

China's Claim on Taiwan: An International Law Perspective

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Abstract

This article explores China's claim to Taiwan from an international law perspective, tracing its origins to the Qing Dynasty and its solidification post-1949 with the establishment of the People's Republic of China. China views Taiwan as part of its territory, but Taiwan's de facto independence challenges this claim. The article examines the conflict between China's One-China Policy and Taiwan's right to self-determination, analysing Taiwan's statehood under the Montevideo Convention despite limited recognition. The principle of non-intervention and China's potential use of force are assessed under the United Nations Charter, including the involvement of third parties such as the United States and Japan. The viability of legal arbitration is discussed, noting China's reluctance, while Article 51 on self-defence is explored in the context of military escalation and international peacekeeping.

Introduction

China's claim over Taiwan is a complex issue rooted in historical, political, and legal arguments. Beijing asserts that Taiwan is an inseparable part of China, a viewpoint embedded in national policy and upheld by domestic laws and international statements. Taiwan, however, maintains a distinct identity, functioning independently with its own government, military, and economy. Taiwan's status remains a significant point of international debate, testing the principles of sovereignty, self-determination, and non-interference in international law. This analysis explores treaties,

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diplomatic agreements, and customary laws framing China's claim while also examining Taiwan's right to self-determination and its implications for the international order.

Historical Foundations of Sovereignty Claims: China and Taiwan

China's claim to Taiwan originates from the Qing Dynasty's annexation of the island in 1683 after defeating Ming loyalist Koxinga. However, Taiwan remained a peripheral region under limited Qing control. The key shift came in 1895, when the Qing ceded Taiwan to Japan after the First Sino-Japanese War, marking Taiwan as a Japanese colony for 50 years.¹ After Japan's defeat in World War II, Taiwan was returned to Chinese control, but the sovereignty transfer was not formalised. In 1949, the Chinese Civil War resulted in the establishment of the People's Republic of China (PRC) on the mainland, while the Republic of China (ROC) retreated to Taiwan, asserting its claim to govern all of China.² This led to dual sovereignty claims: the PRC over the mainland and the ROC over Taiwan. Taiwan has operated as a de facto independent state but has avoided declaring formal independence to prevent military conflict with the PRC.

The conflict between the One-China Policy and the principle of self-determination lies at the heart of this dispute. The One-China Policy³, promoted by the PRC, asserts that there is only one China and Taiwan is its province. This policy was solidified internationally with the United Nations (UN) General Assembly Resolution 2758 in 1971, which recognised the PRC as the legitimate government of China. As a result, Taiwan was diplomatically isolated, with most nations and international organisations adhering to this principle.⁴

The principle of self-determination, enshrined in the UN Charter, grants people the right to determine their political status. Taiwan, with its democratic government, could invoke this principle to claim independence. However, Taiwan's lack of widespread diplomatic recognition, heavily influenced by Beijing's pressure, complicates its legal status despite meeting the criteria for statehood.

Taiwan's Legal Status in International Law

Taiwan's legal status under international law is one of the most debated topics in global geopolitics. Although Taiwan operates as a de facto independent state with its own government, military, and economy, its status as a sovereign entity remains legally ambiguous due to a lack of widespread diplomatic recognition. To determine whether Taiwan qualifies as a sovereign state under international law, it is essential to evaluate its situation against the widely accepted criteria for statehood.

The most widely accepted framework for determining statehood under international law is the Montevideo Convention on the Rights and Duties of States (1933). According to the convention, a state must meet four criteria: a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. These criteria serve as the legal standard by which entities are recognised as states under international law.⁵

Taiwan meets all four criteria for statehood. It has a permanent population of around 23 million people⁶ who primarily identify as Taiwanese, distinct from mainland China. Its territory includes the main island of Taiwan and smaller islands, under the control of the Taipei government since 1949. Taiwan has a functioning, democratically elected government that exercises effective control over its territory, with its legal system, military, and administrative institutions, establishing it as a sovereign entity.⁷ Taiwan also maintains informal diplomatic relations with numerous countries and participates in international organisations as 'Chinese Taipei', while maintaining formal ties with 13 states, including major powers like the United States (US) and Japan.⁸

