Taiwan's participation are unfounded.

When Taiwan's President Ma Ying-jeou of the Kuomintang (Nationalist Party) was in office, the CCP cooperated with his government. Consequently, from 2009 to 2016, with Beijing's approval, the WHO's Director-General invited Taiwan to participate in the WHA as an observer. However, since Taiwan's President Tsai Ing-wen of the Democratic Progressive Party (DPP) took office in 2016, with whom Beijing refuses to cooperate, Taiwan's request for WHA observer status has been denied.

To justify Taiwan's exclusion, the WHO relies on UNGA Resolution 2758 and WHA Resolution 25.1, which reiterated the UNGA resolution. But in fact, according to Article 3 of the WHA Rules of Procedure and the 2009-2016 practice, the WHO Director-General has the discretionary power to invite Taiwan as an observer. Particularly in light of the COVID-19 pandemic, Taiwan's participation as an observer should have been welcomed. However, in 2020, the WHO's principal legal advisor, ignoring the organization's rules, claimed that the Director-General's invitation to observer status requires the support of WHA member states—an assertion without legal basis. Neither the WHO Constitution nor the WHA Rules of Procedure necessitate the Director-General waiting for the WHA's decision to invite Taiwan as an observer.¹²

Taiwan's pursuit of engagement with the International Civil Aviation Organization (ICAO) has faced significant challenges too. Since 2009, the Taiwanese government has persistently sought meaningful participation in the ICAO. The Taiwan Flight Information Region is a critical airspace, with Taoyuan International Airport ranking

<https://www.taipeitimes.com/News/taiwan/archives/2005/05/17/2003255172>.

¹¹ Sigrid Winkler, *Taiwan's UN Dilemma: To Be or Not to Be*, BROOKINGS (June 20, 2012), <https://www.brookings.edu/opinions/taiwans-un-dilemma-to-be-or-not-to-be>; Vincent Y. Chao, *Memo says Taiwan not a party to IHR*, TAIPEI TIMES (May 10, 2011), <https://www.taipeitimes.com/News/taiwan/archives/2011/05/10/2003502869>; *President Ma holds press conference to explain government's position on WHO name issue*, OFFICE OF THE PRESIDENT, ROC(TAIWAN) (May 10, 2011), <https://english.president.gov.tw/NEWS/3632>.

¹² Yu-Jie Chen, *Taiwan and the World Health Assembly: The Politics of Invitation*, THE CHINA COLLECTION (May 11, 2020), <https://thechinacollection.org/taiwan-world-health-assembly-politics-invitation>.

as the 4th busiest airport in handling international freight over the past two years.¹³ Despite being a vital aviation hub, Taiwan’s Civil Aeronautics Administration was granted only a single invitation to the ICAO General Assembly in 2013, attending as a guest under the moniker “Chinese Taipei”—an invitation contingent upon Beijing’s approval. Regrettably, Taiwan has not been invited again.

The absence of direct communication between the ICAO and Taiwan has forced the latter to acquire or purchase technical and operational information on air navigation through unofficial channels. This reliance on alternative means often results in considerable delays and suboptimal implementation.¹⁴ This issue becomes particularly concerning when China conducts military exercises in the vicinity of Taiwan. For example, in the wake of Speaker Pelosi’s visit, Taiwan’s aviation authorities were forced to rapidly develop and execute plans to guide all affected flights and mitigate potential danger. Timely information exchange within the ICAO is of paramount importance to Taiwan’s ability to maintain the airspace safety.¹⁵

Even Taiwanese citizens are not spared from political controversies. The United Nations has denied entry to those holding Taiwan passports. As Drun and Glaser note, “A memorandum featured in the 2010 UN Juridical Yearbook, with redacted dates, indicates that the policy of restricting Taiwan passport holders has been in place since at least 2009.”¹⁶ The 2010 UN Juridical Yearbook states, “The United Nations considers ‘Taiwan’ for all purposes to be an integral part of the People’s Republic of China—The United Nations cannot accept official documentation issued by the ‘authorities’ in ‘Taiwan,’ as they are not considered a Government.”¹⁷

Historically, Taiwanese NGOs were able to participate in UN conferences in the 1990s, but this changed in 2007 when Chinese diplomat Sha Zukang became UN Under-Secretary-General for Economic and Social Affairs. A later improvement in cross-Strait relations allowed holders of R.O.C. (Taiwan) passports and other IDs issued by Taiwanese authorities to regain access to U.N. spaces. However, deteriorating relations in 2014 reversed the trend a second time, resulting in denials of

¹³ *International Travel Returns: Top 10 Busiest Airports in the World Revealed*, AIRPORT COUNCIL INTERNATIONAL (Apr. 5, 2023), <https://aci.aero/2023/04/05/international-travel-returns-top-10-busiest-airports-in-the-world-revealed>.

