**ZOOM IN**

*The Question:*

‘There is great chaos under heaven’ but the situation does not seem ‘excellent’ at all. A reassessment of the Taiwan question, from statehood to the rules on the use of force

*Introduced by Marco Pertile*

In recent months, the question of Taiwan’s status has been back on the forefront of public debate for various political and legal reasons. However arbitrary it always is to distinguish between the legal and political dimensions of an international affair, there is no doubt that the renewed concerns surrounding Taiwan are partly dependent on the propagation of political tensions originating from the conflict in Ukraine. After the Russian aggression of February 2022, the rapprochement between the Russian Federation and China led to increased friction between the latter and the United States.

The climax occurred in August 2022 with the visit of the US House Speaker Nancy Pelosi to Taiwan. The Beijing government reacted with accusations of ‘hegemonic mentality and gangster logic’ and claims that the visit ‘seriously infringe[d] upon China’s sovereignty and territorial integrity’.¹ The Global Times – the Chinese Communist Party’s newspaper – announced that the People Liberation Army would ‘conduct important military exercises and training activities including live-fire drills in six regions surrounding the Taiwan island’.² Ms Pelosi harshly replied

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² Y Shen, L Shanzun, ‘PLA launches missile drill to east of Taiwan as Pelosi arrives; China to turn on a new status quo for Taiwan situation as “US has broken the old one”’ Global Times (3 August 2022) <www.globaltimes.cn/page/202208/1272075.shtml>.

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that President Xi Jinping ‘was acting like a scared bully’. For a few days, the international community thus lived the nightmare of a military confrontation between China and the US in the same breath as the Russia-Ukraine conflict. The Biden administration, which had reluctantly endured the House Speaker’s decision, reiterated that the basic assumptions of US policy towards Taiwan, namely the acknowledgment of the ‘One China Policy’ and the traditional security assurances towards the island, had not changed in any way. As has cyclically happened before, the political tension then gradually dissipated and, in parallel, Chinese support for the Russian Federation’s action in Ukraine became less pronounced over time.

It is thus undeniable that the resurgence of the Taiwan question is due to exogenous tensions. However, underneath this political dimension is also a legal process in which certain classical assumptions of the debate on Taiwan’s statehood have been challenged and appear to suffer the wear and tear of the years.

For some decades, until the beginning of the Nineties, the Taiwan issue appeared as a classic case of contested sovereignty linked to the outcomes of a stalled civil war. As it is known, in 1949, when the Communist Party of China (CPC) took control of virtually the entire territory of the country and established the ‘People’s Republic of China’ (PRC) government in Beijing, the nationalist government relocated to Taiwan.

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3 R Shabad, ‘Pelosi says Taiwan trip was “worth it” and calls Xi “a scared bully”’ NBC News (9 August 2022) <www.nbcnews.com/politics/congress/pelosi-calls-taiwan-trip-pushes-back-china-rcna42174>.

4 DE Sanger, V Wang, ‘Pelosi Is Expected to Go to Taiwan, Biden Administration Officials Say’ New York Times (2 August 2022) <www.nytimes.com/2022/07/31/world/asia/pelosi-taiwan-china.html>. The US does not officially recognize Taiwan as a sovereign state, but has maintained unofficial relations with Taiwan through the Taiwan Relations Act (TRA) of 1979. The TRA allows for the sale of defensive weapons to Taiwan and requires the US to provide Taiwan with the means to defend itself. See Taiwan Relations Act, Public Law 96-8 96th Congress (January 1 1979) <www.ait.org.tw/taiwan-relations-act-public-law-96-8-22-u-s-c-3301-et-seq>.

5 On 30 September 2022 a draft Security Council Resolution condemning Moscow’s Referenda in Ukraine’s occupied territory was vetoed by the Russian Federation. China abstained but stressed the importance of safeguarding ‘sovereignty and territorial integrity’ and did not express any intention to recognize the annexation. See UN Doc S/PV.9143 (30 September 2022) 6.

