



Taiwan Communiqué

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142

Mr. Su goes to Washington *DPP Chairman receives warm welcome*

From 11 through 15 June 2013, DPP Chairman Su Tseng-chang came to Washington, his first formal visit since becoming DPP party chairman in May 2012. He met with key members of Congress, and also had meetings with East Asia policy officials of the Obama administration.

The highlight of the visit was a Congressional reception in the US Capitol, attended by some 22 members of the US Congress. Mr. Su also gave a public talk at the Brookings Institution (see below) and received a rousing welcome from the Taiwanese-American community at a banquet in the evening of 14 June 2013 at the Gaithersburg Hilton, just North of Washington.

Photo: Taiwan Communiqué

Mr. Su's visit to Washington was part of a North American tour, that brought him to Los Angeles, New York, Houston, Washington, Toronto and Vancouver. In all locations he was welcomed by the respective Taiwanese communities, while in Canada he also met members of the Canadian parliament.



DPP Chairman Su Tseng-chang receiving US flag from Congresswoman Ros-Lehtinen at a Congressional reception in the US Capitol

Strengthening US-Taiwan relations

At his speech at the Brookings Institution on 13 June 2013, hosted jointly by Brookings and the Center for Strategic and International Studies (CSIS), Mr. Su highlighted some of the DPP's policies. The speech was titled *A new partnership for a new age; Strengthening US-Taiwan relations*. A brief summary:

He emphasized the three "Rs" as the core concepts for his policies: Responsibility, Reconciliation, and Re-balance.

- * **Responsibility** refers to domestic issues. Mr. Su said his party is a responsible force that proposes alternative policies to resolve the many problems facing society. He highlighted the party's position on media freedom and the Nuclear Four power plant, and also elaborated on the party's plans for the "seven-in-one" local elections for county magistrates, city mayors, and county and city councils, which are slated for the end of 2014. The results of those elections will be a good indicator for the DPP's chances in the next presidential and legislative elections in early 2016.
- * **Reconciliation** refers to Cross-Strait relations with China. Mr. Su elaborated on the work of the DPP's recently-established China Affairs Committee, which was set up to develop strategies for Cross-Strait interactions, and also to provide a platform for dialogue and understanding. He said that Taiwan needs to develop a domestic consensus, which would be the basis for normalizing relations with Beijing. He said that Taiwan should engage a rising China with confidence, and pursue interaction and dialogue with both the Chinese government and the Chinese people.
- * **Re-balancing** refers to relations with the United States. Mr. Su stated that the US is Taiwan's most important democratic partner, and that good relations are all-important for Taiwan, for its security and its future as a free and democratic nation. He thanked the US for its support, and urged the US to continue arms sales so Taiwan can defend itself against the military threat of a rising China. He applauded the Obama administration for its "pivot" to Asia, and said that for its own strategic and economic interest, Taiwan should integrate itself into this re-balancing effort.

The new DPP Defense Blue Paper

In his meetings with both Congress and the Obama Administration, Mr. Su also extensively discussed the DPP's position on Taiwan's defense. He highlighted the DPP's National Defense Agenda blue paper, which was issued by the party on 6 June 2013 in Taipei.

In the four-part report, the party calls for, *inter alia*, an increase of the nation’s defense budget to 3% of GDP. During the past few years under the Ma administration, the defense expenditure level has sunk to less than 2.1% of GDP.

The report also dedicates a separate part to enhancing the Taiwan-US defense partnership. In addition to accelerating arms acquisitions and increasing Taiwan’s defense budgets, the report also emphasizes the “non-hardware” aspects of US-Taiwan defense cooperation, such as a high-level security dialogue, expansion of training programs for the Taiwanese military in the US, and bilateral cooperation on cyber security.

The document also calls for a strengthening of the country’s indigenous defense industrial base, as it is becoming increasingly difficult to purchase arms from other nations. In order to achieve this, the DPP would restructure the quasi-governmental Chungshan Institute of Science and Technology (CSIST) into a full-fledged development organization tasked with developing advanced weaponry.

The report furthermore proposes a restructuring of the National Security Council of the President, which in its present form resembles a black box, with little accountability to the legislature, or capability for interagency coordination. Under the structure proposed by the DPP, the NSC would have increased coordination capabilities vis-à-vis the various ministries, and also be accountable to the Legislative Yuan.

The report was developed over a nine months’ period by a group of scholars and former military officials under the heading of the New Frontier Foundation, a DPP think tank in Taipei.

Photo: Taiwan Communiqué



DPP Chairman Su Tseng-chang addressing audience at the Brookings Institution

The Philippine-Taiwan fisheries crisis

Close encounter in disputed waters

On 09 May 2013, an encounter between a Philippines Coast Guard vessel and a Taiwanese fishing boat turned tragic when the Coast Guard vessel opened fire on the fishing boat and killed an elderly Taiwanese fisherman, Mr. Hung Shih-cheng.

The encounter occurred some 304 km Southeast of Taiwan's southern-most point, Oluanpi, and some 80 km to due East of the Philippine island of Balintang, part of the archipel of the Batanes islands. The location is important, as almost immediately after the incident the Kuomintang government of President Ma Ying-jeou started to claim that these were "disputed waters."