¹⁴ Ram S. Jakhu & Kuan-Wei Chen, *The Missing Link in the Global Aviation Safety and Security Network: The Case of Taiwan*, in *ASIA-PACIFIC SECURITY CHALLENGES* 243 (ANTHONY J. MASYS & LEO S.F. LIN ED., 2018).

¹⁵ Kwo-tsai Wang, *Why ICAO Needs Taiwan*, THE DIPLOMAT (Sept. 14, 2022), <https://thediplomat.com/2022/09/why-icao-needs-taiwan>.

¹⁶ Drun & Glaser, *supra* note 1, at 19.

¹⁷ UNITED NATIONS, UNITED NATIONS JURIDICAL YEARBOOK 539 (2010).

both UN grounds passes and visitors' passes for Taiwanese.¹⁸

Taiwan's participation in regional economic agreements has also been challenging. Take as an example the Regional Comprehensive Economic Partnership (RCEP) initiated by ASEAN;¹⁹ China, as one of the original parties, has been able to block Taiwan's admission.²⁰ China insists that Taiwan accept the "one China principle" in order to join and might also demand additional political concessions from Taipei, such as expanded cross-strait economic ties under the ECFA.²¹ As Richard Bush noted, "Beijing was in a blocking mode for a very political reason. It wished to leverage any additional greater access for Taiwan to bilateral and multilateral trade and investment agreements to press the Taipei government to make more concessions on defining the island's legal and political relationship with the mainland and thus move one step closer to unification."²²

Both China and Taiwan want to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), but China aims to join before Taiwan.²³ It is observed that pro-China Latin American countries are unlikely to admit Taiwan while keeping China out.²⁴ Once China becomes a member of the organization, it may be able to exert more influence to block Taiwan's entry and dictate terms.

While Taiwan has not made significant progress in joining the aforementioned institutions, the Global Cooperation and Training Framework (GCTF) appears to be charting a new path by serving as an innovative model that provides space for Taiwan's participation in discussing global issues. Initiated in 2015, the GCTF was based on an MOU signed by the United States semi-official proxy (American Institute in Taiwan) and Taiwan. Its full partners have since expanded to include Japan (Japan-Taiwan Exchange Association) and Australia (Australian Office in Taipei). Through

¹⁸ *Briefing Note: China and the UN Economic and Social Council*, INTERNATIONAL SERVICE FOR HUMAN RIGHTS (July 2021), https://ishr.ch/wp-content/uploads/2021/07/final_proofed_formatted_-_china_and_ecosoc_0.pdf.

¹⁹ Grace Ho, *A Trade Pact Nearly 10 Years in the Making: 5 Things to Know about RCEP*, THE STRAITS TIMES (Nov. 15, 2020), <https://www.straitstimes.com/asia/a-trade-pact-nearly-10-years-in-the-making-5-things-to-know-about-rcep>.

²⁰ Mareike Ohlberg, *Taiwan Tensions and Deepening Transatlantic Cooperation*, GERMAN MARSHALL FUND (Jan. 10, 2022), <https://www.gmfus.org/news/taiwan-tensions-and-deepening-transatlantic-cooperation>.

²¹ Kristian McGuire, *Taiwan Expands Its Cross-Border E-Commerce and Digital Trade*, 7(7) GLOBAL TAIWAN BRIEF (2022), <https://globaltaiwan.org/2022/04/taiwan-expands-its-cross-border-e-commerce-and-digital-trade>.

²² RICHARD C. BUSH, *DIFFICULT CHOICES: TAIWAN'S QUEST FOR SECURITY AND THE GOOD LIFE* 64 (2021).

²³ Thitinan Pongsudhirak, *The Geopolitics of CPTPP Enlargement*, GIS REPORTS (Jan. 7, 2023), <https://www.gisreportsonline.com/r/china-cptpp-membership>.

²⁴ *Id.*

this platform, which invites experts from an increasingly diverse range of countries, Taiwan gains access to essential cooperation on pressing global challenges. The platform also empowers Taiwan to play a more substantial role in regional and international exchanges on public health, humanitarian assistance, technology, economy, and energy cooperation, among other areas. While this platform cannot replace existing international institutions, its contribution to Taiwan's outreach is helpful as long as Taiwan remains excluded from the international regime.

II. Chinese domestic lawfare aimed at Taiwan

It is essential here to explain the term “Three Warfares” (三戰) and its component “legal warfare” from the Chinese official perspective. The Regulations on the Political Work of the Chinese People's Liberation Army (PLA) promulgated in 1963 already discussed the need to strengthen grassroots ideological construction in PLA's political work, but a more systematic Chinese discussion on what is later known as cognitive domain warfare only appeared in the late 1990s. And it was not until 2003, when China reissued the Regulations on the Political Work of the PLA, that the Three Warfares made their debut in the PLA official regulations. Article 18 of the Regulations on “Wartime Political Work” includes “public opinion warfare,” “psychological warfare,” and “legal warfare.”²⁵ All three can fall within the scope of “cognitive warfare” in contemporary discourse.²⁶

The Regulations do not offer definitions for the Three Warfares, but their typical definitions can be found in Chinese academic discussions and are summarized as follows: Public opinion warfare refers to “the use of media to disseminate social information, purposefully generate and control public opinion, and actively influence the beliefs, views, emotions, and attitudes of the public in political warfare actions.”²⁷ Psychological warfare is “the use of information to exert influence on the target's

²⁵ Regulations on the Political Work of the Chinese People's Liberation Army (中国人民解放军政治工作条例) (2003).

²⁶ The “Regulations on the Political Work of the PLA” promulgated by China in 2010 retained the “Three Warfares” in Article 18, aiming to “disintegrate the enemy's army, carry out counter-psychological warfare and counter-strategy work, conduct military judicial and legal service work, manage the political work of participating militia and civilian workers, and collaborate with the masses in the war zone, maintain battlefield discipline and mass discipline, and honor the memory of the martyrs.” See Regulations on the Political Work of the Chinese People's Liberation Army (中国人民解放军政治工作条例) (2010).

²⁷ Yan-zi Kong & Pei-lin Sheng (孔燕子、盛沛林), *Some Basic Questions on Public Opinion Warfare (论舆论战的几个基本问题)*, 21(6) JOURNAL OF PLA NANJING INSTITUTE OF POLITICS (南京政治学院学报) 115 (2005).

psychology in warfare.”²⁸ Legal warfare is “the use of legal means and mechanisms by a country to define the behavior of the target subject as illegal, forcing it to submit by using legal coercion and sanctions to achieve diplomatic, political, or economic goals.”²⁹

China’s most notable instance of lawfare against Taiwan was the 2005 Anti-Secession Law, which aimed to unify Taiwan through peaceful negotiation or, under the law’s vaguely defined circumstances, by means of force.³⁰ However, this coercive element seems to have failed in achieving the CCP’s objectives, leading to current discussions in China regarding the potential enactment of more deterring legislation against Taiwan. As of now, no such legislation is on the horizon, except for the newly enacted Counter-Espionage law,³¹ which primarily targets “foreign forces” but could also apply to Taiwan’s companies, organizations, and individuals operating in China.

Nevertheless, the Chinese government has made it clear that it will not exclude options mentioned on various official occasions as possibilities, including introducing a “Motherland Unification Law” or “National Unification Law.”³² It remains uncertain whether such a law will be passed in the foreseeable future, and if so, what it would entail. Nonetheless, we can examine discourse in China for insight. For instance, in March 2022, Zhang Lianqi, a member of the Standing Committee of the National Committee of the Chinese People’s Political Consultative Conference, remarked that the Anti-Secession Law focused on “anti-independence,” while a Motherland Unification Law would concentrate on “promoting reunification.” He recommended passing a Motherland Unification Law, which would stipulate the legal obligation of all Chinese citizens, including Taiwan residents, to promote national reunification and clearly define the legal responsibility for violating the obligation of national reunification.³³ If adopted, such a suggestion may likely entail punishment

²⁸ Jun-cang Wu & Cheng-fei Ji (武军仓、纪程飞), *A Comprehensive Review of Psychological Warfare Research under the Conditions of Informatization (信息化条件下心理战研究综述)*, 19(3) JOURNAL OF XI'AN POLITICS INSTITUTE (西安政治学院学报) 38 (2006).