While Taiwan fulfils the Montevideo criteria, its situation is complicated due to the lack of formal recognition from most countries and international organisations. Taiwan operates as a de facto independent state, meaning that while it functions autonomously in all respects, it is not formally recognised as such by the international community. This stems from the influence of the One-China Policy, which dictates that countries seeking diplomatic relations with the PRC must recognise the PRC as the sole legal government of China, thereby, excluding Taiwan.⁹

Despite its diplomatic isolation, Taiwan demonstrates *de facto* independence through its robust economy, democratic governance, and military self-sufficiency. It plays a key role in global trade, particularly in the semiconductor industry, and maintains significant economic ties worldwide. However, Taiwan's lack of formal recognition and exclusion from the UN complicates its claim to full sovereignty. While statehood traditionally requires recognition, international law allows for the possibility of statehood based on functional independence and engagement in international relations. Taiwan's ability to function as an independent entity strengthens its case for *de facto* statehood, despite its political challenges.

Application of the Principle of Non-Intervention

The principle of non-intervention, enshrined in Article 2(4) of the UN Charter, prohibits states from interfering in the internal or external affairs of other sovereign states.¹⁰ It emphasises the prohibition of force, protects territorial integrity and political independence, and is central to state sovereignty as well as international peace and security.

The UN Charter sets the foundation for international relations by affirming state sovereignty and prohibiting foreign interference in domestic affairs. Article 2(4) prohibits the use of force except in self-defence or when authorised by the UN Security Council under Chapter VII to maintain peace.¹¹ Article 2(7) further enforces non-intervention, preventing the UN from intervening in matters within a state's domestic jurisdiction¹², although enforcement actions authorised by the Security Council are permitted. This principle reflects the Westphalian notion of state sovereignty, which has been challenged in cases involving humanitarian crises or territorial disputes.

China's stance on Taiwan is rooted in its One-China Policy, claiming Taiwan as an inalienable part of its territory. Beijing views any movement toward Taiwan's independence as an internal matter and reserves the right to use force if Taiwan seeks formal independence.¹³ This position is enshrined in China's Anti-Secession Law of 2005, which authorises 'Non-peaceful Means' to prevent Taiwan's secession from China.

In the event of a military conflict between China and Taiwan, the legality of China's use of force would be contentious. China could argue that its actions are justified under the principle of non-

intervention, viewing Taiwan as a domestic issue, and any foreign support for Taiwan could be considered a violation. However, under international law, such use of force would likely violate Article 2(4) of the UN Charter, which prohibits force against the territorial integrity or political independence of any state. Taiwan operates as a de facto independent state, so China's military actions could be seen as a breach of Taiwan's sovereignty.

The possibility of foreign intervention further complicates this issue. The US, under the Taiwan Relations Act (TRA) of 1979, maintains a policy of 'Strategic Ambiguity', not committing to defend Taiwan but reserving the right to intervene if Taiwan is attacked. This serves to deter both Taiwan from declaring independence and China from using force.

Article 51 of the UN Charter permits military intervention in cases of self-defence. Taiwan could invoke its right to self-defence if China initiates military action, potentially justifying foreign intervention, including from the US or Japan, both of which view Taiwan's security as crucial to regional stability.¹⁴

International Court of Justice (ICJ) Jurisprudence on Territorial Disputes

The ICJ has developed substantial jurisprudence on territorial disputes, offering legal clarity in cases like *Temple of Preah Vihear (Cambodia v. Thailand)*¹⁵ and *Nicaragua v. Colombia*¹⁶. Its approach to interpreting treaties, historical claims, and effective control is well-established. In theory, the ICJ could resolve the Taiwan-China conflict by considering historical treaties, self-determination, and international recognition. Taiwan's de facto independence and China's territorial claims would be central to the case. Although the ICJ could provide a legal solution, its jurisdiction remains uncertain, and political realities often overshadow legal mechanisms in high-stakes conflicts like the Taiwan issue.