A closer look at the map does show that, while the location of the incident was slightly less than 200 nm from Taiwan, it was actually much closer to the Philippines, just outside the 24



Location of the encounter

nm contiguous zone. Under such circumstances countries generally agree on an "equidistant line", which apparently did not occur between Taiwan and the Philippines. The fishing boat was way beyond this equidistant line.

In the week after the incident, very little was known about the sequence of events that led to the shooting. Were there any warning shots? Did the fishing boat steer towards the Coast Guard vessel? Were there other vessels in the neighborhood that witnessed the events? Those questions needed to be answered if there was to be a fair and objective conclusion. However, fairness and objectivity got totally lost in the war of words that erupted between the two countries.

High tension and inflammatory rhetoric

The tone for the subsequent exchange of angry words was actually set by the PRC, which immediately issued a statement condemning the “barbaric shooting” of the Taiwanese fisherman. This statement was made both by the Chinese Ministry of Foreign Affairs and by the State Council’s Taiwan Affairs Office.

China’s government television channel CCTV led its noon news on May 10th with a report on the death, while the CCP-controlled Global Times called on the Chinese PLA Navy to increase its presence in the South China Sea, and angrily condemned the Philippines as a “savage country.”

After such rhetoric the Ma government couldn’t remain behind, and on Sunday, 12 May 2013, it issues an ultimatum, giving the Philippines 72 hours to respond to four demands by the Taiwan side: that the Philippines issue a formal apology, arrest the personnel responsible for the shooting, compensate the victim’s family, and launch bilateral fisheries negotiations.

Photo: Taipei Times

On the evening of Tuesday, 14 May 2013, the managing director of the Manila Economic and Cultural Office (MECO), Mr. Antonio Basilio, returned to Taipei after consultations in Manila, and had a five-hour negotiating session with Taiwan’s Foreign minister, David Lin. After the negotiations, at one hour after the midnight deadline, Mr. Lin gave a press conference, at which he termed the Philippine response “positive”, but said that that some aspects needed “clarity.”



Philippine Representative Antonio Basilio (R) at midnight press conference with Taiwan Foreign Minister David Y.L. Lin (L)

However, a much harsher response became evident after a top level meeting in the early morning of Wednesday, 15 May 2013, chaired by President Ma Ying-jeou himself, and attended by foreign minister David Lin and National Security Council secretary-general Jason Yuan.

After that meeting the Ma government—without waiting for the results of any investigations—announced a total of eleven sanctions against Manila, including the suspension of new applications for work permits by Philippine workers, recalling Taiwan’s representative to Manila, and sending the Philippines’ representative back to Manila.

On the same day, the MECO Chairman, Mr. Amadeo Perez also arrived from Manila, planning to meet with Taiwan government officials and to extend condolences to the relative of the fisherman. Mr. Perez had been designated as “personal representative” of Philippine President Benigno Aquino, and carried a letter of *apology* “to convey his (Aquino) and the Philippine people’s deep regret and apologize to the family of Hung Shih-cheng, as well as to the people of Taiwan, over the unfortunate and unintended loss of life.”

Copyright: Taipei Times

However, in a turn of events that severely embittered the situation, the Ma government refused to meet with Mr. Perez, saying that he did not have “proper authorization”, and also denied him access to the family of the fisherman to extend his condolences.

The “proper authorization” bit stemmed from the insistence of the Philippine side—based on their “One China” policy—to avoid any formal government-to-government contacts with Taiwan. The Ma government on the other hand heavily insisted on a government-to-government apology, and rejected the outstretched hand extended by Mr. Perez on behalf of President Aquino.



Philippines waving the red "One China" principle flag in front of toreador Ma Ying-jeou

The situation went further downhill from there on, with President Ma himself calling the death a “cold-blooded murder”, a term that was also on the front page of the Ministry of Foreign Affairs website for many days. Furthermore, the Taiwan government conducted a PR campaign through its representative offices around the world referring to the matter as “cold-blooded murder” and “extra-judicial killing.”

The Kuomintang authorities added more oil to the fire by dispatching a number of Taiwan Navy ships to the disputed area for military maneuvers. Taipei announced that the exercises involved the largest flotilla of naval vessels Taiwan had assembled in recent memory, and that the 16 May exercises were designed “*to send the Philippines a message.*” This set off alarm bells in Washington, and the US subsequently leaned heavily on Taipei to cool it. President Ma backtracked and then announced that the ships were in the area to “protect” Taiwan fishing boats.

The heated rhetoric only diminished slightly after the United States repeatedly urged both sides to work towards resolving the matter in an amicable fashion. State Department spokesperson Patrick Ventrell – in the Department’s fourth statement in one week — said on 16 May 2013: “*We urge the Philippines and Taiwan to take all appropriate measures to clarify disagreements and prevent recurrence of such tragic events.*”



Inflammatory "Cold-blooded murder" rhetoric on website of Taiwan's Ministry of Foreign Affairs

“Parallel” investigations

In the subsequent period there was a tug-of-war about how the investigations into the incident would be conducted. In the early stage of the episode, there was an offer from Manila to conduct a “joint investigation”, however this was angrily rejected by the Ma government on 15 May 2013. On the following day, Taiwan sent its own team to Manila, but without any agreement with the Philippines, this team had to return home two days later without being able to do much.