²⁹ See Wei Shen (沈伟), *Legal Warfare in the US-China Trade Friction: Understanding the Unreliable Entity List System and Blocking Regulations (中美贸易摩擦中的法律战——从不可靠实体清单制度到阻断办法)*, 1 JOURNAL OF COMPARATIVE LAW (比较法研究) 180 (2021).

³⁰ Yu-Jie Chen, “One China” Contention in China–Taiwan Relations: Law, Politics and Identity, 252 CHINA Q 1025 (2022).

³¹ Counter-Espionage Law of the People's Republic of China (中华人民共和国反间谍法) (2023).

³² Other possibilities raised by scholars or the media cover: adding “Implementation Rules” to the “Anti-Secession Law,” making a legislative interpretation of Article 8 of the “Anti-Secession Law,” and enacting the “Basic Law of the Taiwan Special Administrative Region,” which appears to model the Hong Kong Basic Law.

³³ Global Times (环球时报), *National Committee of the Chinese People's Political Consultative Conference member Zhang Lianqi: Conditions for formulating the “Motherland Unification Law” are*

for those who fail to comply with the “national reunification obligation.”

Suppose any move is made towards conducting legal warfare against Taiwan. In that case, it is more likely to be done through imposing criminal punishment on those deemed unwelcome by Beijing. In addition, the Chinese government began publishing lists of so-called “Taiwan independence diehards” and their affiliated organizations in 2021. Those included in the list and their supporters will be sanctioned by the PRC. The individuals sanctioned and their families would be prohibited from visiting China, Hong Kong, and Macau. Cooperation between the sanctioned organizations and organizations or individuals in mainland China is also forbidden. Furthermore, firms and investors connected to the sanctioned parties would not be allowed to profit in China. Most importantly, the consequences include criminal punishment and potentially life imprisonment under the PRC Criminal Code and National Security Law.

The current sanction lists³⁴ cover Taiwan officials of the DPP, including Taiwan’s

Gradually Maturing (全国政协常委张连起：制定《祖国统一法》的条件渐趋成熟, WEIBO (微博) (Mar. 3, 2022), <https://weibo.com/1974576991/Li3mnk4yr>. On the other hand, Li Yihu, a member of the Foreign Affairs Committee of the National People's Congress and director of the Taiwan Institute at Peking University, stated that given the current situation, conditions are not yet ripe to introduce a “National Unification Law.” However, he suggested that a legislative interpretation should be made to provide more concrete meaning to the “Anti-Secession Law,” for example, by listing events that might constitute “major incidents leading to Taiwan's secession from China.” *See Formulating a National Unification Law? Director of Peking University's Taiwan Research Institute: Conditions Are not yet Met* (制訂國家統一法？北大台研所長：還不具備條件), CNA (中央通訊社) (Mar. 11, 2022), <https://www.cna.com.tw/news/acn/202203110239.aspx>.