The likelihood of China submitting to ICJ jurisdiction is highly improbable. As a permanent UN Security Council member and a global power, China has historically avoided international arbitration on sovereignty issues, particularly territorial disputes. This was evident in the *South China Sea Arbitration (Philippines v. China, 2016)*¹⁷, where China refused to participate in proceedings before the Permanent Court of Arbitration. Taiwan's status is a core

national interest for Beijing, enshrined in laws such as the Anti-Secession Law. Given the sensitivity of the issue, China is unlikely to accept a legal resolution through the ICJ, as any adverse ruling could undermine its claims to Taiwan.

Taiwan's lack of UN membership poses a significant challenge to its ability to bring a case before the ICJ, which primarily hears disputes between states. ICJ jurisdiction depends on the consent of all parties involved, and without China's agreement, the court cannot intervene. While the ICJ provides a legal framework for resolving territorial disputes, its involvement in the Taiwan-China conflict appears unlikely. China's longstanding refusal to engage in international arbitration on sovereignty issues, combined with the political sensitivity surrounding Taiwan, significantly reduces the likelihood of the ICJ's involvement in resolving this dispute.

United Nations Charter and Self-Defence Clauses¹⁸

Article 51 of the United Nations Charter provides the framework for the right of self-defence, a principle crucial in scenarios involving potential armed conflict between states, such as a hypothetical military confrontation between China and Taiwan. This article is fundamental to understanding how international law justifies or restricts military action in cases of self-defence.

Article 51 of the United Nations Charter

Article 51 of the UN Charter states:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security”.¹⁹

Article 51 affirms states' right to self-defence against armed attacks, individually or collectively, before UN intervention occurs.

Application to the Taiwan-China Scenario

If China initiates military action against Taiwan, Taiwan could invoke Article 51 of the UN Charter, which affirms the right to self-defence in response to an armed attack. International law supports Taiwan's right to defend its territory and people, and allied states might provide military aid or strategic support, guided by their legal obligations and interests.

Taiwan's response must align with the principles of necessity and proportionality, ensuring actions are directly aimed at repelling aggression without exceeding the required measures. Overreactions could violate international law, undermining Taiwan's legitimacy. Notably, Article 51 does not permit pre-emptive strikes or preventive wars; any defensive action must counter an actual attack.

The legality of pre-emptive self-defence, where an attack is anticipated but has not occurred, remains contentious. The ICJ has emphasised that self-defence must respond to an actual or imminent threat. In *Nicaragua v. United States* (1986), the ICJ ruled that self-defence must not rely on speculative threats. Thus, while Taiwan could prepare for an imminent attack, its actions would need to meet stringent legal criteria to justify pre-emptive measures, ensuring compliance with international norms and maintaining international support amidst escalating tensions in the Taiwan Strait.

Similarly, if Taiwan initiates military action without provocation, it risks being labelled an aggressor under international law, as the UN Charter permits force only in self-defence or with Security Council authorisation.²⁰ Article 51 allows collective self-defence, enabling allies like the US or Japan to assist Taiwan, if attacked. However, such support must comply with international law, ensuring proportionality and focusing on repelling aggression rather than escalating conflict.²¹ While Article 51 safeguards the right to self-defence, it imposes strict limits to ensure military actions, uphold peace and security, emphasising the importance of lawful and measured responses to aggression.

Beijing's approach to Taiwan hinges on its political and strategic objectives. A survey of US and Taiwan experts explored potential Chinese actions over the next five years to pressure or punish Taiwan without forcing unification. Both groups agreed that a quarantine is the most likely tactic. However, 65 per cent of US experts believed that China might target outlying islands like Kinmen and Matsu, a view shared by 66 per cent of Taiwan experts. Conversely, 71 per cent of Taiwan experts anticipated a quarantine of Taiwan's main island, compared to fewer US experts.²²

Taiwan experts generally considered aggressive actions more likely. For example, 51 per cent of Taiwan experts foresaw a distant blockade compared to 23 per cent of US experts, while three times as many Taiwan experts expected a highly kinetic blockade. Though an invasion was deemed unlikely, Taiwan experts assessed the possibility as higher. Interestingly, more US experts believed that China might seize offshore islands.