Eventually, after many seesaw negotiations the two sides agreed to do two “parallel” investigations. On 27 May 2013 the Philippines sent an 8-member team of the National Bureau of Investigation to Taiwan, and at the same time Taiwan sent an 8-member team to Manila. The teams did their respective investigations, interviewed the crew of the

Coast Guard vessel and the fishing boat, did a ballistic analysis on the bullets found, and also views a videotape of the event taken by the Philippines Coast Guard.

The two teams returned to their respective home bases on May 31st and started writing their reports. At that time it was also announced in Manila and Taipei that the two governments had “...reached a consensus that before publishing the joint findings of the parallel investigations, both sides needed to consult each other and agree on a consistent account of the facts.”

As this issue of *Taiwan Communiqué* was going to press, Philippine media reported that President Benigno Aquino had received a copy of the Philippine National Bureau of Investigation report from Department of Justice Secretary Leila de Lima, but that the conclusions had not been released. Reportedly, Taiwanese and Philippine investigators were also still comparing notes on their separate, but cooperative investigations into the incident.

Below we present two commentaries on the episode. One from former AIT Chairman Nat Bellocchi, and the second one from Prof. Kuo Ming-Sung, assistant professor at Warwick University Law School, UK

Taiwan must keep a cool head in dispute

By Nat Bellocchi. Ambassador Bellocchi is a former chairman of the American Institute in Taiwan. This article first appeared in the Taipei Times on 23 May 2013. Reprinted with permission.

As a former US diplomat with a keen interest in Taiwan and its future, I am concerned about the present row between Taipei and Manila over the sad and unfortunate death of Taiwanese fisherman Hung Shih-cheng after an encounter between a Taiwanese fishing boat and the Philippine Coast Guard on May 9.

Emotions are running high and angry accusations are being leveled in both directions. This is unfortunate and could have been avoided if everyone had maintained a cool head and proceeded in a reasonable and rational manner.

First and foremost, it is important that a clear and objective assessment of what actually happened be established. The Philippines is taking a lead in that, but Taiwan can help by not jumping to conclusions or making fiery accusations. Terms like “cold-blooded

murder” — found on the front page of the Web site of the Ministry of Foreign Affairs — are seen as premature by the international community (certainly before an investigation) and unhelpful.

To come to a mutually agreeable settlement, the Philippines must go out of its way to establish the truth, but Taiwan must go the extra mile not to be confrontational. In diplomacy it is always better if both sides participate in a give-and-take. Hard and fast ultimatums do not help and are counterproductive.

Photo: Taipei Times

Instead, the two sides need to reduce the tension and tone down the rhetoric. As the US Department of State recently said: Washington is concerned by the increase in tensions between two neighboring democracies and close partners of the US in the Asia-Pacific region, and urges the two countries to take all appropriate measures to clarify disagreements and prevent the recurrence of tragic events. The State Department also urged both parties to refrain



Investigators inspecting bullet holes in Taiwanese fishing boat

from actions that could further escalate tensions in the region and undermine the prospects for a rapid and effective resolution of differences.

However, there is another aspect that worries me: the role of China. One of the reasons why the Filipinos are edgy about their territorial waters is that China has been aggressively encroaching into areas that have traditionally been under control of the Philippines, such as the Scarborough Shoal (Huangyan Island).

The incident thus plays into China's hands. Right after the altercation, Xinhua news agency reported that China's Taiwan Affairs Office was condemning the event as a "barbaric act." Quoting a Chinese academic, the Chinese Communist Party mouthpiece Beijing Times said: "*China has reiterated over time that Taiwan is an integral part of China. Now is a good opportunity to show that China will not tolerate the shooting of our fishermen, whether they are from the mainland or Taiwan, and that our government is determined to protect the life of its people.*"

Taiwan must make clear that it is rejecting such united front tactics and that it is not aligning itself with China in an attempt to push Manila into a corner.

Taiwan and the Philippines are both democracies. This means that both have to be sensitive to the voices of the people, but it also means that there must be leadership and vision, and decisions and actions should not be guided by angry emotions or vitriolic nationalism.

A way out is possible if both sides agree to examine the evidence in a rational and objective fashion. The Philippines needs to be forthcoming with all information pertaining to the chain of events that led to the shooting and Taiwan needs to display patience and calm. It needs to avoid inflammatory language that increases tensions — cooler heads must prevail.

Legal notes on the Taiwan-Philippines Dispute

By Prof. Kuo Ming-Sung, assistant professor at Warwick University Law School, UK

The fatal shooting of a Taiwanese fishing boat on 9 May 2013 by the Philippine Coast Guard has triggered a serious diplomatic row between Taiwan and the Philippines. Instead of entering the debate over whether the Philippine Coast Guard's use of force was violative of proportionality, this brief note focuses on the early reaction from the Taiwan Government to this unfortunate incident.