³⁴ *State Council Taiwan Affairs Office: Severely Punish “Taiwan Independence” Diehards Like Joseph Wu and Hold Them Accountable for Life in Accordance with the Law* (国台办：严惩吴钊燮这类“台独”顽固分子并依法终身追责), TAIWAN AFFAIRS OFFICE OF THE STATE COUNCIL (国务院台湾事务办公室) (May 12, 2021), http://www.gwytb.gov.cn/xwdt/xwfb/wyly/202105/t20210512_12351725.htm;
State Council Taiwan Affairs Office: Legally Punish a Handful of “Taiwan Independence” Diehards like Su Tseng-chang, You Si-kun, and Joseph Wu (国台办：依法对苏贞昌、游锡堃、吴钊燮等极少数“台独”顽固分子实施惩戒), TAIWAN AFFAIRS OFFICE OF THE STATE COUNCIL (国务院台湾事务办公室) (Nov. 5, 2021), http://www.gwytb.gov.cn/xwdt/xwfb/wyly/202111/t20211105_12389168.htm;
State Council Taiwan Affairs Office Announces Punishment for Organizations Associated with “Taiwan Independence” Diehards (国台办宣布对“台独”顽固分子关联机构予以惩戒), TAIWAN AFFAIRS OFFICE OF THE STATE COUNCIL (国务院台湾事务办公室) (Aug. 3, 2022), http://www.gwytb.gov.cn/xwdt/xwfb/wyly/202208/t20220803_12457720.htm;
Spokesperson of the Taiwan Affairs Office of the CPC Central Committee Is Authorized to Announce Sanctions Against a Group of “Taiwan Independence” Diehards and Other Individuals on the List (中共中央台办发言人受权宣布对列入清单的一批“台独”顽固分子等人员实施制裁), TAIWAN AFFAIRS OFFICE OF THE STATE COUNCIL (国务院台湾事务办公室) (Aug. 16, 2022), http://www.gwytb.gov.cn/xwdt/zwyw/202208/t20220816_12462610.htm;
Spokesperson of the Taiwan Affairs Office of the CPC Central Committee Is Authorized to Announce Sanctions Against “Taiwan Independence” Diehard Hsiao Bi-khim (中共中央台办发言人受权宣布对“台独”顽固分子萧美琴实施制裁), TAIWAN AFFAIRS OFFICE OF THE STATE COUNCIL (国务院台湾事务办公室) (Apr. 7, 2023), http://www.gwytb.gov.cn/xwdt/zwyw/202304/t20230407_12524423.htm;

Legislative Yuan Speaker You Si-kun, former Premier Su Tseng-chang, Foreign Minister Joseph Wu, Taiwan's Representative to the United States Hsiao Bi-khim, and National Security Council Secretary-General Wellington Koo, etc.³⁵ As China's law enforcement cannot operate in Taiwan, the likelihood of actually imprisoning sanctioned individuals in China is remote (although the possibility of China using extradition to pursue these individuals cannot be entirely ruled out). However, this list seems to be aimed at creating deterrence and a chilling effect within the broader Taiwanese society, discouraging the people of Taiwan from expressing opinions that Beijing considers threatening.

III. China's lawfare within Taiwan

Taiwan has maintained its rule of law, as it remains beyond the reach of China's law enforcement and legal institutions. Unlike in Hong Kong, China cannot impose legal coercion in Taiwan. There is also no evidence suggesting that Taiwan's judiciary has been infiltrated by the CCP or is subject to Beijing's influence.

However, Taiwan, like other countries, is not immune to China's attempt to exercise long-arm jurisdiction through the National Security Law for Hong Kong,³⁶ which covers offenses committed against Hong Kong outside of Hong Kong by non-Hong Kong citizens. While it would be extremely difficult for China to enforce this jurisdiction, the law may not be intended for complete implementation; rather, its design aims to suppress dissent around the globe, including in Taiwan.

Another crucial aspect of Chinese lawfare within Taiwan involves using cross-strait agreements to exert pressure on the island. Between 2009 and 2014, China and Taiwan signed no fewer than 23 valid agreements through their proxies, i.e., Taiwan's Straits Exchange Foundation (SEF) and China's Association for Relations Across the Taiwan Straits (ARATS). The agreements that have come into force resemble bilateral treaties and should be treated as legally binding. The principle of *pacta sunt servanda* should be applied, meaning that parties should not unilaterally revise or withdraw

State Council Taiwan Affairs Office Announces Punishment for Organizations Promoting "Taiwan Independence" (国台办宣布对宣扬“台独”的有关机构予以惩戒), TAIWAN AFFAIRS OFFICE OF THE STATE COUNCIL (国务院台湾事务办公室) (Apr. 7, 2023), http://www.gwytb.gov.cn/xwtd/xwfb/wyly/202304/t20230407_12524480.htm.

³⁵ Other Taiwanese organizations listed encompass the Taiwan Foundation for Democracy, the International Cooperation and Development Fund, the Cross-Strait Interflow Prospect Foundation, and the Council of Asian Liberals and Democrats.

³⁶ Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (中華人民共和國香港特別行政區維護國家安全法) (2020).

from agreements without valid justification or adherence to termination or amendment procedures.³⁷

However, since the ruling party transitioned from the KMT to the DPP in 2016, Beijing has strategically deviated from or outright violated multiple cross-strait agreements when it appeared politically beneficial to apply economic and political pressure on Taiwan.