6 B Ahl, ‘Taiwan’ (February 2020) in A Peters (ed), Max Planck Encyclopedia of Public International Law (online edn).
continuing to define itself as the government of the ‘Republic of China’ (RoC). The situation thus assumed the typical features of the divided state, with two competing governments, one controlling the territory of mainland China and the other administering the island of Taiwan together with a few other islands in the strait and in the Pacific Ocean. At the time both governments had a competing claim to represent the entire territory and the people of China. After an initial phase in which Western countries continued to recognize the RoC as the government of all China, despite its reduced territorial control, in 1971 the latter lost its membership in the United Nations in favour of the Beijing government, which was gradually recognized by the great majority of the international community.7

The PRC has consistently claimed that the RoC government is illegitimate, and that Taiwan is a province of China. Adopting a policy stance that is the equivalent of the Hallstein doctrine in the case of West Germany and East Germany, the Beijing government has worked to prevent the recognition of the RoC.8 States that recognise Taiwan are thus not allowed to maintain diplomatic relations with the PRC. At present, according to the RoC’s ‘Ministry of Foreign Affairs’, only 13 states have recognised the statehood of the RoC (besides the Holy See), while the great majority of countries recognize instead the Beijing government as the sole government of China.9

The PRC has consistently made it clear that Taiwan is an inalienable part of Chinese territory and that it is committed to reuniting the island with the mainland through peaceful means, but without ruling out the use of force if necessary. The current government led by President Xi

9 Besides the Holy See, mostly smaller and developing countries have official diplomatic relations with Taiwan: Belize, eSwatini, Guatemala, Haiti, Honduras, Marshall Islands, Nauru, Palau, Paraguay, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Tuvalu. See Ministry of Foreign Affairs, Republic of China (Taiwan) <https://en.mofa.gov.tw/AlliesIndex.aspx?n=1294&sms=1007>.
Jinping has continued to uphold this position and has taken a more assertive stance warning that China will not tolerate any attempt to separate Taiwan from China.10

Taiwan, however, maintains unofficial relations with many countries, with which trade, cultural and other exchanges are being held. The RoC government also runs several unofficial representative offices abroad providing consular and other services to its citizens and promoting economic and cultural ties with the host countries. Taiwan is a member of a number of international organizations under names such as ‘Chinese Taipei’, which should underline its otherness with respect to the PRC. Furthermore, the Taipei government progressively abandoned its claim to represent the whole of China and started to portray itself as the government of an independent autonomous state.

To paraphrase a quote traditionally attributed to Mao Zedong ‘there is great chaos under heaven’, but one cannot really say, on this occasion, that the situation is ‘excellent’. As recent events have made clear once again, it cannot be ruled out that the dispute over Taiwan’s status could lead to, or be the pretext for, an international crisis possibly involving a military confrontation between China and the United States. Issues of status may thus have a direct impact on the application of the rules on the use of force. If Taiwan were considered a sovereign state, any use of force by the PRC to regain control of the island would likely be qualified as a violation of international law. To the contrary, if Taiwan were considered a province of China, a PRC’s coercive action could be qualified as the lawful action of a government to prevent the secession of a portion of its territory. It could still be argued, however, that the use of force against a de facto regime would be a violation of international law if the regime in question is exercising control over its territory, has a functioning government, and has the support of the population.11

In view of the importance of recent developments in the situation of Taiwan, there is no doubt that it is necessary to put these arguments in order by contrasting them to recent practice. To pick up the thread again,

QIL asked two authors with opposing views to re-examine Taiwan’s status in connection with the question of the use of force. Adopting a realist approach, Tarcisio Gazzini, professor of International Law at the University of Padua, takes the view that Taiwan has already achieved statehood and that any use of force to regain control of the Island would certainly be prohibited. To the contrary, Matthias Hartwig, Senior Researcher at the Max Planck Institute of Heidelberg, believes that only one China exists as a State under international law. He nonetheless takes the view that the PRC is under a strict obligation not to use force against Taiwan as long as the latter does not alter the status quo by trying to establish an independent State.