Legally speaking, the issue is whether the use of force is necessary for the Philippines Coast Guard to enforce its rights under Article 73, paragraph 1 of the UN Convention on the Law of the Sea. Preventing suspect poachers from "fleeing" the jurisdiction of the coastal state concerned, including the disabling of suspect vessels by the use of arms, is a legitimate means to that end, while the means itself has to be proportionate.

Whether the said Taiwanese vessel attempted to flee, which would be a crucial factor in determining on the legality (i.e., necessity in this case) of the Philippines Coast Guard's use of force, could not be answered until all legal proceedings, including a thorough investigation, are completed.

Premature reactions from Taiwan, official and civil, in the wake of this unfortunate incident simply made matters more complicated. It is the principle of equal sovereignty, not a feeling of sincerity or a sense of self-righteousness, that is the cardinal rule of international relations.

In terms of the post-incident investigation, which would concern the exercise of sovereign rights, I would say that the law enforcement authorities of the Philippines, including the prosecutors — not their Taiwanese counterparts — have the primary jurisdiction. Taiwan’s unilateral dispatch of an investigative team to the Philippines without the latter’s formal consent or mutually agreed prearrangement a week after the incident was unacceptable to any sovereign state.

Photo: Taipei Times

Having said that, I by no means suggest that Taiwan could not demand a role in the investigation. Nevertheless, demanding an official apology before the investigation was even launched was simply out of step with diplomatic protocols (unless the Taiwan Government simply misunderstood the significance of apology in international law).



Voyage Data Recorder trace of route taken by Taiwanese fishing boat

No sovereign state would agree to such a demand in a legal dispute like this. In the immediate wake of the incident, Taiwan could have put pressure (which should be proportionate too) on the Government of the Philippines to expedite the investigation for sure but should *not* have demanded an official apology before the investigation was completed.

What made matters more complicated was that it would be unlikely that a sovereign state like the Philippines (or even the US) would make a formal *government-to-government* apology to Taiwan, which is generally not considered to have statehood under international law. The “extra mile” that the Government of the Philippines claimed it had gone probably referred to President Aquino’s ‘deep regret and apology’ to the victim’s family and the Taiwanese people when the investigation was still ongoing.

Sadly, denied statehood way too long, Taiwan does not understand how sovereign states interact with each other in the postwar international legal system. Did the incident result from territorial disputes between Taiwan and the Philippines? No. Is there any

territorial dispute over the Batanes between Taiwan and the Philippines? No. If so, what is the point of sending armed forces near the territorial waters of the Philippines?

Or, conducting war games as a way to put pressure on the Philippines? Doesn't this evoke the dated gunboat diplomacy in the imperial age? I do not think this is a wise way to win public opinions in the international society.

In my view, the way that the Government of the Philippines responded to Taiwan's demands didn't suggest insincerity, although it did not make Taiwanese feel good either, which is what Taiwanese mean by "sincerity." Unfortunately "feel good" is not what international society is concerned about. Perhaps this is the root cause of Taiwan's frustration amidst this incident. I do agree that *We the Taiwanese People* have to fight on for the unfulfilled sovereignty. Yet, we should pick a good fight. Unfortunately this incident is not, and the way it was dealt with by the government in Taipei is unhelpful.

International space for Taiwan

During the past few years there has been an on-and-off-again debate about Taiwan's participation/membership in international organizations. Some observers felt that the previous DPP administration of President Chen Shui-bian had been too aggressive, and that a more incremental approach was warranted.

According to this new approach, which was advanced by the KMT administration of President Ma Ying-jeou and supported by the US State Department, Taiwan would not push for full membership in international organizations, but strive for "meaningful participation" in international organizations. The policy line even specified that it aimed only at international organizations "that do not require statehood."

On the next few pages we present a brief analysis of where that has gotten us.

US concerned about WHO restrictions

The crown jewel in the Ma administration's efforts to increase its international space is the World Health Organization (WHO) in Geneva. Indeed, since 2009, Taiwan's Minister of Health is allowed to go to Geneva to attend the annual World Health Assembly.

But the problem is that this is a decision on an annual basis, each year requiring the

“approval” of Beijing. In addition, in May 2011 it was revealed that in a secret internal WHO memo dated 14 September 2010 all relevant WHO personnel were instructed that in all its internal correspondence, Taiwan was to be referred to as “Taiwan, Province of China.”

However, the main problem is that Taiwan’s medical professionals still do not participate in any significant way in the technical bodies and medical and professional boards and committees of the WHO where the real work is done. This conclusion was recently also drawn in a report to the US Congress by the State Department. The April 2013 report described Taiwan’s participation as “*sporadic and intermittent.*”

Copyright: Taipei Times

The State Department said that the overall situation with respect to Taiwan’s participation in these technical meetings “*remains unsatisfactory.*” It states that “*...the improvement in cross-Strait relations has not resulted in greater technical involvement of Taiwan experts and officials in relevant meetings.*”

The State Department also mentioned that Taiwan had shown its readiness to participate in several WHO working



Taiwan on its way to the World Health Organization Assembly ... in a "One China" cage

groups, such as the STOP TB Partnership, the International Food Safety Authorities Network (INFOSAN), and the Pandemic Influenza Preparedness (PIP) framework, but that in spite of repeated applications it has never received a reply from the WHO.