For instance, in 2017, China detained Taiwanese NGO worker Lee Ming-che, who was later sentenced to five years imprisonment for subverting state power.³⁸ Lee's detention appears to have been prompted by his advocacy in China, which included discussing human rights, democracy, and Taiwan's experience on Chinese social media. In this case and a series of subsequent detentions, Beijing violated the cross-strait agreement³⁹ requiring prompt notification of such detentions and facilitation of family visits for the detained.⁴⁰

The most recent example is the detention of Taiwan-based Gūsa Publishing founder Li Yanhe (also known as Fu Cha), who has reportedly been detained in China since March 2023. Chinese authorities confirm that Li is under investigation for "suspected activities endangering national security."⁴¹ This case, along with the ongoing case of pro-Taiwan independence activist Yang Chih-yuan, raises concerns of chilling effects in Taiwan. Beijing's denial of notification and family visits may also be intended to create the impression that the DPP, as the ruling party, is unable to help Taiwanese citizens detained in China.

Economic connections can also lead to unwarranted influence and interference. Since 2016, China has reduced the number of Chinese group tourists and banned individual tourist visits to Taiwan in 2019, violating the agreement concerning tourism⁴² and

³⁷ Yu-Jie Chen, & Jerome A. Cohen, *China-Taiwan Relations Re-examined: The "1992 Consensus" and Cross-Strait Agreements*, 14 U. PA. ASIAN L. REV. (2019).

³⁸ Jerome A. Cohen & Yu-Jie Chen, *How China's Trial of Lee Ming-che Is a Warning to Taiwanese Activists Inspired by Freedoms and Democracy*, SOUTH CHINA MORNING POST (Oct. 2, 2017), <https://www.scmp.com/comment/insight-opinion/article/2113665/how-chinas-trial-lee-ming-che-warning-taiwanese-activists>.

³⁹ Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement (海峽兩岸共同打擊犯罪及司法互助協議) (2009).

⁴⁰ Jerome A. Cohen & Yu-Jie Chen, *A Taiwanese Man's Detention in Guangdong Threatens a Key Pillar of Cross-Straits Relations*, CHINAFILE (Apr. 20, 2017), <https://www.chinafile.com/reporting-opinion/viewpoint/taiwanese-mans-detention-guangdong-threatens-key-pillar-of-cross-straits>.

⁴¹ *Press Conference of Taiwan Affairs Office of the State Council* (国台办新闻发布会辑录), TAIWAN AFFAIRS OFFICE OF THE STATE COUNCIL (Apr. 26, 2023), http://www.gwytb.gov.cn/xwdt/xwfb/xwfbh/202304/t20230426_12530249.htm.

⁴² Cross-Strait Agreement Signed Between SEF and ARATS Concerning Mainland Tourists Traveling

apparently using tourism revenue as leverage to pressure Taiwan.

In addition, starting in 2021, Beijing has banned imports of many Taiwanese agricultural, fishery, and various products, which were previously allowed into China under the Cross-Strait Economic Cooperation Framework Agreement.⁴³ Although the bans were ostensibly based on unsatisfactory safety standards or incomplete registration information, Beijing offers no communication channel for the Taiwan government to address these issues.

A few weeks ago, China's Ministry of Commerce announced that it had opened an investigation following World Trade Organization (WTO) procedures into tariffs and other unilateral restrictions on Chinese items banned by Taiwan. Beijing appears strategic in the timing of this investigation, which ends the eve before Taiwan's presidential election.⁴⁴ This provides Beijing with room to impose pressure before and immediately after Taiwan's election. While China's resort to WTO rules may suggest a willingness to comply with international law, when considered alongside its other actions, it indicates a campaign aimed at placing economic stress on Taiwan rather than genuinely pursuing WTO dispute resolution in this case.

Lastly, China has unilaterally terminated the communication channels specified in these agreements, making it challenging, if not impossible, to resolve disputes arising from them. Beijing's severing of communication between its proxy, ARATS, and Taiwan's SEF is also counterproductive in addressing conflicts within an already tense relationship.

Cross-strait agreements aim to enhance economic cooperation and exchanges between China and Taiwan. However, Beijing has opted to use them to wield political influence when hostilities intensify. This strategy appears shortsighted, as Beijing's breaches diminish its own credibility and undermine trust across the Strait. As a result, the prospects for future agreements could be negatively impacted, even if Beijing's preferred KMT party were to regain power in Taiwan.