If unification were the goal, 80 per cent of both groups saw a highly kinetic blockade as the most probable action, with Taiwan experts expressing greater confidence. These differing perspectives reveal contrasting assessments of China's potential strategies.²³

Beijing's actions toward Taiwan will be shaped by political and strategic goals, with military capabilities also influencing decisions. Experts assessed China's ability to execute three actions: a law enforcement-led quarantine, a People's Liberation Army (PLA)-led blockade, and an amphibious invasion.²⁴

Around 90 per cent of US experts and 62 per cent of Taiwan experts believed that China could carry out a law enforcement-led quarantine, while 80 per cent of US experts and 60 per cent of Taiwan experts thought China could execute a PLA-led blockade. Although Xi Jinping set a 2027 deadline for military modernisation, only 13 per cent of US and 6 per cent of Taiwan experts believed this would influence China's actions. The consensus is that political factors, not military capabilities, will guide Beijing's decisions regarding Taiwan.

Role of Third-Party States and International Organisations in the Taiwan-China Dispute

The Taiwan-China dispute extends beyond bilateral tensions, involving global powers like the US and Japan, and international bodies such as the UN. The US, under the TRA of 1979, provides Taiwan with military support while maintaining strategic ambiguity to deter unilateral actions by Taiwan or China. This policy ensures Taiwan's defence capabilities without guaranteeing direct US military intervention. The dispute also draws attention to international peacekeeping, diplomacy, and the enforcement of global treaties, emphasising Taiwan's geostrategic importance and the delicate balance of power in maintaining stability in the region.²⁵

The US also conducts regular arms sales to Taiwan, which China views as a provocative act, potentially escalating tensions across the Taiwan Strait. Furthermore, the US has engaged in diplomatic efforts to bolster Taiwan's international presence, supporting its participation in international organisations under the name Chinese Taipei in line with the One-China Policy.²⁶ The US also conducts freedom of navigation operations in the Taiwan Strait, reaffirming its commitment to maintaining open international sea lanes.

Some experts are questioning whether the US should stop its long-standing policy of strategic ambiguity regarding Taiwan. This policy intentionally keeps China and Taiwan uncertain about whether the US would defend Taiwan if China attacked. The goal has been to deter both sides from making moves that could provoke conflict. For Taiwan, this means avoiding a declaration of independence or other provocative actions, while for China, it means refraining from attacking Taiwan to force reunification.²⁷

The US policy of strategic ambiguity regarding Taiwan has long been a cornerstone of its foreign strategy, but growing Chinese power has prompted calls for a shift. Many US scholars argue that the risk of a Chinese attack now outweighs the danger of Taiwan recklessly declaring independence. They suggest that clarifying the US' commitments could enhance deterrence against China.

Japan, a vital US ally and regional power, is equally invested in Taiwan's stability. Its geographic proximity and economic ties make Taiwan's security crucial for regional stability and prosperity. While Japan lacks a formal military alliance with Taiwan, it supports Taiwan's democratic system through diplomatic and economic engagement. Japan also participates in regional dialogues advocating democracy and peace in the Taiwan Strait. However, its approach remains cautious due to its reliance on China for trade and constitutional limitations on military actions, reflecting a delicate balance in regional dynamics.

In Jan 2024, the Centre for Strategic and International Studies released a survey of US and Taiwanese experts, indicating a high likelihood of a crisis, such as an invasion or blockade by China in 2024 amid Taiwan's presidential election. Japan, recognising Taiwan's security as integral to its own, is closely monitoring the

situation. Former Prime Minister Shinzo Abe and current Japanese leaders have emphasised Taiwan's stability as vital, prompting Japan to increase its defence budget and strengthen its military presence, particularly in the southwest islands, in response to China's growing assertiveness.