The Department of State report also discussed the nomenclature. The report stated that the US continues to object to usage of the phrase “Taiwan, Province of China,” “Taiwan, China” and other closely related nomenclature in WHO/WHO internal documents as well as in all other international organizations in which Taiwan is a meaningful participant.

Is President Ma’s “diplomatic truce” failing?

In the past couple of months, there were also several other events showing that China is still working hard to deny Taiwan any international space.

The main pieces of evidence of Chinese recalcitrance were: a) the Chinese reaction to President Ma's trip to Rome to attend the inauguration of Pope Francis, b) the decision by the Indonesian government in Jakarta to deny a delegation from Taiwan access to an international defense conference after objections from China and c) the Chinese objections to Taiwan's participation in the International Civil Aviation Organization (ICAO), which had been the flagship of the Ma administration's thrust into international organizations.

When Pope Benedict XVI decided to step down, an opportunity opened up for Taiwan: the Vatican is the only "country" Taiwan has diplomatic relations with in Europe. So when plans were made for the inauguration of his successor, Pope Francis, Taiwan jumped at the occasion and requested to send a high-level delegation headed by President Ma Ying-jeou to Rome.

The Vatican agreed, and in early March 2013, President Ma, his wife, and a small delegation of officials travelled to Rome to attend the ceremonies, and to rub elbows with other international dignitaries such as US Vice-President Joe Biden, and German Chancellor Angela Merkel.

One would have thought that with President Ma's "diplomatic truce" with the PRC, Beijing's reaction would be subdued, but in a press briefing on 18 March 2013, Chinese Foreign Ministry spokeswoman Hua Chun-ying strongly criticized both Taiwan and the Vatican over the visit, and even urged the Vatican to dissolve ties with Taiwan.

In the case of the Jakarta International Defense Dialogue (JIDD): Taiwan has participated in the conference for years, usually with a mixed delegation of scholars and government officials. However, this time around, a four-person Taiwanese delegation was forced to withdraw from attending the conference, when the Indonesian authorities disinvited the delegation after China raised objections to Taiwan's presence at the conference.

Taiwan Communiqué comment: *So much for the "diplomatic truce." China's continued efforts to undermine Taiwan's presence at such international events do clearly show that President Ma's approach to expanding Taiwan's international space is not working very well. If anything, it shows that promises of a "rapprochement" across the Taiwan Strait is leading to diminished international space for Taiwan.*

Taiwan (and its allies such as the US) will have to come up with a more forceful and comprehensive approach to achieve meaningful participation by Taiwan in international organizations.

The experience of the past five years (since the beginning of the Ma Administration) shows that hardly anything has been achieved, even in the case of organizations that were the focus of the Ma Administration's policies, such as the World Health Organization (WHO) and the International Civil Aviation Organization (ICAO).

Taiwan and its friends need to return to the policy line that Taiwan is now a free and democratic nation, and that under the principles of the Charter of the UN and the Montevideo Convention it needs to be accepted as a full and equal member in the international family of nations.

The flawed legal case against President Chen

In the previous issue of *Taiwan Communiqué* we reported on the sudden transfer on 19 April 2013 of the former President from the Veterans' General Hospital in Taipei, where he was being treated for a series of illnesses – including severe depression – to the Pei-teh prison clinic in Taichung. The way this was handled by the Ministry of Justice was harshly criticized in Taiwan and overseas. We also wrote about the subsequent visit of US Congressmen Steve Chabot and Eni Faleomavaega.

Photo: Taipei Times



President Chen Shui-bien being moved to Pei-teh Prison in Taichung

In this issue we focus on the legal cases against the former President, and the increasing evidence that he did not receive a fair trial. While no one is arguing that there were no improprieties by Chen or his family, and that he and his family did not enrich themselves, the primary legal issue is whether he actually broke laws, and whether he received due process of law in the prosecution against him.

We present two reports which indicate that the prosecution was very selective and severely flawed, and that significant manipulation of the evidence took place. The former President thus did *not* receive due process and a fair trial.

Professors and Church criticize trial

During the past months, both the Presbyterian Church in Taiwan and the Taiwan Association of University Professors have come out in defense of the former President, and have strongly criticized the trial proceedings against Chen Shui-bian.

At a press conference on 01 March 2013, the moderator of the PCT's General Assembly, Rev. Pusin Tali, called on the Ma government to respect the former President's human rights and release him on medical parole. The pastor criticized the way the former President had been held and treated, saying that the Ma government was treating him like "a prisoner of war."

PCT General Secretary Lyim Hong-tiong added that even during the dark days of the KMT's Martial Law, former President Chiang Kai-shek did not treat his enemies in such a harsh manner. He said that the late general Chang Hsueh-liang, who was accused of kidnapping Chiang in 1936, had been granted house arrest.



Presbyterian General-Secretary Lyim Hong-tiong: Trial reminds us of dark days of Martial Law

The two pastors also highlighted a number of serious improprieties and flaws in the prosecution of Chen by the Special Investigation Division under the Supreme Prosecutor's Office. They also enumerated decisions by the High Court and Supreme Court which showed clear signs of political interference in the proceedings.

A few days later, on 10 March 2013, the Taiwanese Association of University Professors held a book launching ceremony of a new book titled *Judicial Justice and Human Rights – the Chen Shui-bian Case*, at which they presented a number of illustrations on how Chen had not received due process.

The group argued that the judicial system in Taiwan is still severely tainted by its authoritarian past, and is still being used by the present government for political prosecution of its opponents. National Taipei University Professor Chen Chao-hsiang, one of the authors of the report, said that the cases against former President Chen were "benchmark cases" of transitional justice in Taiwan "...because they were political cases

rather than legal cases from the first minute, and were the result of the judicial system being used as a political instrument (against the opposition.”

Professor Chen illustrated his point by comparing the very similar “special discretionary fund” cases against President Ma in 2007 (when he was still mayor of Taipei) and President Chen in 2008-2009. The two cases were actually handled by the same Judge, Tsai Shou-shun.

Judge Tsai handled these two cases totally differently: acting deferentially towards Ma and declaring him innocent, and treating Chen Shui-bian like a common criminal and handing down a long prison sentence: life imprisonment in the first trial and 20 years imprisonment in the second trial.

Professor Chen emphasized that the case against Mayor Ma was indeed stronger: he pocketed the money and did not have adequate receipts, while in the case against former President Chen, the main issue was inadequate receipts for funds spent for public purposes: no pocketing of funds was alleged in *that* case against the former President.

Lawyer Cheng Wen-lung details flaws

In early May 2013, the defense lawyer for former President Chen, Mr. Cheng Wen-lung, visited Washington DC and met with a number of Congressional offices and think tanks. In his meetings he discussed the legal system in Taiwan and presented evidence that it still is very susceptible to political influence and malpractice. He argued that in many ways it had not outgrown its origins in the period of Martial Law (1949-1987).

He strongly advocated judicial reform in Taiwan, and declared himself an outspoken proponent of the jury system as is practiced in the United States. During his visit to the US he also travelled to a number of cities at the invitation of the US State Department, and attended several trial sessions in New York.

During his meetings in Washington he discussed the multiple cases against former President Chen, calling it “very much a political prosecution”, and detailing how the prosecution had violated basic procedures and how there had been an overtone of a strong political bias on the part of many of the prosecutors and judges involved in the case.

Lawyer Cheng also spoke of the bewildering number of cases lodged against the former President: a total of ten (10) according to the website of Taiwan’s Ministry of Justice.

According to Lawyer Cheng, several of these cases were artificially split off from the more general cases in order to arrive more quickly at a “guilty” verdict. In his view this was unusual and an indication of political prosecution.

The cases that were split off were the Long-tan Land Deal (which eventually resulted in a prison term of 17 years and 6 months), and the Yuanta Core Pacific Securities acquisition of Fuhwa Financial Holdings case (in which the District Court initially came down with a “not guilty” verdict, but which -- after political interference from the KMT government -- eventually resulted in a 10 years’ prison term, see below).

Photo: Taiwan Communiqué



Lawyer Cheng Wen-lung

Lawyer Cheng also presented detailed evidence of political interference in the proceedings. A short summary:

- * The first charge on which former President Chen was originally arrested on 11 November 2008 was that he allegedly misused a US\$ 450,400 “special affairs” diplomatic fund. Lawyer Cheng said that it was ironic that on 11 November 2010 the former President was eventually declared “not guilty” on these charges by the Supreme Court, but that he was detained for many months on those charges.
- * **Switching of judges.** This now famous case occurred in the early stages of former President Chen’s “preventive detention” in December 2008, when District Court judge Chou Chan-chun, who was presiding over the case, was suddenly removed due to strong KMT pressure after judge Chou released former President Chen on his own cognizance on 13 December 2008. The judge who replaced him as president of the three-member panel, Tsai Shou-shun, immediately put the former President back in detention on 25 December 2008.
- * **False testimony by key witness.** In the Long-tan Land Deal there was also evidence of false testimony by witness Jeffrey Koo, Jr. In 2008 Mr. Koo, a former vice Chairman of the Chinatrust Financial Holding Co founded by his father, was hiding in Japan trying to escape prosecution in an unrelated case.

However, on the day after former President Chen was arrested, a special prosecutor flew to Tokyo and met with Mr. Koo, promising him that he would not be detained if he agreed to return to Taiwan, and testify against former President Chen. Mr. Koo agreed and became the key witness in the Long-tan Land Deal case, which resulted in a total of 17 years and 6 months imprisonment.

- * **Political interference by President Ma** in the Yuanta Core Pacific Securities merger with Fuhwa Financial Holdings. Lawyer Cheng detailed how in this case, the Taipei District Court originally arrived at a “not guilty” verdict. However, President Ma publicly called the verdict “not acceptable” and invited the Chief Justice and Prosecutor-General for dinner.

Two days later the Supreme Court suddenly came down with a final “guilty” verdict in the Long-tan Land Deal case, sentencing the former President to 17 ½ years imprisonment on 11 November 2010. He was immediately transferred from the temporary detention center to Taipei Prison to start serving that sentence.

In the Yuanta-Fuhwa Merger case, the legal proceedings continued and the High Court subsequently handed down an 18 years’ sentence, which was then reduced to a 10 years’ sentence by the Supreme Court.

- * **Supreme Court deviating from standard practice.** Lawyer Cheng also detailed how in two of the cases against the former President, the Long-tan Land Deal and the Yuanta Core Pacific Securities merger with Fuhwa Financial Holdings, the Supreme Court deviated from standard practice: the Court generally only upholds a verdict handed down by the High Court, or refers it back to the High Court for a retrial. In these two cases against former President Chen it actually came up with a ruling of its own, breaking away from precedents and giving a new interpretation to the law.

Lawyer Cheng argued that the cumulative sum of these irregularities represented a systemic breach of the principles of legality and fair trial, pointing to significant political interference. He said that in any democratic society, the case would have been thrown out of court, but that in the case of former President Chen, the Special Prosecutor’s Office simply threw case after case at the former President in the hope that some would stick, while engaging in fishing expeditions in an attempt to find evidence that might hold up in Court.

Lawyer Chen also explained how the attorney-client privilege was severely violated as all his meetings with former President Chen were restricted and recorded.

Former President attempts suicide again

As this issue went to press in early June 2013, news came out of Taiwan that former President Chen attempted suicide by hanging himself with a towel from a fixture in his bathroom.

According to reports issued by the prison authorities, Chen was reportedly upset by the passage of an amendment to the Accounting Act, hastily passed by the Legislative Yuan around midnight on Friday 1 June 2013, which does de-criminalize irregularities in the use of public funds.

Photo: Taipei Times

The legislation had originally been introduced to reduce bureaucratic tape in the handling of public funds for expenditures at colleges and academic institutions, and was generally supported by all parties. However, in a last-minute move, the Kuomintang Caucus added “elected officials” to the list of people and institutions exempted from auditing.



Pei-teh Prison in Taichung

This move was apparently intended to exonerate former independent legislator and Taichung County Council speaker Yen Ching-piao, who is serving a three-and-a-half-year prison term for misusing public funds. Mr. Yen is a leading gangster in Taichung’s underworld and active in supporting KMT candidates there.

Former President Chen, suffering from severe depression, thus became upset that a gangster like Mr. Yen would go free after spending public funds on hostesses in bars, while he himself remains charged on using the presidential discretionary fund for the purpose of secret diplomacy. Chen was reportedly also upset that his application to rejoin the DPP had hit a snag. But sources in the DPP indicated that the snag would be ironed out, and that Mr. Chen could rejoin the party in the near future.

However, a much more important underlying reason for the suicide attempt was the serious deterioration in medical and psychiatric care experienced by the former President

after he was transferred from Taipei to Taichung on 19 April 2013. On 4 June 2013, the Formosan Association for Public Affairs in Washington DC issued a statement on the issue. The key part reads as follows:

"... this serious deterioration is primarily due to the fact that the former President has received inadequate medical care since he was moved to Pei-teh Prison in Taichung on April 19th.

Until April 19th the former President was held at the Taipei Veterans General Hospital where he received treatment for his medical and psychiatric ailments from an expert team at TVGH, headed by a top psychiatrist, Dr. Chou Yuan-hwa.

However, at Pei-teh Prison, there is no medical team. Medical staff from surrounding hospitals are called in on a case-by-case basis. In fact, his medical records were not even transferred from TVGH to Pei-teh Prison. Reportedly, since April 19th, there have not been any treatment sessions to deal with his mental depression, just one weekly brief visit from a doctor at the Taichung Veterans General Hospital.

In addition, at TVGH, members of his volunteer medical team could visit him whenever needed. However, at Pei-teh Prison in Taichung they need to apply for permission to visit Chen through a legislator, and the legislator needs to accompany them on the visit. The volunteer medical team is also not allowed to write anything down during their visit, making it difficult for them to keep a record."

Report from Washington

The State Department's Human Rights Report

On 19 April 2013, Secretary of State John Kerry submitted the **2012 Country Reports on Human Rights Practices** to the US Congress. The report generally highlights human rights violations and practices in countries where basic freedoms are suppressed by their respective governments. As such the document is a valuable tool to advance freedom and democracy around the world, and is appreciated by many who work towards these goals.

In the case of Taiwan, the report documents various infringements on rights and discrimination against certain disadvantaged groups in society, and gives an adequate and generally informed analysis of the situation.

For instance, the 2012 report does touch on the harsh treatment of former President Chen Shui-bian, and states:

Monitoring: The authorities allowed independent nongovernmental monitors to investigate prison conditions. In July a team of two foreign doctors and one foreign scientist visited former president Chen Shui-bian in prison. In its report the team expressed concern for Chen Shui-bian's deteriorating physical and mental health, concluded that the stress of continued confinement would lead to further deterioration, called for a more complete medical evaluation of Chen, and recommended Chen's release on medical parole.

Photo: Taiwan Communiqué



Former Alaska Governor Frank Murkowski (C):
January 2012 elections were mostly free but partly unfair

Subsequently, several human rights activists visited Chen Shui-bian in prison. A growing number of observers claimed Chen was being mistreated, noting that he was limited to half an hour of exercise daily outside of his cell, increased in August to an hour daily, and was not allowed to leave his cell to work as other prisoners do.

Taipei Mayor Hau Lung-bin, a member of the ruling KMT, called for an assessment of Chen's health condition by an impartial board of medical doctors. Authorities stated that Chen Shui-bian's treatment had been adequate and that his condition did not warrant release on medical grounds.

However, on two points the 2012 Human Rights Report is totally out of touch with reality. We briefly summarize our objections here:

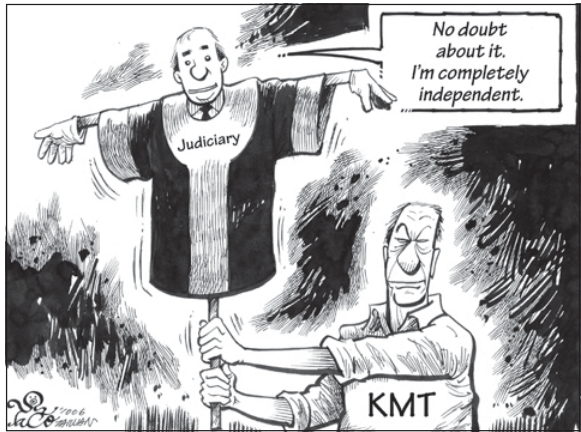
1. In both the **executive summary** and under **Section 3. Respect for political rights**, the report states that the January 2012 elections were "considered free and fair" by international observers. This is pertinently not the case: the report by the International Committee for Fair Elections in Taiwan (ICFET) headed by former Alaska governor and US Senator Frank Murkowski concluded the elections were "*mostly free but partly unfair.*"

The international observation mission that wrote the ICFET report was made up of 19 observers from 8 countries, and represented a wide spectrum of political opinion. The mission submitted its report in Taiwan in June 2012, while US Senator Lisa Murkowski (R-AK) inserted the report into the Congressional Record on 19 September 2012, and also introduced a Concurrent Resolution in the US Senate (S.Res. 542), highlighting the conclusions of the report. It is thus rather flabbergasting that the State Department did not take the conclusions of that report into account.

- 2. Under the heading **Section 1. Respect for the integrity of the person; trial procedures** the State Department report states: *“The constitution provides for the right to a fair trial, and an independent judiciary generally enforces this right.”*

To close observers it is rather obvious that the judicial system in Taiwan is still very much tainted by a political bias stemming from the period of Martial Law (1949-1987) when it was the instrument of repression by the ruling Kuomintang Party.

Copyright: Taipei Times



Taiwan judiciary: No doubt about it, I am completely independent

At the present time, much of that influence is still very much part of the judicial process. While some people in the judiciary and in civic society have attempted to make the judiciary more independent, any judicial reform has been blocked by the vested interests of the ruling Kuomintang.

The examples from the legal cases against former President Chen Shui-bian present ample evidence of major interference in the judiciary, going to the highest level in the Kuomintang administration: President Ma Ying-jeou himself. For the State Department report to conclude that the judiciary is “independent” is confounding to say the least.

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CONTENTS

Taiwan Communiqué no 142
June / July 2013

Mr. Su Tseng-chang goes to Washington

<i>DPP Chairman receives warm welcome</i>	1
<i>Strengthening US-Taiwan relations</i>	2
<i>The new DPP Defense Blue Paper</i>	2

The Philippines-Taiwan fisheries conflict

<i>Close encounter in disputed waters</i>	4
<i>High tension and inflammatory rhetoric</i>	5
<i>"Parallel" investigations</i>	7
<i>Taiwan must keep a cool head in dispute</i>	
<i>by Ambassador Nat Bellocchi</i>	8
<i>Legal notes on Taiwan-Philippines dispute</i>	
<i>by Prof. Kuo Ming-sung</i>	10

International space for Taiwan

<i>US concerned about WHO restrictions</i>	12
<i>Is President Ma's "diplomatic truce" failing?</i> ...	13

The flawed case against President Chen

<i>Professors and Church criticize trial</i>	15
<i>Lawyer Cheng Wen-lung details flaws</i>	17
<i>Former President Chen attempts suicide again</i> ...	20

Report from Washington

<i>The State Department Human Rights Report</i>	21
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The goals of FAPA are: 1) to promote international support for the right of the people of Taiwan (Formosa) to establish an independent and democratic country, and to join the international community; 2) to advance the rights and interests of Taiwanese communities throughout the world; and 3) to promote peace and security for Taiwan

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