IV. Recommendations

My analysis of China's international strategy uncovers at least five lessons for Taiwan

to Taiwan (海峽兩岸關於大陸居民赴台灣旅遊協議) (2008).

⁴³ Cross-Straits Economic Cooperation Framework Agreement (海峽兩岸經濟合作架構協議) (2010).

⁴⁴ Zhiqun Zhu, *Is Beijing 'Internationalizing' Cross-Strait Trade?*, THE DIPLOMAT (Apr. 26, 2023), <https://thediplomat.com/2023/04/is-beijing-internationalizing-cross-strait-trade>.

and countries supporting Taiwan's meaningful international participation, including the United States as a primary ally.

First, Beijing's misinterpretation, misinformation, and disinformation regarding its "one China principle" must be countered. By asserting that the "principle" represents an international consensus or serves as the "basic norms governing international relations," Beijing aims to create the impression that Taiwan is merely an internal Chinese affair. This is particularly concerning given the potential for conflicts across the Taiwan Strait. The notion that the "one China principle" is a universally accepted international norm must be dispelled.

Second, resistance against Beijing would be more effective if it were initiated by influential democracies such as the United States and its allies, rather than solely by Taiwan. These endeavors should concentrate on organizations that Taiwan aspires to join as an observer but have rejected Taiwan's meaningful participation based on false premises, including the WHA and ICAO. Protests against incorrect interpretations of questions concerning Taiwan within international organizations should be lodged, and information regarding any clandestine arrangements between China and international organizations must be sought.

Third, depending on a specific organization's charter and rules, there may be normative foundations for Taiwan's meaningful participation. These norms should be emphasized when discussing Taiwan's representation in global governance.

Fourth, Taiwan has sought to diminish its economic dependence on China by entering regional economic agreements and establishing and enhancing economic relations with other countries. Such efforts can be bolstered by countries signing trade agreements with Taiwan and advocating for Taiwan's involvement in multilateral economic institutions.

Fifth, I wish to highlight the Global Cooperation and Training Framework (GCTF), an innovative, flexible institution that serves as a multilateral platform allowing Taiwan to expand its transnational networks and enhance its international presence. This model offers inspiring lessons for breaking Taiwan's isolation and should continue to be expanded.

Regarding Chinese domestic lawfare targeting Taiwan, Beijing appears to be testing the waters by releasing information about potential enactment of a Motherland

Unification Law, National Unification Law, or other similar legislative measures. However, based on publicly available information, it remains uncertain if and when such a law would be passed and what it would entail. More research should be directed to this area to better anticipate the future.

It is evident that Beijing has the capacity to penalize individuals within its jurisdiction, including the hundreds of thousands of Taiwanese individuals who travel to or reside in mainland China, Hong Kong, and Macau. For Taiwanese individuals and organizations beyond Beijing's reach, it employs sanctions as a deterrent. Clearly, Taiwan is out of reach of Beijing's legal coercion, but these attempts generate animosity across the Taiwan Strait, making it increasingly challenging for the Taiwan government to engage with China. Moreover, these sanctions lists may create chilling effects on the broader Taiwanese population. The Taiwan government should raise awareness among its citizens about the risks of going to China, while carefully avoiding inadvertently helping China spread fear. Striking the right balance is indeed a difficult task.

Beijing's recent resurgence of economic coercion, which involves violating cross-strait agreements, indicates an intention to influence the political choices of the Taiwanese people in the upcoming presidential and legislative elections. It is reasonable to anticipate a further intensification of such strategies. As mentioned, Taiwan has been working to reduce its economic dependence on China; this requires seeking alternative options, such as forging free trade agreements with other countries or participating in regional trade organizations to redirect Taiwan's economic pursuits. Countries that support Taiwan's economic resilience can collaborate with Taiwan in this regard.

Lastly, there is an impressive array of world-class experts specializing in the China field in the United States. However, research regarding Taiwan remains comparatively limited. Expanding and deepening the understanding of Taiwan and its unique perspectives in policy considerations would be highly beneficial. This approach will ensure that U.S. policy is thoroughly informed and well-rounded. Therefore, I thank the Commission for this opportunity, and I look forward to the questions.