Japan's approach to a potential Taiwan conflict is shaped by key factors. The 1972 Japan-China Joint Communiqué supports peaceful unification, but any use of force by China could prompt Japan to reconsider its position. The US commitment to Taiwan under the TRA might compel Japan to assist US military efforts or defend US bases in Japan, if they are attacked. Additionally, the evolving strategic nuclear balance between the US and China could influence Japan's response, particularly if the US intervention wanes. Taiwan's geostrategic importance further underscores its role in maintaining critical maritime routes and countering Chinese expansion. Japan is likely to engage indirectly through the US, participating in military planning and joint exercises to bolster deterrence and regional stability.²⁸

Influence of International Organisations

The UN's role in the Taiwan-China dispute is intricate, shaped by Taiwan's exclusion due to the One-China Policy. Taiwan is not a UN member, and the UN General Assembly Resolution 2758 (1971) recognises the PRC as the 'Only legitimate representative' of China. As a result, Taiwan is excluded from UN peacekeeping missions and diplomatic forums. China further opposes Taiwan's participation in UN agencies and other international organisations limited to sovereign states. Despite these restrictions, Taiwan continues to protest its exclusion while the US advocates for its inclusion in global bodies.

Taiwan actively engages in the international arena through membership in over 40 intergovernmental organisations, such as the World Trade Organisation, Asia-Pacific Economic Cooperation, the World Organisation for Animal Health, and the Central American Bank for Economic Integration. It also holds observer status in other key organisations. While only 12 countries maintain formal diplomatic relations with Taiwan, it has substantive ties with nations such as Australia, Canada, European Union members, Japan, New Zealand, the United Kingdom, and the US. This extensive network highlights Taiwan's efforts to remain visible globally,

showcasing its commitment to international cooperation despite diplomatic challenges stemming from China's objections.²⁹

The global landscape shifted in 2022 as Russia's invasion of Ukraine drew parallels to Taiwan's situation, emphasising territorial sovereignty and self-determination. The conflict underscored the fragile balance in the Taiwan Strait, heightening concerns about the geopolitical implications of any instability in the region. Taiwan's position gained prominence as a focal point for international security, with countries closely monitoring developments and their potential ripple effects.

In May 2024, Taiwan's political landscape attracted global attention during William Lai Ching-te's inauguration as the fifth elected president. Despite Beijing branding him a 'Separatist' and opposing the event, 508 foreign delegates attended, symbolising strong international support for Taiwan's democracy.

These events highlight Taiwan's growing strategic significance and its rising recognition on the global stage. However, the UN and its specialised agencies influence the Taiwan-China dispute only indirectly. While Taiwan lacks formal recognition, the UN's principles of sovereignty and peacekeeping frameworks support Taiwan's de facto status. Additionally, treaties like the UN Charter and TRA guide third-party actions, emphasising peaceful resolution and diplomacy. Yet, the UN's effectiveness remains constrained by the geopolitical realities of the Taiwan-China issue, reflecting the complexities of balancing regional stability with international legal principles.

Alliances like the US-Japan Security Treaty play a vital role in maintaining the strategic balance in the Taiwan-China dispute by deterring aggression and ensuring regional stability. The US provides military aid and diplomatic support to Taiwan, adopting strategic ambiguity to manage tensions, while Japan supports Taiwan's democracy and stability more cautiously. International organisations, though limited by Taiwan's lack of formal membership, influence the situation through frameworks promoting peace and security. The combined efforts of these actors reflect the complexity of the Taiwan-China conflict, balancing regional security dynamics with the challenges posed by international legal and geopolitical principles.

Conclusion

In conclusion, China's claim to Taiwan under international law remains a contentious issue, deeply rooted in historical context and bolstered by evolving geopolitical interests. While China asserts a right to reunification based on the principles of sovereignty and territorial integrity, Taiwan's de facto independence and distinct political system raise important questions about self-determination under international law. This examination of China's claim within the framework of treaties, customary international law, and diplomatic precedents highlights the ambiguities and challenges of enforcing a singular interpretation of sovereignty in cases like Taiwan. The international community's varied stances on Taiwan reveal the complexities of applying international law uniformly, especially in matters involving powerful state interests. As tensions over Taiwan's status continue to shape East Asian and global stability, this article underscores the need for a nuanced understanding of sovereignty, self-determination, and the role of international law in addressing such disputes. Through this perspective, we gain a deeper appreciation of the legal and diplomatic hurdles that define China's claim on Taiwan and anticipate the potential implications for future peace and security in the region.

Endnotes

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