Taiwan: a derogation of international law?

Dr Brian Christopher Jones, University of Dundee
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Author: Brian Christopher Jones, University of Dundee

If you only follow the good news out of Taiwan, you may be forgiven for thinking that things have been rosy of late — the first female president [1] in the country’s history and the recognition [2] of same-sex marriage have provided for some positive press. But some troubling signs are emerging. Recent events have brought to light questions regarding Taiwan’s status in international law and have highlighted the failing aims and enforceability of such law.

What does international law do if it does not protect peaceful, democratic countries committed to human rights? The demand for this kind of protection was the reason that the United Nations and the Council of Europe were originally formed. Friendly relations among nations, self-determination of peoples, and universal peace are bedrock principles of the UN, which pledges [3] to be ‘a centre for harmonizing the actions of nations in the attainment of these common ends’. But these laudable aims now seem [4] adrift [5]. Nowhere is this more evident than when considering Taiwan.

After almost 30 years of democracy in Taiwan it is now time to ask a difficult question: why does the country remain so vulnerable, and unprotected by the international legal community?

As Taiwan becomes increasingly democratic, allies are deserting them. The most recent to do so was Panama, a long-standing ally that was ‘seduced’ [6] by China through a number of mouth-watering loans and infrastructure projects. Panama’s president rationalised [7] the switch by suggesting that President Tsai’s election to office ended the ‘cross-Strait truce’. This incident will not be the last — China is pressuring [8] more Taiwanese allies abroad to change the way they deal with Taiwan. And it seems Taiwan has few options to protect itself.
If international law must not be judged on the Herculean task of protecting states, it is also designed to protect vulnerable individuals. Here, too, it is struggling. Recently, China charged [9] Taiwanese human rights activist Lee Ming-cheh with ‘subverting state power’. This is the first time a Taiwanese national has been charged in this way. Lee has virtually no avenues for international protection — even though China was a signatory to the International Covenant on Civil and Political Rights in 1998, they have still not ratified it. Many fear that Lee will not receive a fair trial in China and is likely to be convicted, similar to the Chinese human rights lawyers [10] involved in a 2015 crackdown [11] by the Chinese government.

And what can be said for the institutions of international law? Their support for Taiwan is also lacking. Most recently, the World Health Organisation (WHO) failed to invite Taiwan to this year’s World Health Assembly (WHA), at which Taiwan has acted as an observer every year since 2009. In September 2016, the International Civil Aviation Organisation did the same thing [12].

For the time being, Taiwan can forget about formal recognition from the UN —it is even shut out of UN ancillary organisations. But it seems clear [13] that Taiwan does not seek membership to such organisations as a crutch for promoting their sovereignty; the country genuinely believes that they have something to offer international discussions on public health, aviation safety, and other issues.

Some may respond to these developments by contending that if China’s ability to deal with its own sovereignty disputes is not protected, then the Taiwan Strait — and East Asia more generally — will become more volatile. A worldwide non-interventionist strategy has been readily accepted in response to China’s increasingly hostile actions towards Taiwan.

But what comes of international non-intervention? The tension in East Asia — and especially across the Taiwan Strait — arises not because Taiwan is attempting to continually assert its sovereignty under a new government, but because China is allowed to run amok. Recall that it is Taiwan, not China, that has pledged [14] for a peaceful resolution to the cross-Strait situation.

And yet, Taiwan could go some way to helping itself by tweaking its own ‘One China’ policy. Currently the Taiwanese government still claims that the Republic of China (ROC) represents all of China. Thus countries like Panama increasingly have little choice but to recognise China’s version of a more coherent ‘One China’ policy, as Taiwan’s sovereignty claim is regarded as increasingly irrelevant in the geopolitical sphere. Taiwan could either acknowledge that its ‘ROC’ title is meant as a representation of Taiwanese sovereignty, or drop the ‘ROC’ portion of the title completely — the latter, from China’s perspective, may amount to an act of succession or a declaration of war [15]. At any rate, it would be better if Taiwan focused on Taiwanese sovereignty, and stopped referring to themselves as the ‘free China’.

If the international legal community has no way to sanction economically powerful countries that do not abide by international law principles, and conversely has no way to protect countries or individuals that do abide by those principles, then it is time to reform the mechanisms of international law.
Brian Christopher Jones is a Lecturer in Law at the University of Dundee.

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[1] first female president:
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[2] recognition: https://nyti.ms/2qV5XTS


[4] seem:
https://www.theguardian.com/commentisfree/2015/sep/08/united-nations-70th-birthday-time-for-relaunch-tarnished-brand

[5] adrift:
https://www.theguardian.com/world/2015/sep/07/what-has-the-un-achieved-united-nations


[9] charged: https://nyti.ms/2sdlKLr


[12] the same thing:


[15] act of succession or a declaration of war: